

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-006

XXXXXXXXXXXXXX.
XXXXXXXXXXXXX, HS3

FINAL DECISION

AUTHOR: Hale, D.

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 October 16, 2006, upon receipt of the applicant's completed application.

This final decision, dated April 26, 2007, 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, a health services technician, third class (HS3), asked the Board to correct his record to show that he is entitled to a \$2000 enlistment bonus for signing a four-year enlistment contract on February 9, 2006. He alleged that his Coast Guard recruiter promised him a \$5000 bonus for college credit and a \$2000 bonus because he (the applicant) had prior military service. The applicant stated that he never received the \$2000 bonus.

SUMMARY OF THE RECORD

The applicant served in the U.S. Navy from December 1999 through September 2004. On February 9, 2006, he enlisted in the Coast Guard for a term of four years. He signed an enlistment contract (DD Form 4/1) indicating in block B (AGREEMENTS) that additional details of the contract appeared in Annexes A, G, and T. Annex T states, *inter alia*:

1. I have been offered an Enlistment Bonus of \$ 2000 to affiliate with the _____ rating. In order to affiliate with this rating, I have been offered a Type 1 guaranteed school, or guaranteed enrollment to an eligible "Striker" program, or I am a prior service member who is already qualified in the skill/rating in accordance with eligibility criteria established by the Coast Guard.

2. Furthermore, I have been offered an Enlistment Bonus for College Credit of [\$] 5000 for having attained _____ Semester Hours or _____ hours of Technical School.

VIEWS OF THE COAST GUARD

On February 27, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny the relief requested but grant the applicant alternate relief. The JAG stated that the applicant was erroneously promised that he would receive a \$2000 enlistment bonus for affiliating with the HS rating. The JAG stated that Article 3.A.3.2. of the Personnel Manual only awarded bonuses to members who enlisted in a critical rating and that the applicant's HS rating was not a critical rating. Moreover, the JAG stated that the line on Annex T showing the affiliation rating was left blank.

The JAG recommended that the Board offer the applicant two options. First, the applicant could have his record corrected by voiding the enlistment contract and be immediately discharged. The JAG noted that if the applicant selects this option, he would be responsible for reimbursing the Coast Guard for any enlistment bonus he has already received. As a second option, the Coast Guard recommended that the applicant maintain the status quo and have his record corrected to show that he was only eligible to receive the \$5000 enlistment bonus for his college credit.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 1, 2007, the Chair sent a copy of the JAG's advisory opinion to the applicant and invited him to respond. No response was received.

APPLICABLE LAW

Article 3.A.1. of the Coast Guard Personnel Manual states that the Enlistment Bonus program is an incentive to attract qualified personnel to critical skills or ratings to help meet the Coast Guard's recruiting goals. The program applies to new enlistees.

Article 3.A.3.2. of the Personnel Manual states that enlistment bonuses are linked to a member's recruitment and affiliation with a critical rating by attending a guaranteed Class "A" school or participating in a guaranteed "Striker" program in that rating or, for prior service personnel who already have the qualifying skill, agreeing to enlist in the designated rating for a minimum of four years.

Article 3.A.9. of the Personnel Manual states that the Enlistment Bonus Agreements (Annexes T, T.1 and T.2) document the eligibility criteria and conditions under which an enlistment bonus is paid.

ALCOAST 645/05 was issued on December 17, 2005, and went into effect on January 1, 2006. It was issued to identify vacancies in critical ratings and to encourage the recruitment of qualified prior service members to fill those vacancies. There are 16 critical ratings identified on the list, but the HS rating is not one of them.

PREVIOUS BCMR DECISIONS

In BCMR Docket No. 1999-027, the applicant had been promised a Reserve enlistment bonus by her recruiter. 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. 2005-117, the applicant was promised an enlistment bonus by his recruiter. He did not receive the bonus because the Coast Guard determined that he was not eligible because he had not enlisted in a critical rating or a rating assigned to a critical unit. Although the JAG recommended denying relief, the Board granted relief, finding that it was likely that the recruiter promised the applicant the bonus as an enticement to enlist in a particular rating and to accept an assignment to Group Long Island Sound. The Board stated 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. The Board finds that the Coast Guard erred when the recruiter promised the applicant that he would receive a \$2000 enlistment bonus because of his prior military service. At the time of his enlistment, the applicant's rating (HS) had not been identified as a critical rating, and ALCOAST 645/05 did not provide a bonus for prior service members who enlisted in the Coast Guard in the HS rating. Therefore, although his recruiter promised him a bonus and memorialized that promise on Annex T to his enlistment contract, the applicant did not meet the eligibility requirements for the bonus under ALCOAST 645/05.

3. The JAG argued that the Board should deny the requested relief because the applicant was not eligible for the enlistment bonus. However, the Board finds it likely that the recruiter promised the applicant the bonus as further enticement to enlist in the Coast Guard. The Board believes 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, i.e., a four-year enlistment in the Coast Guard.

4. Although the Government is not estopped from repudiating the bad promises made by its employees (*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)), 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.”¹ The Coast Guard recommended that the Board offer the applicant the choice of having his enlistment contract voided and being discharged from the Coast Guard, or having his record show that he was entitled only to the \$5000 enlistment bonus for his college credit. However, the applicant’s recruiter promised him both the \$5000 bonus and the \$2000 bonus for enlisting, and the applicant has already given consideration on the contract by enlisting in the Coast Guard. Since he was not already a member of the Coast Guard, he had to rely on his recruiter to inform him of his entitlements. There is no evidence that he would have enlisted had he not been promised the \$2000 bonus as well as the \$5000 bonus. Discharging him more than a year later would not correct the error or remove the injustice that has been done, especially because his discharge would also result in the recoupment of the \$5000 bonus. The Board finds that the Coast Guard’s recommended corrections are inadequate to remedy the injustice committed in this case as they would not provide “thorough and fitting relief.” *Id.*

5. The facts of this case are very similar to the facts in BCMR Docket Nos. 1999-027 and 2005-117. Like the applicants in those cases, the applicant in this case was promised an enlistment bonus by his recruiter although he did not meet the eligibility requirements, and gave due consideration for the bonus. In Docket No. 1999-027, the Chief Counsel recommended that the Board grant relief, but in 2005-117, the JAG recommended denying relief. In both cases, the Board granted relief, finding that although the government is not estopped from repudiating the advice of its employees, the promises made by the Coast Guard to new recruits should be kept where they give due consideration for the promised benefit.

6. Accordingly, the applicant’s request should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹ 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." Citing *Duhon v. United States*, 471 F. 2d 1278, 1281, quoting *Caddington v. United States*, 178 F. Supp. 604, 607, (1959).

ORDER

The application of HS3 XXXXXXXXXX, xxxxxxxxxxxx, USCG, for correction of his military record is granted. His record shall be corrected to show that he was eligible for the \$2000 enlistment bonus he was promised in Annex T to his February 9, 2006, enlistment contract. The Coast Guard shall pay him the amount due as a result of this correction.

Harold C. Davis, M.D.

Darren S. Wall

Eric J. Young