

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

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2002-133

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed July 5, 2002, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision dated April 8, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant asked the Board to correct his record to show that his enlistment expires on September 27, 2003, rather than August 27, 2004.

SUMMARY OF RECORD AND SUBMISSIONS

The applicant alleged that the August 27, 2004 end of enlistment date established by the Coast Guard is in error and unjust because he never attended AMT Class "A" School, which was the purpose of an 11-month extension he signed on March 22, 2001. He further alleged that the August 27, 2004 date is incorrect because the Coast Guard listed August 31, 2002 as his end of enlistment date on the extension agreement. He claimed that the yeoman who prepared the extension agreement did not know how to correctly complete it, requiring him to make two return visits to the yeoman's office to correct mistakes on the agreement.

The applicant executed orders and entered the airman program, from which he was disenrolled on August 8, 2001. He stated the following about his disenrollment:

After I was involved in the airman program, I started having personal problems with my wife at home. As a reflection of my performance on the job, I was released from the airman program. I never attended A-school. Finally, I transferred to [a cutter] and my command helped me send a letter to headquarters asking them to release me from the extension. In response, headquarters . . . disapproved my request and has tried to grant authority to adjust the "new expiration of enlistment date" from 02 Aug 31 to 04 Aug 27. I feel it is unlawful for CGPC to change the official contract without the consent of both parties whom entered into the contract.

In closing I felt like the U.S. Coast Guard unfairly treated me. I held my end of the contract as well as I could with the personal problems that I had at that time. I never received the schooling that I wanted and the only reason for the extension was for my time in service after the completion of A-school.

On September 28, 1999, the applicant enlisted in the Coast Guard for four years. On March 22, 2001, he extended his enlistment for 11 months through August 27, 2004, in exchange for school/training in the AMT airman program. (August 31, 2002, is listed as the end of enlistment date on the extension agreement.)

The applicant's assignment orders required COs to "(A) Ensure that [the member] agrees to [obligate service] 31 months (AMT/AVT) and 28 months (AST) effective upon "A" school graduation." The orders further stated, "Completion of the airman program is mandatory. COs/OINCs shall immediately notify CGPC-EPM-2 of any individual who will not complete the airman program. CGPC-EPM-2 will reassign the [member] as service needs dictate."

On April 9, 2001, in accordance with orders, the applicant reported for duty in the Airman Program. On August 6, 2002, the air station to which the applicant was assigned requested his disenrollment from the program for fault, due to his unsatisfactory performance and irresponsibility. On August 8, 2001, the applicant was disenrolled from the program for fault and reassigned to a cutter. The applicant never entered AMT Class "A" School, which convened on August 20, 2001 with graduation date of January 18, 2002.

On January 20, 2002, the applicant's current commanding officer (CO) wrote a letter to Coast Guard Personnel Command (CGPC) on behalf of the applicant requesting that the applicant's 11-month extension be voided and his original end of enlistment date of September 27, 2003 be reinstated. The CO noted that the extension agreement erroneously listed August 31, 2002, as the expiration date for the applicant's enlistment.

On February 28, 2002, CGPC denied the applicant's request to have the 11-month extension voided, finding that he had received the benefits for which he extended. In addition, CGPC adjusted the applicant's end of enlistment to August 27, 2004, stating that August 31, 2002, was incorrectly listed on the extension agreement as the end of enlistment date.

On June 11, 2002, the applicant's yeoman, a YN1, wrote that he believed the applicant was being treated unjustly. He stated the only benefit the applicant received was a PCS transfer as a non-rate to an air station. He stated the applicant never

reported to AMT School and based on Article 2.A.2.a.(11) of COMDTINST M1500.10B, the applicant is not required to fulfill the 11-month extension. This provision states as follows:

This period of obligated service will commence on the date of graduation from "A" school. Members disenrolled from Class "A" school at their own request, for lack of application, or for misconduct will be required to fulfill their full-obligated service requirement.

The YN1 further stated that it was his opinion that the extension agreement is a legally binding contract and the Coast Guard should not be allowed to change the end of enlistment date on the extension contract from August 31, 2002 to August 27, 2004 without the applicant's consent.

Views of the Coast Guard

On November 29, 2002, the Board received an advisory opinion from the Chief counsel of the Coast Guard recommending that the Board deny relief to the applicant. The Chief Counsel adopted the analysis provided by CGPC, which is attached as Enclosure (1) to the advisory opinion.

CGPC disagreed with the applicant's contention that his extension is void because he never enrolled in class "A" school. He stated that according to the Coast Guard Aeronautical Engineering Maintenance Management Manual, Aviation Class "A" school instruction is two-tiered. The first tier consists of assignment to an Airman Program at an air station and the second tier is the traditional resident Class "A" school. He stated that the applicant's orders are evidence that the Coast Guard intended for the Airman Program to be a part of Class "A" training because the orders required the applicant to have sufficient remaining obligated service upon graduation from "A" school (the second tier) prior to being transferred to an air station.

CGPC further disagreed with the applicant's contention that he never received the benefits of the extension agreement. He stated that it is longstanding Coast Guard policy to require members to obligate for additional future service in exchange for "A" school training. The Coast Guard expects that members will make a good faith effort to complete the training, but if they fail to complete the training through no fault of their own, the Coast Guard will permit the cancellation of the extension. However, in situations like the applicant's where a member fails through his own fault to complete the program, the Coast Guard will not permit the cancellation of the extension. CGPC stated that the applicant was disenrolled from the Airman Program because of his irresponsibility and unsatisfactory training.

CGPC stated that the August 31, 2002, end of enlistment date typed on the extension agreement is an obvious clerical error. He stated that the applicant's original

four-year enlistment expires on September 27, 2003 and with an 11-month extension, the new enlistment date could not be August 31, 2002. CGPC stated that the extension agreement should have shown the end of enlistment date as August 27, 2004. He stated that the applicant acknowledged on the extension agreement and under oath that he was voluntarily extending his enlistment for 11 months. CGPC asserted that the incorrect end of enlistment date on the extension agreement in no way altered the terms of the agreement or placed an unjust burden on the applicant.

The Chief Counsel stated the following:

The Coast Guard followed proper procedure in evaluating the member's request to be released from his extension agreement. The Coast Guard's decision to require the Applicant to complete his obligated service, even though he did not ultimately receive the full training for which he obligated additional service for -- due to his own fault -- was not an injustice that "shocks the senses." Reale v. United States, 208 Ct. Cl. 1010, 1011 (1976). ("Injustice" is treatment by the military authority that shocks the sense of justice, but is not technically illegal.) . . . It cannot be overstated that if a member could, without consequence, fail to complete "A" school training due to his own fault, the Coast Guard's ability to manage its training, assignment and workforce processes would suffer and would ultimately place the member's desires above the needs of the service.

Applicant's Response to the Views of the Coast Guard

On December 2, 2002, a copy of the Coast Guard's views was sent to the applicant with an invitation for him to submit a response. He did not submit a response.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant has failed to show that the Coast Guard committed an error or injustice by not canceling the 11-month extension agreement he signed on March 22, 2001. The applicant voluntarily entered into this extension agreement in exchange for AMT training. However, before the applicant was eligible to enter AMT "A" school, he was required to complete training in the Airman Program. His orders directed him to

report to an Air station on or before April 20, 2001 and to enter the AMT "A" School on August 20, 2001. Moreover, his orders stated that he was required to have 31 months of service remaining after he completed "A" school, which was scheduled to conclude on January 18, 2002. If the applicant had graduated from "A" school on January 18, 2002, the remaining service on his original four-year enlistment plus the 11-month extension would equal the 31 months of required obligated service after graduation.

3. The Coast Guard disenrolled the applicant from the Airman Program because of unsatisfactory performance and irresponsibility. The applicant did not deny that his performance was unsatisfactory but offered that he was having marital problems at that time. He never stated that he did not have the ability to do the work. Nor did he describe the extent of his family problems. Therefore, the applicant has submitted insufficient evidence to show that the Coast Guard committed an error in justice by refusing to void his 11-month enlistment extension.

4. The August 31, 2002, end of enlistment date listed on the extension agreement is obviously incorrect. The applicant could not have been misled by this error. If a four year enlistment ends on September 27, 2003 and an 11-month extension is added to that date, it is impossible to conclude that your end of enlistment date is earlier than the date the original enlistment was due to expire. The Coast Guard did not commit an error or injustice by correcting an obvious error with respect to the end of the applicant's enlistment. The corrected end of enlistment date reflects the facts of the applicant's bargain with the Coast Guard.

5. The applicant has not shown the existence of an error or injustice in this case that requires corrective action by this Board. Accordingly, relief should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXX USCG, for correction of his military record is denied.

