

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-154



FINAL DECISION

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. The Chair docketed the application after receiving the applicant's completed application on July 26, 2013, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 13, 2014, 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, currently a [REDACTED] asked the Board to correct his record by changing his end of enlistment (EOE) date from April 6, 2013, to June 6, 2014. He stated that he was on leave when the Coast Guard issued his transfer orders and when he returned to his unit it had already been 5 days since the orders were issued and he had no choice but to sign the three-year extension contract he was presented. The applicant stated that he thought he did not need to obligate a full three years of additional service (OBLISERV)¹ but was told that he could change it later. He alleged that he attempted to have the extension contract changed shortly after signing it, but the yeoman "did not care." The applicant stated that he is trying to get out of the Coast Guard as soon as possible so he can get into a police academy.

SUMMARY OF THE RECORD

On January 16, 2011, the Coast Guard issued the applicant orders to transfer from xxxxx to xxxxxxxx for a three-year assignment beginning on July 1, 2011, and ending on July 1, 2014.

¹ Obligated service is all periods of military service covered by signed agreements in the form of enlistment contracts, reenlistment contracts, and/or agreements to extend enlistment between Coast Guard members and the U.S. Coast Guard where members agree to serve for designated periods of time. Chapter 3.C.2.7. of the Coast Guard Personnel Manual.

The orders state that he had to have at least three years remaining on his enlistment contract when he reporting on July 1, 2011. When the applicant received the orders his EOE date was April 6, 2012, so he needed only 27 months of additional obligated service to have three years remaining on his enlistment when he reported to xxxxxx. On January 21, 2011, however, he signed a 36-month extension contract to obligate service for the transfer, with a new EOE date of June 6, 2015. Although the applicant's orders state that his reporting date to xxxxxx is July 1, 2011, the Coast Guard stated that the applicant reported to xxxxxxxx on May 30, 2011.

VIEWS OF THE COAST GUARD

On October 2, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief. The JAG argued that the applicant failed to provide any proof that he was erroneously counseled or that he was rushed into signing the January 21, 2011, 36-month extension contract. He added that the applicant willingly signed the 36-month extension contract and that it could not be canceled after its operative date of April 7, 2012.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 1, 2013, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. In his two responses, the applicant disagreed with the JAG's recommendation and repeated his argument that he was miscounseled by his yeoman to sign a three-year extension contract instead of a 26-month extension contract. He stated that he immediately noticed the error upon signing the contract and brought it to the attention of the yeoman, but that the yeoman "shrugged" and said "you can always get it fixed." The applicant further stated that he was bullied and manipulated into signing the extension contract and argued that "anyone in my situation would have signed the extension due to fear of being discharged."

APPLICABLE REGULATIONS

Article 4.B.6.a. of the Coast Guard Personnel Manual states that assignment officers normally will not transfer Service members E-4 and above, including active duty Reservists, with fewer than six years of active duty unless they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit. Members normally will not be transferred if they have less than one year of OBLISERV remaining. However, if they elect to extend or reenlist, they may be considered for transfer. If they do not obligate sufficient service to accept transfer orders, they are subject to discharge.

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 erroneously offered and counseled to sign a 36-month extension contract when he needed to sign only a 26-month extension contract to obligate sufficient service for a transfer to xxxxxxxxxx. He also alleged that he brought the mistake to the attention of the yeoman but was told that he (the applicant) could fix the problem later. 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. 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."²

3. When the applicant received his PCS orders to xxxxxxxxxx, he was required to obligate sufficient service to complete a full tour of duty (three years) before reporting on July 1, 2011—i.e., through at least June 30, 2014. Because his enlistment already ran through April 6, 2012, his extension contract should have been prepared for 27 months, but the record shows that his yeoman prepared it for 36 months instead. The applicant has signed a sworn statement indicating that the yeoman did this without consulting him because he had been on leave and thus unnecessarily obligated the applicant to an additional 9 months of service. The applicant also stated that when he questioned the term of the extension, the yeoman mistakenly told him that he would be able to change it later.

4. There was no bonus in effect in 2011 that would have induced the applicant to want to sign a longer than necessary contract, and there is no evidence in the record that contradicts the applicant's sworn statements. The Coast Guard has frequently recommended that the Board grant relief in past cases where members were "over-obligated" to accept transfer orders instead being offered a contract obligating them to serve the actual additional amount of time required to accept their orders, and the Board has consistently granted relief to applicants who were miscounseled about their obligated service requirement. *See, e.g.*, BCMR Docket Nos. 2011-062, 2010-046, 2010-003, 2009-255; 2004-022, 2003-039, 2001-065, 2001-089, and 2000-181.

5. Based on the preponderance of the evidence in the record, the Board finds that is in the interest of justice to correct the applicant's record to show that he signed a 27-month extension contract, instead of a 36-month extension contract, on January 21, 2011.

(ORDER AND SIGNATURES ON NEXT PAGE)

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

ORDER

The application of [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall correct the term of his January 21, 2012, extension contract from 36 months to 27 months.

March 13, 2014

