

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2022-017**

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OS1

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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. § 2507. The Chair docketed the case after receiving the completed application on December 8, 2021, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 31, 2023, 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, an Operations Specialist first class (OS1/E-6) currently on active duty in the Coast Guard, asked the Board to correct his record to show that he is eligible to receive the full Critical Skills Retention Bonus (CSRB) in the amount of \$100,000 that he signed and completed on September 29, 2021.

ALCOAST Commandant Notice (ACN) 074/21 authorized a \$100,000 bonus for active-duty members who chose to remain in designated Cyber Operation positions. The applicant was in a Cyber Operation position and was fully qualified for the bonus with the exception of the requirement that members not have more than 20 weeks of remaining obligated service for training. At the time, the applicant had approximately 15 months of remaining obligated service for training.

The applicant stated that he was granted a waiver of the obligated service requirement. Accordingly, he argued, he was promised a \$100,000 CSRB for agreeing to serve an additional 48 months of service in a Cyber Operation position. The applicant argued that the Coast Guard later changed its mind and reduced his bonus by 15 months in contradiction of the waiver. He argued that he should have received the entire \$100,000 bonus not reduced by 15 months.

The applicant stated that if the Board denies his request for the entire \$100,000 bonus, then he would like to cancel the extension contract that he signed to accept orders to attend the Joint

Cyber Analysis Course (JCAC). On January 21, 2020, he signed a one-year contract extension, which extended his enlistment from December 7, 2021, to December 6, 2022. He argued that he should be allowed to cancel the extension contract because it was not scheduled to begin until December 7, 2021. He argued that if he were able to cancel the one-year contract extension that he signed on January 21, 2020, he could receive “the CSRB without the pro-rated 15-month loss of CSRB entitlement but with only a loss from the start of the current fiscal year until December 2021.”

In support of his application, the applicant submitted numerous documents which are summarized in the Summary of the Record below.

### **SUMMARY OF THE RECORD**

On March 20, 2012, the applicant enlisted on active duty for a term of six years.

On December 7, 2015, the applicant signed another six-year reenlistment contract, obligating service through December 6, 2021.

On January 21, 2020, the applicant signed a one-year contract extension, which extended his enlistment from December 7, 2021, to December 6, 2022. He signed the extension contract because to attend the JCAC training, he was required to have at least two years of obligated service remaining on his enlistment upon completion of the JCAC.

On November 20, 2020, the applicant completed the JCAC.

On July 28, 2021, the Coast Guard released ACN 074/21, which announced critical skills retention bonuses to induce active-duty members to remain in designated Cyber Operations positions. The ACN states that to be eligible for the CSRB, a member must not have obligated active-duty service commitment beyond September 30, 2021, other than service obligated to accept permanent change of station orders (PCS) or a promotion/advancement. At the time, the applicant had obligated service until December 6, 2022, which he had incurred when attending the JCAC.

On September 13, 2021, the applicant sent a memorandum to the Commandant’s office asking the Coast Guard to waive the CSRB’s obligated service requirement so that he could receive the entire bonus. The memorandum states the following, in pertinent part:

1. Reference (a) [ACN 074/21] authorized monetary bonus offers for eligible active-duty members to remain in designated Cyber Operations positions.
2. After reviewing reference (a), I believe I am fully qualified with the exception of the following eligibility criteria factors; 1) Obligated service for training greater than 20 weeks.
3. I request the unmet criteria be waived due to the difficulty of obtaining the JCAC. The required 2 years of obligated service to graduate, coupled with the significantly limited number of available seats makes the requirement nearly impossible to meet for qualified and senior personnel. As a foundational school for Navy systems (Class 'A' School) and the nature of the course, not all members who are directed to receive the course can be sent to the school. Due to limited

availability of seats, priority given to Navy personnel, significant time commitment for the course after an extended access clearance process (2+ years of a 4-year tour to even be eligible for the course), and the ability to attend is often not possible. With bonus requirements being made near impossible to obtain, employment on the outside becomes more desirable due to the compensation levels available, current cyber skills gap nationwide in Cyber making jobs readily available, and more relaxed HR policies (i.e., telework schedules, grooming and weight standards, etc.). Being able to receive this bonus makes CGCYBER compensation more competitive with the outside opportunities, increasing the likelihood that a member would desire to stay. Failure to waive this requirement exponentially increases the likelihood of losing a fully cleared, trained, qualified, competent, and critical member of the Coast Guard Cybersecurity work force.

On September 27, 2021, the Commandant's office responded to the applicant's September 13, 2021, request and stated the following:

1. After a careful review of this case, the request that was submitted on your behalf in reference (a) is granted. The requirement in reference (b) that a member have no current obligated active-duty service beyond September 30, 2021, is hereby waived for the obligated service you incurred from cyber related training at the Joint Cyber Analysis Course (JCAC).
2. This approval is in concurrence with recent policy changes, which state that obligated active-duty service does not include CGCYBER-specific training. Consequently, your current obligated active-duty service will run concurrently with your bonus Active-Duty Service Commitment (ADSC). The operative date for your bonus payment will be the date you reported to your assigned unit and met all bonus requirements or the effective date of your "CGCYBER Enlisted Bonus Agreement," Form CG-5305C, whichever date is later.
3. Your request for the FY21 CGCYBER Enlisted Bonus must be submitted through your SPO [Servicing Personnel Office]. The SPO must submit a PPC [Pay and Personnel Center] Customer Care Branch Ticket along with a copy of this waiver to request the bonus payment. All remaining eligibility requirements found in references (b) and (c) must be met before the bonus can be paid.

On September 28, 2021, the applicant and his first line supervisor completed and signed a \$100,000 Cyber Enlisted Critical Skills Retention eligibility checklist. The eleven-item list contains the applicant's initials next to each item, with the exception of the line which states "no disqualifying OBLISERV." The word "waiver" is handwritten on the line next to this item.

On September 29, 2021, the applicant and his first line supervisor completed and signed a \$100,000 Cyber Enlisted Bonus Agreement. The document states that the applicant agreed that in consideration of receiving a \$100,000 bonus, he would obligate four years of active-duty service in an approved CGCYBER billet from the effective date of this agreement. It also states that his active-duty service commitment (ADSC) under this agreement would be four years of obligated service from the effective date of this agreement, or the date after he completes any current obligated active-duty service commitment and meets all other eligibility requirements, whichever is later.

Also on September 29, 2021, the Commandant's office sent the applicant a memo which states the following:

1. Congratulations! Your application and eligibility have been reviewed by CG-791 and approved for processing in accordance with reference (a) which authorizes a monetary bonus for eligible active-duty members to remain in designated Cyber Operations positions.
2. CG-791 has requested a waiver on your behalf for the obligated service related to your Joint Cyber Analyst Course. The waiver was sent to CG-1331 and subsequently approved.

On October 1, 2021, the Coast Guard directed that the applicant's bonus be pro-rated based upon his previously obligated service. On October 14, 2021, the CGCYBER Command Personnel and Administrative Office informed the applicant that his bonus would be prorated. The first paragraph of the email states the following regarding the prorated bonus:

My office has been getting overwhelmed with correspondence in regards to the CSRB Bonus being prorated and this email should address every concern so you can make an informed decision on whether or not you intend to move forward with the bonus. If you are in the to line of this email you have JCAC Obliserv beyond 9/30/2021 and your bonus will be prorated. Be advised that there are ZERO loopholes and ZERO policy to get you around this policy determination from CG-133.

The email also informed the applicant that he had the option of cancelling his bonus agreement if he decided that he did not want a prorated bonus. Specifically, the email states:

In speaking with CG-133 I have confirmed that if any of you decide you do not want a prorated bonus they will support not holding you to the bonus agreement. However, CG-133 also said you need to make a decision one way or another this week and then proceed with executing the appropriate extension agreement accordingly.

On October 26, 2021, the applicant signed an Administrative Remarks form ("Page 7")<sup>1</sup> stating that he understood that his CSRB payment would be prorated and paid based upon the amount of newly obligated service months he incurred beyond his existing current obligated active service. The Page 7 states that his CSRB payment would be computed based upon 33 months of newly obligated service. The applicant signed the Page 7, indicating that he had reviewed and understood the above regarding the payment of his CSRB.

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

On August 16, 2022, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case.

The JAG argued that relief should be denied because the Coast Guard made it clear to the applicant several times that his bonus would be prorated. The JAG noted that the letter from the Coast Guard dated September 27, 2021, informed the applicant that his current active-duty service would run concurrently with the CSRB active-duty service commitment. The JAG argued that this language should have made it clear to the applicant that his CSRB would be prorated. Additionally, the JAG noted that the applicant's Cyber Enlisted Bonus Agreement states that his active-duty commitment "will be four years of obligated service from the effective date of this agreement, or

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<sup>1</sup> An Administrative Remarks record entry, form CG-3307, better known as a "Page 7," is used to document a member's notification of important information, achievements, or counseling about positive or negative aspects of a member's performance in the member's military record.

the date after I complete any current obligated active-duty service commitment and have met all other eligibility requirements, whichever is later.” The JAG stated that the applicant’s obligated service completion date under his agreement is September 30, 2025, which includes the concurrent obligated service from JCAC.

The JAG also submitted an email dated June 27, 2022, from a Chief Petty Officer (CPO) with CBCYBER Command who explained why the Coast Guard elected to pro-rate the CSRB for members enrolled in JCAC:

The prorated bonuses were a HUGE deal when they happened. Members with JCAC time were not supposed to get the bonus at all with this bonus which is why no language concerning prorating was mentioned in the message. I had 40+ members put in for this bonus and about 10-15 of them had JCAC time which made them ineligible for the bonus. CG-791 and my unit put a package together to request CG-133 waive the JCAC obligation. CG-133 did however with the caveat that the bonuses would be prorated for that JCAC time. When the members discovered this proration there was an outrage by the members, their supervisors and branch chiefs. It went back and forth trying to get that canceled however it was upheld. I even did a TEAMS call with everyone who was getting a prorated bonus with myself, I think the CMC, a rep from CG-133 and maybe even one from PPC (I can't remember if PPC participated or not) to go over everything and clear up any questions they may have had. The proration was a big deal in that call, and they were all upset about it but they were all told and it was explained why it was being prorated.

These members were trying to come up with any way they could find to not get a prorated bonus. The canceling of the extension would have served no purpose because regardless of whether they signed a contract for JCAC time they would still not be paid for it. I have people who already had enough obligated service for JCAC when they went so their contract in DA [Direct Access] doesn't state anything about school/training however we know they attended JCAC so we prorated their bonuses based on that. They are obligated for 2 years from their graduation date regardless of the contract status.

The way I explained it to everyone was this: You are not authorized a bonus per the requirements released. You have a disqualifying factor and yet the CG is granting you a waiver to get the bonus anyway without that disqualifying time being paid. The Coast Guard already has you for that JCAC time, why would we pay you for time we already have you for? The Coast Guard is going to pay you for new time.

The JAG also addressed the applicant’s request to cancel the one-year extension he signed on January 21, 2020, to attend JCAC. The JAG stated that Section 3.A.6. of the Commandant Instruction M7220.2 discusses special conditions for canceling extensions. According to the instructions, a member can only cancel an extension if it is required of the member for transfer, training, and advancement. The JAG argued that the applicant's reason for cancellation does not fall within the purview of this clause, and that if the applicant were to cancel the extension, he would not have had the necessary two-year service obligation to attend JCAC.

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

On August 19, 2022, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. The Board did not receive a response.

## APPLICABLE LAW AND POLICY

Section 323 of Title 37, U.S. Code, "Special pay: retention incentives," permits the Secretary of Homeland Security to pay a bonus to Coast Guard members who are serving or accept an assignment in a critical military skill designated as a high priority unit. It is to be used as an incentive to encourage the retention of officers and enlisted members in designated critical skills.

ACN 074/21, issued July 28, 2021, announced CSRBs for active-duty members to remain in designated Cyber Operation positions. The ACN explained that the CSRb provides an incentive to members who reenlist in a Commandant designated critical skill or rating in a high priority unit.

Paragraph 3.A of ACN 074/21 defines active-duty service commitment (ADSC). It states that the ADSC is the number of years a member agrees to obligate service under a bonus agreement. The ADSC is calculated by adding the number of years obligated to the effective date of the bonus agreement or the date after the member completes any current obligated service period and has met all other eligibility requirements, whichever is later.

Paragraph 3.D of ACN 074/21 states that the obligated active-duty service period includes (1) all service obligations for initial entry into the Coast Guard; (2) obligated service under an existing bonus agreement or obligated service incurred by a monetary payment; or (3) obligated service for receipt of graduate/advanced education or training greater than 20 weeks. Current obligated active-duty service does not include obligated service for promotion, advancement, permanent change of station (PCS), BRS continuation pay, or service obligation as directed by the Coast Guard. These service obligations will run concurrently to a bonus service obligation.

Paragraph 4.A of ACN 074/21 states that eligibility for the CSRb requires the following: (1) have no current obligated active-duty service, as defined in Paragraph 3.d. of this ACN, beyond September 30, 2021; (2) meet all of the requirements set forth in 2.a. or 2.b. by September 30, 2021; (3) accept assignment to a CGCYBER position during the AY2021 process if not currently assigned to one; (4) have at least 4 years of total active duty as of the effective date of the bonus agreement; (5) have less than 25 years total active duty service at the completion of the bonus agreement term; (6) may not have an existing bonus agreement; and (7) the effective date of bonus agreement will be in compliance with Paragraph 3.e. For those members failing to meet the eligibility requirements before October 1, 2021, the bonus agreement will not become effective.

Paragraph 1.B.2.h of the Bonus Programs Manual, COMDTINST 7220.2, defines Additional Obligated Service as all periods of military service covered by reenlistment contracts or signed agreements to extend enlistments that bind members and the Coast Guard to specified periods of time beyond any period for which the member has already obligated. For example, a member executes a 3-year extension to obligate for a PCS assignment. Subsequently, but prior to the extension's operative date, the member decides to reenlist for 4 years. Only 1 year is considered additional obligated service since the member was already obligated for 3 years under the extension.

Paragraph 3.A.2.f of the Bonus Programs Manual states that obligated service includes all service obligations for initial entry or continued retention in the Coast Guard (Academy, OCS, DCA, Enlistment/Reenlistment Contract, Extension Agreement, etc.) and obligated service for

receipt of training (post graduate school, flight training, Class “A” or “C” schools, etc.). This does not include obligated service for permanent change of station (PCS) or obligated service incurred through promotion/advancement.

Paragraph 3.A.6. of the Bonus Programs Manual states that extensions previously executed by members may be canceled prior to their operative date for the purpose of executing a longer extension or reenlistment. Members should be informed that their CSRB entitlement will be based only on newly acquired obligated service. An exception to this rule is made for extensions of 2 years or less, or multiple extensions (each of which is 2 years or less in length), required of a member for transfer, training and advancement. These extensions may be canceled prior to their operative date for the purpose of immediate reenlistment or longer extension without any loss of CSRB entitlement.

### 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. The application was timely filed.<sup>2</sup>

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.<sup>3</sup>

3. The applicant argued that the Coast Guard committed an error and injustice in reducing his \$100,000 CSRB based on his previously obligated service. 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 the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>4</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>5</sup>

4. The applicant alleged that he should receive the entire \$100,000 CSRB because he received a waiver of the obligated service requirement from the Commandant’s office. Specifically, he stated that he received a waiver of the obligated service requirement and was approved for the entire \$100,000 bonus. He argued that the Coast Guard later changed its mind and reduced his bonus by 15 months in contradiction of the waiver. To support his allegation, the applicant submitted a copy of the letter he received from the Commandant’s office dated September 27, 2021, in which his waiver request was granted. However, contrary to the applicant’s assertion,

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<sup>2</sup> 33 C.F.R. § 52.22.

<sup>3</sup> *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

<sup>4</sup> 33 C.F.R. § 52.24(b).

<sup>5</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).

there is nothing in the letter from the Commandant's office that states that he would receive the entire CSRB. In fact, the letter notified the applicant that his current obligated active-duty service would run concurrently with his bonus active-duty service commitment. And the waiver waived the requirement to have no previously obligated service; it did not waive, or cancel, the previously obligated service.

5. The Board finds that despite the language of the Cyber Enlisted Bonus Agreement, the applicant knew or should have known that his CSRB would be reduced by his previously obligated service. On September 29, 2021, he signed a Cyber Enlisted Bonus Agreement that stated he would receive \$100,000 for four years of service. However, as discussed above, the applicant was notified two days before signing the agreement that his current obligated active-duty service would run concurrently with his bonus active-duty service commitment. Then, on October 14, 2021, he was again informed that his bonus would be reduced by his previously obligated service. On that day, the applicant received an email from the CGCYBER Command Personnel and Administrative Office that stated his bonus would be prorated. The email also gave the applicant the option of cancelling his bonus agreement if he decided that he did not want a prorated bonus. About two weeks later, on October 26, 2021, the applicant signed a Page 7 stating that he understood that his CSRB payment would be prorated to reflect 33 months of newly obligated service.

Therefore, the preponderance of the evidence shows that although CG-133, the Commandant's Office of Military Personnel Policy, waived the "no obligated service" criterion for the Cyber Operations CSRB, it also determined that members, like the applicant, with obligated service for attending the JCAC would receive only a prorated bonus. The fact that the bonus would be prorated was very poorly communicated until after the applicant had signed his Cyber Enlisted Bonus Agreement. After he signed the agreement, the requirement for proration was communicated very clearly, but the applicant repeatedly declined the chance to cancel the agreement, and he signed the Page 7 expressly acknowledging that the CSRB would be prorated. Given these circumstances, the Board finds that the applicant has failed to prove by a preponderance of the evidence that he should have received the entire \$100,000 CSRB.

6. The applicant asked the Board to cancel the extension contract that he signed on January 21, 2020, to obligate service for the JCAC if the Board denies his request for the full \$100,000 CSRB. The Board presumes that the motive for his request is so he would not have any obligated service at the time he became eligible for the CSRB. He argued that he should be allowed to cancel the extension contract because it was not scheduled to begin until December 7, 2021. When the applicant received his orders to attend the JCAC, he was required to have at least two years remaining on his enlistment upon completion of the course. To do this, he signed a one-year extension contract which extended his enlistment to December 6, 2022. According to Article 3.A.6. of the Bonus Programs Manual, extensions previously executed by members can be canceled prior to their operative date except for extensions of 2 years or less required of a member for transfer, training, and advancement. In this case, the applicant was not allowed to cancel the extension contract because the extension was necessary for the applicant to complete training. Therefore, the applicant failed to prove by a preponderance of the evidence that his one year extension contract dated January 21, 2020, should be canceled.



7. Accordingly, relief should be denied because the Board finds that the applicant has failed to prove that he is eligible for the CSRB not reduced by his previously obligated service.

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

ORDER

The application of OS1 [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

March 31, 2023

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