

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-182

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

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 on September 22, 2006, upon receipt of the applicant's completed application.

This final decision, dated May 31, 2007, 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 his record to show that he is entitled to the \$8000 Selective Reserve enlistment bonus he was promised when he affiliated with the Coast Guard Reserve. The applicant stated that although he enlisted based on the promise of an \$8000 bonus, the Coast Guard later told him that he was entitled to only a \$6000 bonus because although he was enlisting in a critical rate, he was not assigned to a critical duty station.

SUMMARY OF THE RECORD

On August 13, 2004, ten days before his enlistment, the applicant and his recruiter signed a Page 7 (form CG-3307), which was entered into the applicant's record and states the following:

08 / 23 / 04 I have been advised that I am eligible for a \$8000 SELRES enlistment or affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through 08 / 22 / 04 [sic]. I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7220.1 Series and ALCOAST 268/04.

On August 23, 2004, the applicant enlisted in the Selected Reserve (SELRES) for six years. His enlistment contract does not reference the Page 7 or any annex concerning a bonus. Section B of the contract references Annexes A, G, and O. Annex A is a Statement of Under-

standing concerning the applicant's military obligations. Annex G is a form showing that the applicant was enlisted in pay grade E-3 because he had completed at least 60 college semester hours. Annex O is a Statement of Understanding in which the applicant agreed to attend OS "A" School to become an operations specialist.

On the enlistment contract, the applicant initialed section B.8.c. of the contract which states that "[t]he 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.**" The applicant also signed and initialed section D.13.a., which states the following in bold, capitalized letters:

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: (*If none, X "NONE" and initial.*) [X] NONE [initials of applicant]

In August 2004, ALCOAST 268/04 was in effect and provided the regulations for enlistment bonuses for Selected Reserve recruits with no prior military service. ALCOAST 268/04 authorizes a Level I bonus of \$6000 for members who enlist in the SELRES for six years in a "critical rating assigned to [a] critical unit." It identifies the critical ratings as BM, MK, MST, and OS. It identifies all Port Security Units and Harbor Defense Commands as the critical units.

ALCOAST 268/04 also authorizes a Level II bonus of \$4000 for members who enlist in the SELRES for six years in a "critical rating assigned to any unit, or any rating assigned to [a] critical unit." No part of ALCOAST 268/04 authorizes an \$8000 bonus.

VIEWS OF THE COAST GUARD

On February 20, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny relief in this case.

The JAG stated under ALCOAST 268/04, the applicant was entitled to only a \$4000 Level II bonus because he was assigned to a critical rating but not to a critical unit. The JAG further stated that the Page 7 that the applicant signed on August 13, 2004, was not only unauthorized but also invalid because

- (a) it was signed 10 days before the actual date of enlistment;
- (b) it commits the applicant to serve in the SELRES for only nine days, through August 22, 2004, when the applicant had not yet enlisted in the SELRES; and
- (c) it purports to document the reading and understanding of ALCOAST 268/04, which was clearly untrue for both the applicant and the recruiter who signed the Page 7.

The JAG argued that the relief requested by the applicant "is an inappropriate remedy. Therefore, the applicant should continue to receive the remainder of the \$4000 SELRES enlistment incentive bonus he qualified for under the direction of ALCOAST 268/04."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 23, 2007, the Chair sent a copy of the JAG's advisory opinion to the applicant and invited him to respond within 30 days. The applicant was granted a 15-day extension and responded on April 9, 2007.

The applicant stated that he was miscounseled by his recruiter. He also stated that since he enlisted in the SELRES two and one-half years ago, in addition to performing his regular drills, he has served in Kuwait and Colombia, in the Hurricane Katrina disaster relief effort, at an AIS convention in Ft. Lauderdale, and in Sector Miami and Sector San Juan.

PREVIOUS BCMR DECISIONS

In BCMR Docket No. 1999-027, the applicant stated that she had been promised a Level II \$2000 SELRES enlistment bonus by her recruiter, and the bonus was noted on her enlistment contract. However, when she finished recruit training, the Coast Guard refused to honor that promise because she was technically ineligible for the bonus since she had never graduated from high school. The Chief Counsel recommended that the Board grant the applicant's request. He argued that, although the government is not estopped from repudiating erroneous advice given by its officials, relief should be granted because the bonus was promised her, she provided due consideration for it, and acted promptly when she discovered the error. The Board granted the applicant's request.

In BCMR Docket No. 1999-121, the applicant stated that he had been promised a Level II \$2000 SELRES enlistment bonus by his recruiter. The bonus was cited on his enlistment contract and in a Page 7 dated the same day. He did not receive the bonus because he was not assigned to a designated critical unit under the ALCOAST then in effect. The Chief Counsel stated that the contract was voidable so the applicant could be discharged but recommended against granting the applicant the unauthorized bonus. The Board, however, granted relief, finding that while "the government may repudiate the erroneous advice of its officers or agents, ... whenever reasonable, such promises should be kept, especially when the member relies on the erroneous advice and gives due consideration for the promised benefit."

In BCMR Docket No. 1999-135, the applicant stated that she had been promised a Level II \$2000 SELRES enlistment bonus by her recruiter. The bonus was not mentioned in her contract but was documented on a Page 7 dated the day of her enlistment. She did not receive the bonus because she had not enlisted in a critical rating, although her rating was listed in the applicable ALCOAST as one of those eligible for Level I bonuses if the members were assigned to a critical unit. The Chief Counsel provided the same recommendation as in BCMR Docket No. 1999-121, and the Board granted relief for the reasons stated in that case as well.

In BCMR Docket No. 2004-063, the applicant stated upon his discharge after completing more than eight years of active duty, he enlisted in the SELRES and was promised a SELRES enlistment bonus. His contract noted that he was "entitled to SELRES SRB as per ALCOAST 192/03." However, that ALCOAST clearly authorized bonuses only for members being released to the Reserve, not for those being discharged and choosing to enlist in the SELRES. The JAG recommended that the Board deny the requested relief but allow the applicant, at his discretion,

to be honorably discharged for “Defective Enlistment Agreement,” with a KDS separation code¹ and an RE-1 reenlistment code. The Board noted that the applicant was an experienced member of the Coast Guard and that even a cursory review of ALCOAST 192/03 showed that he was not eligible for the SELRES bonus. Because the bonus was noted in the enlistment contract, the Board found the contract to be voidable and granted the relief recommended by the JAG.

In BCMR Docket No. 2005-117, the applicant stated that he was promised a \$4000 SELRES enlistment bonus by his recruiter. His enlistment contract cited a “RES BON PG7” along with the incorporated annexes, and the Page 7, dated the day of enlistment, documented the promised \$4000 Level II bonus under ALCOAST 268/04. He did not receive the bonus because he had not enlisted in a critical rating or been assigned to a critical unit. Although the JAG recommended only that the Board make the contract voidable, the Board granted relief, finding that the recruiter had promised the applicant the bonus as an enticement to enlist and that, “whenever reasonable, such promises should be kept, especially when the member relies on the erroneous advice and gives due consideration for the promised benefit.”

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.

2. As the JAG pointed out, there are clear errors on the Page 7 signed by the applicant and his recruiter on August 13, 2004. First, the Page 7 purports to promise a bonus of \$8000 under ALCOAST 268/04, but that ALCOAST does not authorize an \$8000 bonus for anyone. Second, the Page 7 purports to promise the bonus for just nine days of service through August 22, 2004. Finally, the Page 7 is dated ten days before the date of enlistment and is not mentioned anywhere on the enlistment contract. On the other hand, it is signed by the applicant's recruiter, and its very presence in the applicant's military record indicates that the recruiter submitted it as an official record along with the applicant's other enlistment papers.

3. The applicant is not in the same position as any of the other applicants in recent SELRES bonus cases before this Board. The promise of the bonus was not mentioned anywhere in his enlistment contract, as it was in BCMR Docket Nos. 2005-117, 2004-063, 1999-121, and 1999-027. Like the applicant in BCMR Docket No. 2004-063, he was clearly not eligible for what he was allegedly promised under the applicable ALCOAST, but unlike that applicant, he was not an experienced member of the Coast Guard who would or should know to read an ALCOAST thoroughly. The enlistment contract of the applicant in BCMR Docket No. 1999-135 was—like the applicant's contract—silent about a bonus, but her record contained a Page 7 that—unlike the applicant's—was signed on the day of her enlistment and promised a bonus she might reasonably have thought she was eligible for under the ALCOAST then in effect..

¹ Under the Separation Program Designator (SPD) Handbook, a KDS code denotes a “voluntary discharge allowed by established directive resulting from non-fulfillment of service contract.”

4. Given the early date and other errors in the applicant's Page 7 purporting to promise an unauthorized \$8000 bonus, as well as the lack of any mention of a bonus in the enlistment contract, the Board is not persuaded that the applicant is entitled to the requested relief. However, the recruiter's signature on the Page 7 and the fact that it was entered in the applicant's military record indicate that the Coast Guard erred by promising him a larger enlistment bonus than the \$4000 Level II bonus he was actually entitled to under ALCOAST 268/04.

5. The JAG recommended that the Board deny relief. Although the Government is not estopped from repudiating the bad promises made by its employees,² this Board has "an abiding moral sanction to determine . . . the true nature of an alleged injustice and to take steps to grant thorough and fitting relief."³ On the applicant's Page 7, his signature attests to his having read and fully understood ALCOAST 268/04. The applicant's record indicates that English may not be his first language. However, the figure \$8000 does not appear anywhere in ALCOAST 268/04. Even someone who merely scanned the ALCOAST without much comprehension could not reasonably conclude that an \$8000 bonus was authorized for anyone.

6. In light of the errors, the Board finds that the applicant's enlistment contract is voidable and that he should have the option of being expeditiously discharged. The Board realizes that, should the applicant choose to be expeditiously discharged from the Reserve, the Coast Guard might attempt to recoup all or part of the \$4000 Level II enlistment bonus he has rightfully received. The Board believes that such recoupment would be unjust in light of the promise made to the applicant on the Page 7 dated August 13, 2004. The Board notes that the applicant has already completed almost half of the six years in the SELRES for which he expected to receive \$8000. Therefore, if he elects to be discharged, the applicant would have received approximately one-half of the bonus he expected to receive in exchange for approximately one-half of the years of inactive duty he expected to provide. If the applicant elects to be discharged and if the Coast Guard then recoups his enlistment bonus, the applicant could apply to this Board for relief from the recoupment.

7. Accordingly, the applicant's request should be denied but some relief should be granted by offering the applicant the opportunity to be expeditiously separated from the Reserve with an honorable discharge for "Defective Enlistment Agreement," a KDS separation code, and an RE-1 reenlistment code. If the applicant elects discharge and if the Coast Guard recoups all or part of his enlistment bonus, he may apply to this Board to request relief from the recoupment.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

² *Montilla v. United States*, 457 F.2d 978 (Ct. Cl. 1972); *Goldberg v. Weinberger*, 546 F.2d 477 (2d Cir. 1976), cert. denied sub nom *Goldberg v. Califano*, 431 U.S. 937 (1977).

³ In *Yee v. United States*, 512 F. 2d 1383, 1387, the Claims Court stated that military corrections boards "have an abiding moral sanction to determine . . . the true nature of an alleged injustice and to take steps to grant thorough and fitting relief."

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is denied, except that, at his discretion, he may be expeditiously separated from the Reserve with an honorable discharge for “Defective Enlistment Agreement,” a KDS separation code, and an RE-1 reenlistment code.

Patrick B. Kernan

Donald A. Pedersen

Kenneth Walton