DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-159

[redacted]

FINAL DECISION

[redacted]

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on September 6, 2005, upon receipt of the completed application.

This final decision, dated June 20, 2006, is 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 asked the Board to correct his record by changing the term of his enlistment from 4 years to 3 years. In his application to the BCMR, the applicant alleged that he was counseled that he was signing a 2-year reenlistment contract when he integrated from the Coast Guard Reserve into the regular Coast Guard on April 1, 2003.[1] He also alleged that the aforementioned enlistment contract was blank with respect to the term of the enlistment and that he did not initial block 13a to certify that he did not have any more questions regarding the enlistment.

In support of his allegations, the applicant submitted a letter that his commanding officer (CO) sent to the Coast Guard Personnel Command (CGPC), wherein the CO asked CGPC to change the applicant's expiration of enlistment (EOE)

[1] Although the applicant alleged that he signed a 2-year contract, he seeks to correct his current enlistment from 4 years to 3 years, because he has already completed 36 months of the April 1, 2003, enlistment.

date to reflect a 3-year enlistment. The CO asked CGPC to make the change, alleging that "[the applicant] was counseled for a 2-year enlistment contract at Coast Guard Station [redacted] by [LT R]." In his letter to CGPC, the CO also stated that the applicant's April 1, 2003, enlistment contract was blank with respect to the term of the enlistment. Responding to the CO's request, CGPC stated that it was denying the request to have the applicant's EOE date adjusted because there was no provision in Coast Guard policy for a 2-year reenlistment.

SUMMARY OF THE RECORD

On February 21, 2002, the Coast Guard issued ALCOAST 080/02, which provided certain Coast Guard Reserve members serving on extended active duty the opportunity to apply for integration into the regular Coast Guard. The ALCOAST directed interested reservists to submit their applications using Request for Active Duty (CG-3472) forms. Paragraph 8 of the ALCOAST specified that upon approval of a member's application, CGPC would "authorize the member to enlist/reenlist into the regular Coast Guard for a period of 4 years."

On February 18, 2003, while serving on extended active duty in the Coast Guard Reserve, the applicant submitted his CG-3472 and requested to be integrated into the regular Coast Guard. On March 26, 2003, CGPC sent a letter to Coast Guard Integrated Support Command (ISC), with a copy to the applicant's unit, authorizing ISC to discharge the applicant from the Reserve and immediately enlist him in the regular Coast Guard on April 1, 2003, for a term of four years. A copy of the letter was not sent directly to the applicant.

On April 1, 2003, the applicant signed an enlistment contract that had been prepared by his unit's executive officer who was filling the role of the unit's enlistment officer. The block of the contract that should have contained the term of the enlistment was left blank. In addition, although the applicant signed the contract in blocks 13b and 18a and initialed block 8c, he did not place his initials in block 13a, which states that

> **I CERTIFY THAT I HAVE CAREFULLY READ THIS DOCUMENT. ANY QUESTIONS I HAD WERE EXPLAINED TO MY SATISFACTION. I FULLY UNDERSTAND THAT ONLY THOSE AGREEMENTS IN SECTION B OF THIS DOCUMENT OR RECORDED ON THE ATTACHED ANNEX(ES) WILL BE HONORED. ANY OTHER PROMISES OR GUARANTEES MADE TO ME BY ANYONE ARE WRITTEN BELOW.**

VIEWS OF THE COAST GUARD

On January 30, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request. The JAG argued that the applicant failed to prove that the Coast Guard committed an error or injustice in this case. He stated that absent strong

evidence to the contrary, Coast Guard officials are presumed to have carried out their duties correctly, lawfully, and in good faith. *Arens v. United States*, 969 F.2d 1034, 1037 (D.C. Cir. 1990); *Sanders v. United States*, 594 F.2d. 804, 813 (Ct. Cl. 1979). In addition, the JAG noted that Article 1.G.2.A. of the Coast Guard Personnel Manual only authorizes enlistments into the regular Coast Guard for periods of 3, 4, 5, or 6 years.

The JAG argued that the Coast Guard official who entered the applicant's contract data into the Direct Access database carried out his duty correctly by entering an effective enlistment date of April 1, 2003, and a contract term of 4 years. In addition, the JAG argued that the terms of enlistment that were entered into the Direct Access database were consistent with paragraph 8 of ALCOAST 080/02, CGPC's letter of March 26, 2003, and the enlistment contract signed by the applicant.

The JAG further argued that the applicant did not present sufficient evidence to show that his 4-year term of enlistment is erroneous or unjust. The JAG argued that the applicant offers no evidence to corroborate his claim that the executive officer counseled him that he was enlisting for 2 years. The JAG also argued that it is reasonable to conclude that the executive officer believed that the applicant was enlisting for 4 years, because the executive officer likely received CGPC's letter specifying a 4-year enlistment within a week of the applicant signing the contract.

Finally, the JAG argued that the applicant's request should be denied because the applicant failed to carry his burden of production and persuasion when he pointed to a blank term in his enlistment contract. The JAG argued that the blank term of enlistment was nothing more than an ambiguity in the contract, and that any such ambiguity should only be construed against the Coast Guard in the absence of any evidence of the intent of the parties. He argued that the Coast Guard's intention can be inferred from ALCOAST 080/02, CGPC's letter of March 26, 2003, and Coast Guard regulations. The JAG further stated as follows:

> As mentioned above, the ALCOAST and CGPC's letter only mention a 4-year enlistment. Coast Guard regulations in effect at the time of the applicant's enlistment only authorized enlistments into the regular Coast Guard for periods of 3, 4, 5, or 6 years. If the Coast Guard wanted to enlist the applicant for 2 years, ALCOAST 080/02 would not have offered the incentive of integration into the regular Coast Guard, which opened the door to potential advancement, retirement, and education opportunities. Instead, the Coast Guard would have offered him another 2-year extended active duty contract. Clearly, the Coast Guard's intention was to enlist the applicant for 4 years. As for the applicant's intention, the evidence does not substantiate the claim that he intended to enlist for 2 years when he executed the contract. ALCOAST 080/02 required eligible reservists to apply for integration into the regular Coast Guard by using a CG-3472 form. The applicant submitted CG-3472 on February 18, 2003. Applicant's awareness of the integration opportunity and his compliance with the

requirements of ALCOAST 080/02 support a presumption that he had read the ALCOAST. Therefore, it is reasonable to conclude that the applicant knew or should have known that he was enlisting for 4 years.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 2, 2006, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond. The Chair did not receive a response.

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 submissions, and applicable law:

1. The Board has jurisdiction over this matter pursuant to the provisions of 10 U.S.C. § 1552. The application was timely.

2. The applicant alleged that he intended to enlist for 2 years when he signed an enlistment contract on April 1, 2003, to integrate into the regular Coast Guard. He also alleged that his unit's executive officer counseled him that he was signing a 2-year enlistment contract. In addition, the applicant's CO stated in a letter to CGPC that the applicant had been counseled that he was signing a 2-year enlistment contract. However, the applicant's CO did not reveal his basis for his allegation that the applicant had been counseled that he was enlisting for 2 years. The Coast Guard's database indicates that the Coast Guard enlisted the applicant for a period of 4 years. The enlistment contract that the applicant signed on April 1, 2003, is silent with respect to the length of the enlistment.

3. Although the applicant alleged that he signed a 2-year enlistment contract — an allegation supported by his CO — there was simply no authority to enlist the applicant for a term of 2 years. Article 1.G.2.A. of the Coast Guard Personnel Manual provides that personnel with less than 10 years of active service can reenlist for a period of 3, 4, 5, or 6 years. Paragraph 8 of ALCOAST 080/02 clearly states that following approval of a member's request to integrate into the regular Coast Guard, CGPC will authorize members to "enlist/reenlist into the regular Coast Guard for a period of 4 years." The preponderance of the evidence suggests that the applicant sought integration into the regular Coast Guard after learning about the opportunity to do so via ALCOAST 080/02. By completing and submitting form CG-3472, the applicant applied for integration in accordance with the terms of ALCOAST 080/02. The form, however, is not in his record, and it is not clear whether he read the ALCOAST before signing the contract.

4. During the week before signing the contract, LT R presumably received the letter from CGPC authorizing him to reenlist the applicant for four years. The applicant submitted no statement from LT R regarding the term of the contract. Absent evidence to the contrary, the Board must presume that LT R and the applicant's command acted correctly and in good faith in enlisting the applicant for four years. *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979); 33 C.F.R. § 52.24(b). Although the contract is silent as to the terms of the enlistment and the applicant's CO supports his allegation, the Board finds that the applicant has submitted insufficient evidence to prove by a preponderance of the evidence that he reenlisted for less than four years on April 1, 2003.[2]

5. Accordingly, the applicant's request should be denied.

[2] A member of the BCMR staff spoke with the applicant on several occasions during which the applicant was encouraged to submit additional evidence in support of his allegations. The BCMR did not receive any additional evidence or supporting documentation.

ORDER

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

[redacted]