

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-095

**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 February 7, 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 November 18, 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 asked the Board to correct the annexes to his original enlistment contract to show that he enlisted to become an electrician's mate (EM), instead of an operations specialist (OS). The applicant stated that during his enlistment process, EM was the only rating he discussed with his recruiter. Moreover, he attended EM "A" School directly after completing boot camp and is currently an EM3. However, he alleged, the annexes he completed pursuant to his enlistment erroneously indicate that he was enlisting to become an OS. In support of his allegations, the applicant submitted many of his enlistment documents, including the following:

- The applicant's enlistment contract, dated October 19, 2009, incorporates by reference several annexes. The fourth page of the contract, signed by the applicant, notes in the "Remarks" section the annexes he had signed, his enlistment in pay grade E-3 because he had prior military service, the fact that it was a four-year enlistment, and the fact that he would be attending "OS A School."
- Annex D, signed by the applicant and his recruiter on October 19, 2009, states the following: "1. I have been guaranteed that I will be assigned to OS Class "A" School, class convening on 1/4/2010. ..."
- Annex T, signed by the applicant and his recruiter on October 19, 2009, states that the applicant was offered a \$4,000 enlistment bonus to affiliate with the OS rating. Annex T

also states that if he did not graduate from OS “A” School or serve in the OS rating, he would be ineligible for the bonus and any unearned portion of it would be recouped.

- Travel orders issued on October 27, 2009, ordered the applicant to report for training at EM “A” School in Yorktown, Virginia, from January 3, 2010 to May 14, 2010, following his completion of recruit training.
- Travel orders issued on April 13, 2010, assigned the applicant to a unit to serve as an electrician from May 30, 2010, to July 1, 2014.

VIEWS OF THE COAST GUARD

On June 2, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant’s request.

The JAG stated that the applicant’s enlistment documents show that he was promised a \$4,000 bonus if he attended OS “A” School and served as an OS for the term of his enlistment. The JAG pointed out that the annex promising the bonus stated that it he would be ineligible for the bonus or the bonus would be recouped if he did not graduate from OS “A” School or serve in the OS rating. The JAG pointed out that the applicant signed each of the documents regarding his attendance of OS “A” School and the bonus for affiliating with the OS rating. Therefore, the JAG argued that the applicant has “failed to carry his burden of production and persuasion to show that these documents incorrectly indicate OS vice EM.”

The JAG stated that the Coast Guard has not found any documentation revealing how the applicant ended up attending EM “A” School, instead of OS “A” School. The JAG included with his memorandum a copy of an email from the Recruit Servicing Personnel Officer (SPO) at the recruit training center. The SPO stated that “I’m not sure how things were handled prior to my arrival at [the training center]. Our current process is that if member elects to decline their guaranteed ‘A’ School assignment as shown on their enlistment contract (DD FORM 4/1), they would sign a CG-3307 [“Page 7”] that would be filed in the [personnel data record]. The CG-3307 also states that any bonus was part of this assignment that it would become null and void [sic].” The SPO submitted a form recruits currently fill out to explain why they are relinquishing their “A” School guarantee and to acknowledge how much bonus the recruit would lose by relinquishing their guaranteed “A” School assignment. The SPO also submitted a copy of the Page 7 recruits currently sign when they are relinquishing their “A” School guarantee, which states the following:

I hereby decline my guaranteed Class “A” school assignment of _____ Class “A” School as shown on my enlistment contract, DD form 4/1. I understand that this will enable me to request orders in conjunction with normal recruit procedures. I understand that I am not eligible to request another Class “A” school until I have been assigned to my first unit for 4 months. I fully understand this cancellation of my guaranteed Class “A” school assignment if final [sic]. I also understand that if any bonus was part of this assignment, the bonus becomes null and void.

The JAG attached to his advisory opinion a memorandum prepared by the Personnel Service Center (PSC) and adopted the findings and analysis provided by the PSC. The PSC stated

that relief should be denied because the applicant was guaranteed and could have attended OS “A” School to receive the bonus but “freely chose” to accept an offer to attend EM “A” School instead. The PSC stated that the applicant’s enlistment contract “is not wrong or inaccurate in any part and is still valid. At time of enlistment, the offer listed in Annex D was the proposed offer made to the Applicant and did not obligate him in any way to only become an OS. Being that he chose another rate, all terms of the contract relating to him becoming an OS are moot, but do not negate the remaining terms of the contract.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 9, 2011, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

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 under 10 U.S.C. § 1552. The application was timely filed.

2. The applicant alleged that the annexes to his enlistment contract erroneously show that he intended to earn the OS rating and was promised an enlistment bonus for doing so when the only rating he discussed with his recruiter was the EM rating, which he did earn. Therefore, he asked the Board to correct the annexes to reflect his intention to enlist as an EM. 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.¹

3. The evidence before the Board shows that after his enlistment, the applicant attended EM “A” School and became an EM. However, all of the documentation showing the promises made to him on the day he enlisted indicates that he was guaranteed attendance at OS “A” School and a \$4,000 enlistment bonus if he actually graduated from OS “A” School and served in the OS rating. His enlistment contract and two annexes to the contract show that the promise of the enlistment bonus was contingent upon his earning and serving in the OS rating. The applicant signed the three documents acknowledging the guarantee and bonus offer for attending OS “A” School on October 19, 2009, and he has not proved that they do not reflect the promises made to him by his recruiter.

4. The Board notes that the Coast Guard is unable to explain why the applicant was issued orders to attend EM “A” School, instead of OS “A” School. However, the applicant did not complain about being denied OS “A” School and indicated that he intended to attend EM “A” School all along.

¹ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979) (holding that absent evidence to the contrary, Government officials are presumed to have carried out their duties “correctly, lawfully, and in good faith”).

5. The Board also notes that the applicant did not mention the unearned OS enlistment bonus on his application to the Board. Because the applicant earned the EM rating, instead of the OS rating, he is not entitled to the OS enlistment bonus he was offered upon enlistment. After enlistment, members sometimes become eligible for critical skills training bonuses (CSTBs) in exchange for agreeing to attend certain "A" schools, but the applicant has made no allegations about a CSTB and there is no documentation in the record that he was ever promised one.

6. Accordingly, relief should be denied because the applicant has not proved by a preponderance of the evidence that the references to the OS rating on his enlistment contract and two annexes to the enlistment contract, which he signed on October 19, 2009, are erroneous or unjust.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Evan R. Franke

Randall J. Kaplan

H. Quinton Lucie