

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-093

 SC

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the application upon receiving the applicant's completed application on March 8, 2019, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 15, 2020, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a Chief Operations Specialist (OSC) currently on active duty, asked the Board to correct his record to show that he reenlisted on his 6th active duty anniversary, which was July 21, 2007, to receive a selective reenlistment bonus (SRB).¹ He stated that his unit's YN1 was preparing for a FORCECOM inspection in 2019 and discovered that he (the applicant) had not been counseled about his eligibility for an SRB anniversary.

In support of his request the applicant submitted a copy of a Page 7 dated February 11, 2019, documenting that he had reviewed Article 1.B.13 of the Military Programs Manual and had been informed that he was eligible to reenlist on or within 3 months prior to July 21, 2007, to

¹ SRBs allow the Coast Guard to offer a reenlistment incentive to members who possess highly desired skills at certain points during their career. SRBs vary according to the length of each member's active duty service, the number of months of service newly obligated by the reenlistment or extension of enlistment contract, and the need of the Coast Guard for personnel with the member's particular skills, which is reflected in the "multiple" of the SRB authorized for the member's skill/rating, which is published in an ALCOAST. Within 90 days prior to a member's 6th and 10th active duty anniversary, the member is eligible to reenlist for either a Zone A or a Zone B SRB if one is authorized for his rating and the member has not already received one.

receive a Zone A SRB in accordance with ALCOAST 304/07. The Page 7 noted that his SRB would be computed with 47 months of newly obligated service.

SUMMARY OF THE RECORD

The applicant served in the Marine Corps for exactly four years from January 29, 2001, to January 28, 2005, and enlisted in the Coast Guard on July 21, 2005, for a term of four years, through June 20, 2009. He received a \$5,000 Enlistment Bonus because he agreed to affiliate with the OS rate. He advanced from OS3 to OS2 on June 1, 2007, and was an OS2 when he reached his 6th active duty anniversary on July 21, 2007.²

On June 3, 2009, the applicant extended his enlistment for one year to obligate service for a transfer, and he extended his enlistment again on May 7, 2010, for one year. He signed an indefinite reenlistment contract on June 10, 2011, and in August 2016, he applied for and received a \$30,000 Career Status Bonus.

On February 11, 2019, the applicant was counseled after-the-fact that he had been eligible to reenlist for a Zone A SRB pursuant to ALCOAST 304/07 during the three months leading up to his 6th active duty anniversary (July 21, 2007). He was accurately advised that if he had reenlisted for six years on the anniversary then his bonus would be calculated based on 47 months of newly obligated service.

APPLICABLE REGULATIONS

Article 1.B.5.i. of the Coast Guard Personnel Manual in effect in 2009 provides that Commanders are authorized to effect early discharge and reenlist members within three months prior to their 6th, 10th, and 14th year anniversaries, for the purpose of qualifying for an SRB.

Articles 3.C.3. and 3.C.11. of the manual require documented SRB counseling on a Page 7 for all personnel with ten years or less of active service who reenlist or extend for any period and for all personnel within three months of their 6th, 10th, and 14th active duty anniversaries.

Article 3.C.4. provides that, to receive a Zone A SRB, a member must meet the following criteria:

1. Reenlist not later than 3 months after discharge or release from active duty in a rating authorized an SRB multiple.
2. Have completed 17 months continuous active duty (including extended active duty as a Reserve) at any point in their military career. The 17 months continuous active duty need not have been completed immediately prior to the reenlistment or extension.
3. Have completed not more than 6 years active service on the date of reenlistment or the date on which the extension becomes operative.

² The applicant's 4 years in the Marine Corps is added to his active service in the Coast Guard when calculating his 6th active duty anniversary.

4. Be serving in pay grade E-3 (with appropriate designator), or higher on active duty in a rating that is designated as eligible for an SRB multiple.
5. Reenlist or extend enlistment in the Regular Coast Guard for a period of at least 3 full years.
6. Have not previously received a Zone A SRB.
7. Attain eligibility prior to the termination of a multiple for that particular rating.
8. Meet any additional eligibility criteria the Commandant may prescribe.

Article 3.C.5.9 of the manual states that Commanding officers are authorized to effect early discharge and reenlist members within 3 months prior to their 6th, 10th, or 14th year active service anniversary dates (not to be confused with the normal expiration of enlistment), for the purpose of qualifying for a Zone A, B, or C SRB. In such cases payments will be reduced by any portion of unserved service obligation. Commanding officers shall ensure that such personnel are fully qualified to receive an SRB and advise them that all periods of unserved obligated service will be deducted from their bonus entitlement.

Article 3.C.7.1 of the manual provides that bonus payments will be computed by taking the authorized SRB multiple, multiplying it by the member's monthly basic pay, multiplying the result by the number of months of newly obligated service under the new reenlistment or extension contract, and dividing this figure by 12.

ALCOAST 283/06 was issued on May 15, 2006, and authorized a Zone A SRB for an OS2 between July 1, 2006, and July 15, 2007. It did not authorize an SRB for an OS3. Paragraph 8 states that commanding officers and officers in charge "shall bring the contents of this ALCOAST to the attention of all personnel."

ALCOAST 304/07 was issued on June 15, 2007, and went into effect July 16, 2007. It did not authorize a Zone A SRB for members in the OS rate.

Chapter 1.G.5.8. of the Coast Guard Personnel Manual states that first term personnel are not eligible for reenlistment without authority from the Centralized First Term Reenlistment Review (CFTRR).

VIEWS OF THE COAST GUARD

On August 26, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny relief. The JAG argued that although there is nothing in the applicant's record to show that he was timely counseled on his 6th active duty anniversary, it is not proof that he was not counseled because it is likely that after 12 years the records have been lost.

The JAG further argued that the Doctrine of Laches precludes relief, asserting that the applicant's 12-year delay in submitting his request is unreasonable and he failed to justify the delay. Moreover, the JAG argued that the Coast Guard is prejudiced by the applicant's delay because it is impossible to determine if he would have been allowed to reenlist on his 6th anniversary or if he would have reenlisted and incurred another 47 months of newly obligated service in 2007.

The JAG also argued that there is no evidence to show the applicant would have been allowed to reenlist on his 6th active duty anniversary without prior authorization. The JAG noted that because the applicant was on his first enlistment, he would not have been allowed to reenlist on his 6th anniversary without authorization from the Centralized First Term Reenlistment Review (CFTRR), and there is nothing in his record to show that he applied to the CFTRR.

The JAG attached to her memorandum an email from a Military Pay Systems Specialist Pay who wrote that the only period during which the applicant could have reenlisted within 3 months of his 6th anniversary to receive a Zone A SRB was from June 1, 2007, to July 15, 2007. The pay specialist stated that he was only eligible to receive an SRB during this short time frame because he was an OS3 through May 31, 2007, and thus ineligible for an SRB under ALCOAST 283/06, which was in effect through May 31, 2007. However, the pay specialist stated that once the applicant advanced to OS2 on June 1, 2007, he was eligible for an SRB under ALCOAST 283/06, but he lost eligibility when ALCOAST 304/07 went into effect because members in the OS rate were no longer eligible for an SRB.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 29, 2017, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. On October 25, 2019, he submitted a 60-day extension to respond. The Chair granted his request and he responded on November 29, 2019, disagreeing with the Coast Guard's recommendation.

The applicant argued that the absence of 6th anniversary SRB counseling in his record is proof that he was not counseled. He noted that the Coast Guard was able to provide the Board with his personnel records from 2005 to 2019, which is proof that the Coast Guard made a "significant effort" to maintain all of his records.

The applicant also found issue with what he alleges are contradictory statements from the Coast Guard regarding the timeliness of his application. For instance, he noted that the Coast Guard stated that his application is timely but then it argued that relief should be denied "due to the unreasonable delay in filing his BCMR, for which the applicant knew or should have known the facts."

Finally, the applicant disagreed with the Coast Guard's speculation that he would not have reenlisted on this 6th active duty anniversary. He noted that he completed two one-year extensions and signed an indefinite reenlistment contract in 2011, so these contracts are proof that he intended to complete 20 years of active service in the Coast Guard.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant alleged that he was not counseled regarding his eligibility to reenlist for an SRB when he reached his 6th active duty anniversary and so was erroneously and unjustly denied an SRB. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁴

3. There is no Page 7 in the applicant's record to show that he was counseled about his opportunity to reenlist for an SRB during the three months leading up to his 6th active duty anniversary in 2007, as required by Article 3.C.11. of the Personnel Manual then in effect, and the Coast Guard admitted that his record does not contain evidence of timely counseling. The Coast Guard claimed that the required Page 7 documenting the SRB counseling might have somehow been lost or removed from the applicant's record in the interim, but it did not explain how or why the Page 7 could have been removed from his record. The Board finds that the absence of the required Page 7 proves by a preponderance of the evidence that he was not timely counseled about his eligibility for an SRB before his 6th active duty anniversary on July 21, 2007.

4. Under Article 3.C.5.9. of the Personnel Manual, the applicant was eligible to reenlist for an SRB during the three months before his Zone A SRB if there was one in effect for his rating. Under ALCOAST 283/06, no SRB was authorized for an OS3/E-4, but when the applicant advanced to OS2/E-5 on June 1, 2007, he became eligible for a Zone A SRB under the ALCOAST. And he remained eligible to reenlist for an SRB until ALCOAST 304/07 was issued on July 15, 2007, which canceled the SRB authorization.

5. The Board finds that if the applicant had been properly counseled three months prior to his 6th active duty anniversary, then he would have been told that as an OS3 he was ineligible to receive an SRB pursuant to ALCOAST 283/06 but that he would become eligible for one as soon as he advanced to OS2. The applicant's name would have been near the top of the advancement list at the time, and when the advancement announcement was issued, he would have known that he could reenlist for an SRB after he advanced to OS2 on June 1, 2007. Had he been properly counseled, he would have known that he could reenlist for a term of 3, 4, 5, or 6 years to receive a Zone A SRB any time between June 1, 2007, and July 15, 2007, when the SRB authorizations were canceled by ALCOAST 304/07.

5. Citing Article 1.G.5.8. of the Personnel Manual, the JAG argued that relief should be denied because there is no way to know if the applicant would have been allowed to reenlist on his 6th active duty anniversary. The JAG stated that pursuant to Article 1.G.5.8., members on

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

their first term are not eligible for reenlistment without authority from the CFTRR and there is nothing in the applicant's record to show that he requested permission to reenlist from the CFTRR. The Board disagrees with the JAG's recommendation. The applicant's record shows that he enlisted in the Coast Guard after serving honorably in the Marine Corps for four years, and there is no evidence of any NJPs or unsatisfactory marks. Given that the Coast Guard was in need of OS2s and offering a reenlistment bonus to retain them in 2007, the Board finds that the preponderance of the evidence shows that, if the CFTRR was in effect in 2007, his request to reenlist on his 6th active duty anniversary for an SRB would have been granted.

6. Likewise, although the Coast Guard argued that the applicant might not have reenlisted in 2007 despite the offer of the SRB, the preponderance of the evidence of the evidence shows that he would have. His decision to sign short extension contracts when his four-year enlistment ended in 2009 could have based on hopes that an SRB would be authorized for his rating.

7. The applicant has proven by a preponderance of the evidence that he was not properly counseled about his eligibility for an SRB before his 6th active duty anniversary and that, if he had been, he would have reenlisted for a Zone A SRB before the SRB multiples were canceled as of July 16, 2007. Therefore, the Board should order the Coast Guard to correct his record to show that he signed a 6-year reenlistment contract or, at his discretion, a 3, 4, 5-year reenlistment contract (in case the term of the SRB contract affects a later bonus) on July 15, 2007, to receive an SRB in accordance with ALCOAST 283/06.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The military record of OSC [REDACTED] USCG, shall be corrected to show that he reenlisted for a term of 6 years or—at his discretion—for a term of 3, 4, or 5 years on July 15, 2007, to receive a Zone A SRB as provided under ALCOAST 283/06. The Coast Guard shall pay him any amount due as a result of this correction.

May 15, 2020

