

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2021-091**

  
MK1

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the applicant's completed application on June 9, 2021, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision dated September 22, 2022, 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 Machinery Technician, first class (MK1) currently on active duty, asked the Board to correct his record to show that he reenlisted on his 10<sup>th</sup> active duty anniversary<sup>1</sup> to receive a Selective Reenlistment Bonus (SRB)<sup>2</sup>.

The applicant argued that in April 2021 a yeoman was reviewing his personnel record and determined that he had never been counseled about his opportunity to reenlist on his 10<sup>th</sup> active duty anniversary to receive an SRB. He stated that he is about to transfer to a new duty station and that "these extra funds would make a substantial difference in my family's quality of

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<sup>1</sup> Further clarification with the applicant determined he is seeking to reenlist on his 6<sup>th</sup> active duty anniversary to receive an SRB, and not reenlist on his 10<sup>th</sup> active duty anniversary, as noted on his application to the Board.

<sup>2</sup> 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 6<sup>th</sup> and 10<sup>th</sup> 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. Article 3.C. of the Coast Guard Personnel Manual.

life.” The applicant also argued that the bonus money should be tax exempt because he was serving overseas at the time.

To support his request, the applicant submitted an Administrative Remarks Form (“Page 7”) dated January 27, 2021. The Page 7 documents that he had been counseled about his eligibility to reenlist on or three months prior to his 6<sup>th</sup> active duty anniversary on July 8, 2009, to receive a Zone B SRB. The applicant also submitted an email that he received from the yeoman who prepared his Page 7. In the email, the yeoman informed the applicant that he had not been timely counseled about his eligibility to reenlist on his 6<sup>th</sup> active duty anniversary to receive a Zone B SRB. As such, the yeoman told the applicant that he had missed out on nearly \$9,000 in bonus money. He advised the applicant to submit an application to the BCMR asking to correct his record to show that he had reenlisted on his 6<sup>th</sup> anniversary for an SRB. The yeoman also told the applicant that his bonus should be tax exempt because he was serving in a combat zone at the time.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on July 8, 2003, for a term of four years. After attending recruit training, the applicant attended MK “A” School and advanced to MK3.

On June 7, 2007, the Coast Guard issued ALCOAST 304/07, which authorized a Zone A SRB multiple of 2.0 for MK2s and MK1s and a Zone B SRB multiple of 1.5. No SRB multiple was authorized for MK3s.

On June 20, 2007, the applicant signed a twelve-month extension contract to obligate service for transfer, with an effective date of July 8, 2007.

On April 1, 2008, the applicant advanced from MK3 to MK2.

On June 8, 2008, the Coast Guard issued ALCOAST 286/08, which authorized both a Zone A SRB multiple of 2.0 for MK2s and MK1s and a Zone B SRB multiple of 1.2 for MK2s and MK1s. These multiples would go into effect on July 16, 2008, after the applicant’s 6<sup>th</sup> active duty anniversary.

On June 23, 2008, while the SRB multiples authorized under ALCOAST 304/07 were still in effect, the applicant reenlisted for four years, through June 22, 2012. He received a Zone A SRB pursuant to ALCOAST 304/07.

ALCOAST 353/09, issued on June 12, 2009, noted that the SRB multiples authorized under ALCOAST 286/08 would remain in effect through July 15, 2009. Fewer ratings were authorized new SRB multiples as of July 16, 2009, under ALCOAST 353/09, and no SRB multiple was authorized for the applicant’s rating.

The applicant’s 6<sup>th</sup> active duty anniversary was on July 8, 2009, and there is nothing in his record documenting counseling about his eligibility to reenlist for an SRB on that date. At the time, the applicant was stationed on a cutter.

On June 5, 2012, the applicant extended his enlistment for 12 months, through June 12, 2013.

On February 1, 2013, the applicant reenlisted for four years.

The applicant's 10<sup>th</sup> active duty anniversary was on July 8, 2013, and there is nothing in his record documenting counseling about his eligibility to reenlist for an SRB on that date.

On August 12, 2016, the applicant reenlisted for a term of three years. He advanced to MK1 on September 1, 2017.

On April 9, 2018, the applicant reenlisted for a term of six years, through April 8, 2024. He was counseled that in accordance with ALCOAST 157/16 he was not eligible to receive an SRB.

On January 27, 2021, the applicant signed a Page 7 documenting that he had been counseled after-the-fact about his eligibility to reenlist on or three months prior to his 6<sup>th</sup> active duty anniversary to receive a Zone B SRB in accordance with ALCOAST 353/09.<sup>3</sup> The Page 7 states that he was eligible to extend/reenlist for a maximum of six years and that his SRB would be computed based on 36 months of previously obligated service.

### **VIEWS OF THE COAST GUARD**

On December 27, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief.

The JAG first recommended denying the applicant's request to receive an SRB on his 10<sup>th</sup> active duty anniversary. The JAG acknowledged that there is nothing in the applicant's record to show that he was counseled about his eligibility to reenlist on his 10<sup>th</sup> active duty anniversary for an SRB. However, the JAG stated that if the applicant had been counseled, he would have been advised that he was not eligible for an SRB at the time. To support its assertion, the JAG stated that the Coast Guard cancelled the SRB program from December 1, 2009, to May 6, 2015.<sup>4</sup> The applicant reached his 10<sup>th</sup> active duty anniversary on July 8, 2013.

The JAG also recommended denying the applicant's request to receive an SRB on his 6<sup>th</sup> active duty anniversary. The JAG stated that the Page 7 referenced by the applicant actually refers to his eligibility for a Zone B SRB on his 6<sup>th</sup> active duty anniversary date of July 8, 2009. The JAG acknowledged that there is nothing in the applicant's record to show that he was timely counseled about his eligibility to reenlist on his 6<sup>th</sup> active duty anniversary for an SRB. The JAG argued that if the applicant had been properly counseled, he would have been advised that he was

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<sup>3</sup> It is unclear why the Page 7 was prepared more than 11 years after the applicant's 6<sup>th</sup> active duty anniversary, but was likely done by a yeoman upon noticing that the applicant had not been counseled on the anniversary.

<sup>4</sup> ALCOAST 621/09, issued on October 29, 2009, cancelled SRBs effective December 1, 2009. SRBs later continued when ALCOAST 193/15 was published on May 6, 2015.

eligible to reenlist for an SRB but that any bonus would be significantly reduced by his previously obligated service.

Finally, the JAG argued that the applicant failed to prove that he would have reenlisted for the reduced SRB had he received proper counseling. At the time of the applicant's 6<sup>th</sup> active duty anniversary, he already had approximately three years of obligated service. As such, the Zone B SRB would have been significantly reduced. The JAG stated that even if the applicant had reenlisted for the maximum amount of 6 years, he would have received only 50% of the SRB because of his previously obligated service since bonuses are paid only for months of newly obligated service under the new reenlistment contract. The JAG argued that since members can only obtain an SRB once for each zone, the applicant would have likely chosen to forgo the significantly reduced SRB and waited for his four-year reenlistment to end in 2012. The JAG stated that in 2012, the applicant was still within the Zone B SRB eligibility and would have been eligible to receive 100% of an SRB as there would have been no reduction for previously obligated service. The JAG argued that at the time of the applicant's 6<sup>th</sup> active duty anniversary, there was no way for him to have known that SRBs would be soon discontinued. The JAG argued that it is impossible to "assess hypothetical decisions in hindsight" and without knowing what the applicant would have decided when faced with the decision in 2009, he has not proven that he more likely than not would have taken the significantly reduced SRB in 2009 instead of waiting for a subsequent larger SRB.

#### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On June 7, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. He responded on July 12, 2022, and argued that he would have reenlisted on his 10<sup>th</sup> active duty anniversary for an SRB if he had been properly counseled. He acknowledged that his bonus would have been significantly reduced by his previously obligated service.

#### **FURTHER PROCEEDINGS**

In reviewing this case, the Board identified a discrepancy in the applicant's request. The applicant asked the Board to correct his record to show that he reenlisted on his 10<sup>th</sup> active duty anniversary to receive an SRB. However, his supporting evidence cited his 6<sup>th</sup> active duty anniversary. On September 14, 2022, a member of the Board contacted the applicant to clarify his request. The applicant asked the Board to correct his record to show that he reenlisted on his 6<sup>th</sup> active duty anniversary to receive a Zone B SRB. He stated that he never meant to ask to reenlist on his 10<sup>th</sup> active duty anniversary.

#### **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 6<sup>th</sup>, 10<sup>th</sup>, and 14<sup>th</sup> 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 6<sup>th</sup>, 10<sup>th</sup>, and 14<sup>th</sup> active duty anniversaries.

Article 3.C.4.b of the manual states that to receive a Zone B 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 at least 6 but not more than 10 years active service on the date of reenlistment or the operative date of the extension.
4. Be serving in pay grade E-5 or higher. Personnel who are changing rate, as approved by the Commandant, are eligible as an E-4 provided they were E-5 or higher immediately prior to changing rate.
5. Reenlist or extend enlistment in the Regular Coast Guard for a period of at least 3 full years, provided the reenlistment or extension, when added to existing active service, will provide a total active duty of no less than 10 years.
6. Have not previously received a Zone B 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 6<sup>th</sup>, 10<sup>th</sup>, or 14<sup>th</sup> 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.

## **FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions based on 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.

2. Although the application was not filed within three years of the applicant's discovery of the alleged error or injustice, it is considered timely because he has remained on active duty in the interim.<sup>5</sup>

3. The applicant alleged that he was not timely counseled about his eligibility to reenlist for an SRB when he reached his 6<sup>th</sup> 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.<sup>6</sup> 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."<sup>7</sup>

4. In his application to the Board, the applicant argued that he had not been properly counseled about his eligibility to reenlist for an SRB on his 10<sup>th</sup> active duty anniversary. In support of his request, he submitted a Page 7 dated January 27, 2021, which documented after-the-fact counseling about his eligibility to reenlist for a Zone B SRB on his 6<sup>th</sup> active duty anniversary. A BCMR staff member of the Board called the applicant for clarification. The applicant stated that he was only requesting that his record be corrected to show that he reenlisted on his 6<sup>th</sup> anniversary for an SRB. He stated that he never intended to ask to reenlist on his 10<sup>th</sup> active duty anniversary. Accordingly, the Board will interpret the applicant's request to mean that he wants his record corrected to show that he reenlisted on his 6<sup>th</sup> active duty anniversary to receive an SRB.

5. The applicant's record contains a Page 7 documenting counseling about his eligibility to reenlist for an SRB on his 6<sup>th</sup> active duty anniversary, which was July 8, 2009. However, the Page 7 was prepared by a yeoman on January 27, 2021, more than 11 years after the anniversary. Article 3.C.3. and 3.C.11. of the Coast Guard Personnel Manual in effect in 2009 required SRB counseling to occur within the three-month period before a member's 6<sup>th</sup> active duty anniversary. There is nothing in the applicant's record to suggest that he was timely counseled, and the JAG admitted that he did not receive proper SRB counseling in 2009. The Board finds that the applicant has proven by a preponderance of the evidence that he was not timely counseled about his eligibility for an SRB before his 6<sup>th</sup> active duty anniversary on July 8, 2009.

6. The Board finds that if the applicant had been properly counseled within three months of his 6<sup>th</sup> active duty anniversary—July 8, 2009—then he would have been told that as an MK2, he was eligible to receive a Zone B SRB pursuant to ALCOAST 286/08 because ALCOAST 353/09 did not go into effect until July 16, 2009. Had he been properly counseled, he

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<sup>5</sup> *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

<sup>6</sup> 33 C.F.R. § 52.24(b).

<sup>7</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

would have known that he could reenlist for a term of 4, 5, or 6 years to receive a Zone B SRB any time between April 8, 2009, and July 8, 2009. Additionally, the applicant would have been advised that his bonus would be reduced by the previously obligated service he had incurred when he reenlisted for four years on June 23, 2008.

7. The JAG recommended denying relief because the applicant failed to prove that he would have reenlisted and taken the reduced SRB had he been properly counseled. The JAG argued that the applicant would have likely chosen to forgo the significantly reduced SRB and waited for his reenlistment to end in 2012 to reenlist and receive the full amount of the bonus. The Board disagrees. As noted by the JAG, SRBs were cancelled shortly after the applicant's 6<sup>th</sup> active duty anniversary. Moreover, ALCOAST 353/09, issued on June 12, 2009, had already shown that fewer ratings were being authorized SRBs as of July 16, 2009, and that the applicant's rating in particular was not being authorized an SRB at least for the next year. Although the applicant could not have known for certain that no SRBs would be authorized from December 2009 to May 2015, members know that SRBs are not guaranteed and are only issued when they are determined to be necessary to maintain workforce readiness. At the time of the applicant's 6<sup>th</sup> active duty anniversary, he still had about three years of obligated service remaining to run on his 4-year reenlistment dated June 23, 2008. However, he was authorized to reenlist for up to 6 years for a Zone B SRB on his 6<sup>th</sup> anniversary. Even though the applicant's SRB would have been reduced by his previously obligated service, this guaranteed money would likely have been more enticing than a potential SRB three years later after ALCOAST 353/09 showed that the number of SRBs authorized had been greatly diminished and the SRB for his rating had been eliminated altogether. Further, if the Zone B SRB was in fact tax exempt as the applicant argues, it would have been another reason to accept the guaranteed Zone B SRB in July 2009. Therefore, the Board finds that the applicant has proven by a preponderance of the evidence that he was not properly counseled about his eligibility for an SRB on his 6<sup>th</sup> active duty anniversary and that, if he had been, he would have reenlisted for 6 years to receive a Zone B SRB on July 8, 2009.

8. The Board should order the Coast Guard to correct the applicant's record to show that he signed a 6-year reenlistment contract or, at his discretion, a 4 or 5-year reenlistment contract (in case the term of the SRB contract affects a later bonus) on July 8, 2009, to receive a Zone B SRB in accordance with ALCOASTs 286/08 and 353/09. The applicant argued that any bonus he receives for reenlisting on his 6<sup>th</sup> active duty anniversary should be tax exempt because he was serving overseas on the anniversary. The applicant's record shows that at the time of his 6<sup>th</sup> active duty anniversary, he was serving aboard a cutter. The applicant did not provide any evidence that his cutter was overseas. However, the Coast Guard should review the applicant's assignment record and determine if some or all of his bonus should be tax exempt.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

**ORDER**

The military record of MK1 [REDACTED] [REDACTED] USCG, shall be corrected to show that he reenlisted for a term of 6 years or—at his discretion—for a term of 4 or 5 years on July 8, 2009, to receive a Zone B SRB as provided under ALCOASTs 286/08 and 353/09. The Coast Guard shall determine if some or all of his bonus is tax exempt based on the location of his cutter on that date and shall pay him any amount due as a result of this correction.

September 22, 2022

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