

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-072

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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. The Chair docketed the case after receiving the applicant's completed application on January 15, 2011, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 29, 2011, 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 marine science technician, third class (MST3/pay grade E-4) in the Reserve, asked the Board to correct her record to show that she advanced from pay grade E-2 to E-3 on February 7, 2010, and advanced from E-3 to E-4 on August 7, 2010. She also asked the Board to award her corresponding back pay and allowances and the \$1,000 bonus she was promised in writing upon enlistment in the Reserve on June 16, 2009.

The applicant alleged that when she advanced from E-1 to E-2 upon completing boot camp, she completed all of the skill requirements for advancement to E-3 and was told that the only remaining obstacle to her advancement was six months' time in grade as an E-2. Therefore, she expected to advance to E-3 on February 7, 2010. When she was not advanced, she was told by her chief that "all that needed to happen was approval." She inquired a couple more times and received the same response. By March 2010, she had completed the sign-off requirements and examination for advancement to E-4 and thought that she would advance to E-4 upon graduating from MST "A" School and earning the MST rating. While in MST "A" School in the summer of 2010, she asked about her advancement to E-3 and was told that the form for her advancement had never been processed. Therefore, she did not advance to E-3 until she had been an E-2 for almost a year and could not advance to E-4 until she had six months' time in grade as an E-3. Moreover, she was told that because she did not advance to E-4 upon graduating from MST "A" School, she would not receive the \$1,000 bonus she had been promised when enlisting.

In support of these allegations, the applicant submitted a statement from her supervisor, a chief petty officer, who wrote that after the applicant completed all of the sign-off requirements for advancement to E-3, she was recommended for advancement. Therefore, he contacted an administrative officer and was told that “everything was done” and that the only obstacle to the applicant’s advancement to E-3 was her time in grade as an E-2. Thereafter, the applicant continued to complete sign-offs toward advancement to E-4 and took the E-4 End of Course Test before attending MST “A” School. Because she had already completed all of the preliminary requirements, he expected her to advance to E-4 upon graduating from MST “A” School. However, while she was away at school, he learned that she had never advanced to E-3 because they had failed to complete a required form. The chief stated that he “take[s] responsibility for not making sure that all the paperwork was completed since [he is the applicant’s] supervisor.”

The applicant also submitted the following documents in support of her allegations:

- An “Enlisted IDP E-2 to E-3 Advancement Checklist” shows that the applicant completed the EPME proficiency requirements for advancement to E-3 on October 3, 2009; received her semiannual performance evaluation, on which she was recommended for advancement, on January 31, 2010; complied with the weight standards; and had six months of satisfactory time in grade as an E-2 as of February 7, 2010.
- An “Enlisted IDP E-3 to E-4 Advancement Checklist” shows that the applicant completed the EPME proficiency requirements and AQE-4 End of Course Test for advancement to E-4 and complied with the weight standards on April 25, 2010.
- An “Enlisted Performance Evaluation” dated January 31, 2010, shows that the applicant received average or above average scores in all performance categories and was recommended for advancement.
- An “Administrative Remarks” (Page 7) dated June 16, 2009, and signed by the applicant and her recruiter states, “I have been advised that I am eligible for a \$ 1000 SELRES enlistment or affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through June 16, 2015 . I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7220.1 Series and the current ALCOAST applicable to this bonus and fiscal year.”
- An “Applicant Information Page – Enlisted” shows that upon enlisting on June 16, 2009, the applicant agreed to attend MST “A” School and was promised a \$1,000 bonus.
- A long email string shows that on September 24, 2010, a Sector yeoman advised the applicant that he had reviewed her record and “there is no information regarding a bonus on your [enlistment] contract or your [contract] annexes. If you feel this is incorrect, you will have to provide proof of a bonus that was promised to you. . . . I am unaware of any bonus for affiliation into the MST rating.” On September 25, 2010, the applicant replied saying that her “recruiter randomly requested a bonus when I joined just to see if anything would get approved. It was only \$1,000 and we were both aware that it was not

common for the rating to be getting that bonus.” On October 11, 2010, the applicant advised the yeoman that her recruiter had just found and faxed him the paperwork for her bonus. The yeoman replied, “I got the fax. We are going to send the paperwork to [the Pay and Personnel Center] and they will pay out your bonus.”

- An email string shows that on October 15, 2010, a member of the MAS Bonus Team at the Pay and Personnel Center advised the applicant’s unit that when she enlisted on June 16, 2009, ALCOAST 167/09 was in effect and authorized enlistment bonuses only for those entering the machinery technician (MK) rating. In addition, an MK could not receive this bonus until advanced to E-4.

SUMMARY OF THE RECORD

On June 16, 2009, the applicant enlisted in the Reserve for eight years in pay grade E-1. Section B.8.c. of the enlistment contract, which was biometrically signed by the applicant, states, “The agreements in this section and attached annex(es) are all the promises made to me by the Government. ANYTHING ELSE ANYONE HAS PROMISED ME IS NOT VALID AND WILL NOT BE HONORED.” This section of the applicant’s contract does not mention any bonus or annexes although the applicant did sign two annexes when she enlisted: one related to the details of the Reserve program and the other related to her educational benefits. The applicant’s record also contains the Page 7 regarding her eligibility for a \$1,000 bonus, which is quoted above. The Coast Guard did not submit to the Board any records or information revealing when she advanced to E-3 or E-4.

VIEWS OF THE COAST GUARD

On May 4, 2011, the Judge Advocate General of the Coast Guard recommended that the Board grant full relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The PSC stated that the applicant has provided sufficient evidence to prove that she was eligible for advancement to E-3 on February 7, 2010. The PSC further stated that, if she had advanced to E-3 on February 7, 2010, she would have advanced to E-4 on August 7, 2010, upon her graduation from MST “A” School. The PSC stated that her dates of advancement should be corrected and she should be awarded back pay and allowances.

In addition, the PSC noted the Page 7 stating that the applicant was eligible for a bonus, concluded that she “has provided the evidence required to receive a \$1,000 SELRES enlistment bonus,” and recommended that she be paid the bonus.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 2, 2011, the applicant advised the Board that she agreed with the Coast Guard’s recommendation for relief.

APPLICABLE LAW

Chapter 7.C.1. of the Reserve Policy Manual states that “[t]he provisions of the Personnel Manual, COMDTINST M1000.6 (series), apply to advancements of Reserve enlisted personnel except as specifically modified by this section.” None of the listed modifications affect the outcome in this case.

Article 5.C.26.b.2. of the Personnel Manual states that “[c]ommanding officers of training centers are authorized to advance personnel from pay grade E-1 to E-2 upon satisfactory completion of recruit training.”

Article 5.C.14.a. provides the “time in grade” chart, which shows that a member may be advanced from E-2 to E-3 upon completion of six months in pay grade E-2 or upon graduation from “A” School and from E-3 to E-4 upon completion of six months in pay grade E-3.

Article 5.C.2.a.2. of the Personnel Manual states that members may be advanced “[b]y their commanding officer (applicable for advancement from E-1 to E-2 and E-2 to E-3 and advancement to pay grade E-4 of Class “A” School graduates).”

Article 5.C.9. states that one of the requirements for earning the MST3/E-4 rate is to graduate from MST “A” School. Article 5.C.7.b.3. states that to advance to E-4 an “A” School graduate must also complete the EPME requirements and pass the AQE-4 examination.

Article 5.C.26.a.2. states that “commanding officers are authorized to advance, without reference to Commandant, from pay grade E-3 to E-4 members who were assigned a designator upon graduation from a Class “A” School once the member satisfies all applicable requirements of Article 5.C.4. The requirements listed for advancement to E-4 under Article 5.C.4. include being recommended for advancement, having sufficient time in grade, and completing the rating courses, EPME, and EPQ for the higher rate, if any.

ALCOAST 167/09 was in effect when the applicant enlisted. The only bonus authorized for new recruits in this ALCOAST is a \$6,000 bonus for people who enlist in the Reserve and agree to serve in the MK rating in the Selected Reserve for at least six years. This bonus is paid in halves: half upon completion of “A” School and the other half one year later if the member’s participation in the SELRES has been satisfactory.

COMDTINST 7220.1A contains the rules for enlistment bonuses. Paragraph 2 of Enclosure (2) states the following:

In order to meet the eligibility criteria for the enlistment bonus program the member:

- a. Must be a graduate of a secondary school.
- b. Must have never previously served in an armed force.
- c. Must enlist for a period of not less than six years in the SELRES.
- d. Must be assigned to a bonus-eligible permanent rating, billet, or unit listed in the current ALDIST bonus message at the time of enlistment. NOTE: This includes assignment to a guaranteed ‘A’ school and/or a bonus eligible billet or unit.

e. Member must agree to serve in the SELRES in the rating, billet, or unit, for which the bonus was authorized unless authorized to change to a rating, billet, or unit that is bonus eligible.

...

f. Must execute a written agreement (sample [Page 7] in this enclosure).

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 concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's discovery of the alleged errors in her record.¹

2. The applicant alleged that her advancements to E-3 and E-4 were improperly delayed and that she was unjustly denied a \$1,000 enlistment bonus that had been promised to her in writing. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in her record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² 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."³

3. The applicant has proved by a preponderance of the evidence that she had completed the requirements for advancement to E-3 on February 7, 2010, and was recommended for promotion when she gained sufficient time in grade as an E-2 (six months) to qualify for advancement.⁴ Her advancement checklist shows that she had timely completed the requirements, and her supervisor states that he later learned that the command had failed to ensure that a necessary form was submitted to ensure her timely advancement. However, the applicant was not advanced to E-3 until several months later, and the Coast Guard has admitted the delay was caused by an administrative error. Therefore, the Board finds that the applicant's date of advancement to E-3 should be backdated to February 7, 2010, and she should receive corresponding back pay and allowances.

4. The applicant has proved by a preponderance of the evidence that had she been properly advanced to E-3 on February 7, 2010, she would have advanced to E-4 upon her graduation from MST "A" School on August 7, 2010. Her checklist, her performance evaluation, and her supervisor's statement show that she completed all the preliminary requirements for advancement to E-4 before attending "A" School, and she would have had sufficient time in grade as an E-3 (six months) to advance to E-4 upon graduation from "A" School if she had been

¹ 10 U.S.C. § 1552(b).

² 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ *See* Coast Guard Personnel Manual, Articles 5.C.4., 5.C.2.a.2., and 5.C.14.a.

timely advanced to E-3 on February 7, 2010.⁵ The Coast Guard has admitted that the delay of her advancement to E-4 resulted from an administrative error. Therefore, the Board finds that the applicant's date of advancement to E-4 should be backdated to August 7, 2010, and she should receive corresponding back pay and allowances.

5. The applicant alleged that she has unjustly been denied a \$1,000 enlistment bonus that she was promised in writing. Her record contains a Page 7 signed by her and her recruiter stating that she was "advised that I am eligible for a \$ 1000 SELRES enlistment or affiliation incentive bonus." The promise of the bonus is not incorporated in her enlistment contract, but the lack of incorporation is not particularly probative since the recruiter also failed to incorporate required annexes she executed into the contract. No bonus was authorized for the applicant under ALCOAST 167/09 because she was enlisting in the MST rating, but the Coast Guard has recommended that she receive the bonus based on the language in the Page 7. However, the Board notes that in an email dated September 25, 2010, the applicant wrote that her "recruiter randomly requested a bonus when I joined just to see if anything would get approved. It was only \$1,000 and we were both aware that it was not common for the rating to be getting that bonus." Thus, it appears that the applicant was aware when she enlisted that no bonus was authorized for the MST rating but that her recruiter led her to believe that she might receive a bonus anyway if she completed the paperwork for one. It is not entirely clear whether the applicant signed her enlistment contract believing she would receive a \$1,000 bonus for doing so. However, because of the Page 7 and the Coast Guard's belief that she should receive the bonus, the Board will order the Coast Guard to pay the \$1,000 bonus in accordance with the rules for payment in ALCOAST 167/09.

6. Accordingly, relief should be granted by backdating the applicant's advancement to E-3 to February 7, 2010; backdating her advancement to E-4 to August 7, 2010; awarding her corresponding back pay and allowances; and ordering the Coast Guard to pay her the \$1,000 bonus in accordance with the rules for payment in ALCOAST 167/09.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁵ See Coast Guard Personnel Manual, Articles 5.C.4., 5.C.7.b.3., 5.C.9., and 5.C.26.a.2.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of her military record is granted.

The Coast Guard shall correct her date of advancement to pay grade E-3 to February 7, 2010, and her date of advancement to pay grade E-4 to August 7, 2010, and shall pay her the back pay and allowances she is due as a result of these corrections.

The Coast Guard shall pay her \$500—the first half of the \$1,000 enlistment bonus documented on the Page 7 dated June 16, 2009—because she has already completed IADT. In addition, the Coast Guard shall promptly determine whether she meets or has met the participation standards under Chapter 4 of the Reserve Policy Manual during the year following her completion of MST “A” School, and if so, her record shall be corrected to show that she is eligible for and entitled to the second half (\$500) of the \$1,000 bonus, and the Coast Guard shall pay her that amount as well.

James E. McLeod

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