

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-098

XXXXXXXXXXXXXX
xxxxxxx, BM1

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 on February 23, 2007, upon receipt of the applicant's completed application, and assigned it to staff members D. Hale and J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 29, 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, a boatswain's mate first class (BM1), asked the Board to correct his record to show that he is entitled to an \$8,000 bonus for signing a six-year reenlistment contract for the Coast Guard Selected Reserve (SELRES) on March 9, 2006. He alleged that his recruiter promised him the bonus and that the promise was documented with a Page 7.¹ He further alleged that his recruiter "checked with two other people" with respect to the bonus, and both of them confirmed his eligibility for the bonus. In support of his application, he stated that the "bonus was an integral part of my enlistment. It favored my decision to reenlist in the Coast Guard over the Army. I counted on the bonus to help me provide for me and my family..." The applicant also alleged that he openly disclosed to his recruiter the fact that he had previously received a bonus from the Coast Guard when he enlisted in the SELRES in 1998. Finally, he stated that he did not discover that he was not going to receive the bonus until nearly six months after he signed the reenlistment contract.

SUMMARY OF THE RECORD

The applicant served in the Coast Guard Reserve from June 19, 1990, through October 16, 1994. He enlisted on active duty in the U.S. Army on October 17, 1994, and was honorably

¹ A Page 7 (CG-3307, or Administrative Remarks) entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

discharged on October 16, 1998. On December 10, 1998, he reenlisted in the Coast Guard SELRES for a term of six years, through December 9, 2004, and received a bonus.

On November 12, 1999, the Coast Guard prepared a Statement of Creditable Service (SOCS)² for the applicant. It indicates that he had four years, five months, and 12 days of “total creditable active duty” and nine years, one month, and 19 days of “total creditable service for pay.”³

Between January 2006 and March 2006, the applicant discussed the possibility of reenlisting in the Coast Guard SELRES with MSTC R, a recruiter at the applicant’s local Coast Guard recruiting office. MSTC R was a temporary reserve recruiter serving on three-year extended active duty orders.

On March 9, 2006, the applicant reenlisted in the Coast Guard SELRES for a term of six years by signing a reenlistment contract and a Page 7 prepared by MSTC R. The contract does not mention a bonus or integrate any document promising a bonus, but the Page 7 signed by the applicant and his recruiter states the following:

I have been advised that I am currently eligible for a Level _____ Selective Reserve (SELRES) Reenlistment/Extension Bonus in the amount of \$ 8,000 for assignment to the following rating or unit: BM1 . I am eligible to enlist for a maximum of 6 years. My bonus will be computed based on 72 months of obligated SELRES service.

I hereby acknowledge that I have read and fully understand the contents and explanation of Chapter 3.E, Personnel Manual, COMDTINST M1000.6A (series). I have been counseled on the opportunity to contribute my SEBP payment to the Thrift Savings Plan (TSP).

The applicant’s record also contains a statement written by MSTC R regarding the applicant’s reenlistment and the confusion surrounding the SELRES bonus. In the statement dated October 12, 2006, and addressed to the recruiter in charge (BMC D), MSTC R stated that he began the enlistment process of the applicant, which took “several months,” thinking that the applicant was eligible for a SELRES bonus because he had determined that the applicant had less than 13 years of time in service (TIS). He further stated that prior to reenlisting the applicant he e-mailed YNCS S, who “confirmed bonus eligibility.”⁴ During a phone call with a member of the BCMR staff, BMC D stated that as the recruiter in charge and MSTC R’s supervisor, he had “signed-off” on the applicant’s reenlistment and bonus. Finally, MSTC R stated that after confirming the applicant’s bonus eligibility with YNCS S, he submitted a “reservation” for the applicant “requesting an \$8,000 signing bonus, which was approved.”

² A Statement of Creditable Service verifies and validates all periods of prior military service (all branches) and sea service to adjust a member’s Pay Base Date (PBD), Active Duty Base Date (ADBDD), or cumulative sea service time. Chapter 2.A. of the Coast Guard Pay Manual.

³ On October 24, 2007, the JAG stated that the only SOCS in the applicant’s record is the one dated November 12, 1999.

⁴ YNC S is the Regional Supervisor at Coast Guard Recruiting Command. He stated to a member of the BCMR staff that he does not approve/disapprove bonuses, but may have had a conversation with the recruiter regarding the applicant’s eligibility to reenlist.

MSTC R also noted that after he prepared the applicant's enlistment paperwork, he recalculated the applicant's TIS and determined that, in fact, he was not eligible for the SELRES bonus because he had more than "13.38" years of previous service. However, MSTC R had already submitted the applicant's reenlistment paperwork for processing. Regarding the confusion surrounding the calculation of the applicant's prior service, MSTC R stated that:

I do not feel that BM1 ever tried to mislead me or withhold information regarding his prior service. The DD-214s and the recruiting manual are easy to misread/misunderstand. I initiated the bonus based on incomplete and inaccurate information, and as new information became available, I did not connect that information with bonus eligibility.

MSTC R also stated in an October 13, 2006, e-mail to the applicant that he had referenced ALCOAST 056/06 in determining his eligibility for the bonus, and that he was "sorry for the error."⁵

According to the applicant, it was six months after signing the reenlistment contract before the Coast Guard notified him that he would not be receiving the bonus. He stated that he did not receive the bonus because the Coast Guard determined that he was not eligible for one at the time of his reenlistment.

VIEWS OF THE COAST GUARD

On July 11, 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 an \$8,000 SELRES bonus. The JAG stated that per Enclosure (1) of Article 2.d. of Commandant Instruction 7220.1A, the applicant was not eligible for the bonus because he had previously received a six-year SELRES bonus for his December 10, 1998, reenlistment in the SELRES. The JAG did not address the applicant's amount of prior service and its effect on his March 2006 eligibility for the SELRES bonus.

The JAG recommended that the Board offer the applicant two options. First, the applicant could have his record corrected by voiding the reenlistment contract and be immediately discharged from the Reserve. As a second option, the JAG recommended that the applicant could maintain the status quo and continue to serve in the SELRES without eligibility for the bonus.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 23, 2007, the Chair sent a copy of the JAG's advisory opinion to the applicant and invited him to respond. In his response, the applicant asserted the following:

⁵ MSTC R is apparently referring to the error he made in determining the applicant's eligibility for a bonus.

By me reenlisting I am committing six more years of my life to serve in the Coast Guard. At a minimal I will give up weekends and time away from my family while on active duty training and in schools away from home.

Most likely my sacrifice will be greater. In the past I was not there for the birth of my youngest child or by my wife's side when she faced surgery. I was away at war serving in combat operations in Iraq. Given the current state of conditions I know that I may be called again to serve away from home in defense of this nation.

Military service equates to sacrifice. I will sacrifice time away from my wife and young children. I will miss periods of time in my children's life and I will continue to work in a job which puts me in harm's way. My compensation for my sacrifice is my pay and the reenlistment bonus I was promised.

After reenlisting, the Coast Guard stated that I was ineligible for the promised bonus because I have too much time in service. I was told that the Coast Guard made a mistake and therefore I would not receive the bonus. A statement of creditable service was completed and I was told that I had 14 years, 11 months, and 20 days. However, the enlistment paper work showed me to have 13.48 years. Finally, the Coast Guard's advisory opinion states that I have approximately 13 years, 3 months, and 29 days. I have lost faith in the Coast Guard's ability to properly calculate my time in service. During the process I even provided the Coast Guard with all my DD-214s and other supporting paper work as requested.

Now the Coast Guard in the advisory opinion has sidestepped the time in service issue and stated that I'm simply ineligible to receive a bonus because I received a smaller one in the past. Another mistake by the Coast Guard. The bottom line is I was promised a bonus which I have not received as part of my compensation for my enlistment.

APPLICABLE LAW

COMDTINST 7220.1A provides the policies governing the SELRES bonus program and provides guidance for administering the program. It went into effect on February 5, 1998.

Article 2 of Enclosure (1) to COMDTINST 7220.1A provides the bonus eligibility criteria for members reenlisting in the SELRES. The applicable sections are as follows:

- Article 2.b. provides that total length of service for a member enlisting in the SELRES for a bonus must be less than 14 years at the time of enlistment.⁶
- Article 2.d. states that to receive a SELRES bonus, the member "must not have previously received a six-year bonus or more than one three-year bonus for enlistment, reenlistment, affiliation, or extension in ANY reserve component."

⁶ Article 2.b. provides that "total prior service at date of enlistment is the total active and inactive service, regardless of branch, computed from Pay Base Date (PBD) to preceding Expiration of Service (EOS). NOTE: Inactive service covers all periods of inactive duty served under a qualifying enlistment."

- Article 2.g. provides that the member must sign an acknowledgement of SRB counseling. The sample acknowledgment includes this sentence:

"I hereby acknowledge that I have read and fully understand the contents and explanation of COMDTINST 7220.1 (series)."

ALCOAST 056/06 was issued on February 1, 2006, and announced eligibility and amounts paid for enlistments into the SELRES. Paragraph 5 of the ALCOAST states that "[d]ue to the current high rate of retention, no reenlistment/extension bonus is offered at this time."⁷

PREVIOUS BCMR DECISIONS

In BCMR Docket No. 1999-027, the applicant had been promised a \$2,000 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 a \$4,000 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.

In BCMR Docket No. 2004-063, the applicant stated that after more than eight years on active duty, he enlisted in the SELRES and was promised a SELRES enlistment bonus of \$50 per month of his remaining service obligation. 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 direction, to be honorably discharged for "Defective Enlistment Agreement," with a KDS separation code⁸ and an RE-1 reenlistment code. The Board noted that the applicant was an experienced member of the regular 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.

⁷ MSTC R stated that he referred to Paragraph 3.A. of ALCOAST 056/06 to determine the applicant's bonus eligibility. However, paragraph 3.A. refers to the *enlistment* of prior service personnel, and not the *reenlistment* of prior service personnel.

⁸ 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."

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 an \$8,000 SELRES bonus for signing a six-year reenlistment contract on March 9, 2006. The Page 7 prepared by the recruiter, also dated March 9, 2006, clearly states that the applicant is eligible to receive an \$8,000 SELRES bonus. However, the applicant was ineligible for the bonus in three ways:

a) The applicant had already received a SELRES bonus for signing a six-year reenlistment contract for the SELRES on December 10, 1998. Pursuant to Article 2.d. of Enclosure (1) to COMDTINST 7220.1A, a member cannot receive a SELRES bonus if he previously received "a six-year bonus or more than one three-year bonus for enlistment, reenlistment, affiliation, or extension in ANY reserve component."

b) The applicant was not enlisting in the SELRES, but reenlisting. Paragraph 5 of ALCOAST 056/06 states that "due to the current high rate of retention, no reenlistment/extension bonus is offered at this time." If the recruiter had properly read ALCOAST 056/06, he would have determined that the applicant was not eligible for a reenlistment bonus.

c) The applicant had more than 14 years of active service when he signed the reenlistment contract.⁹ Under Article 2.b. of Enclosure (1) to COMDTINST 7220.1A, only members with less than 14 years of total prior service were eligible for the bonus. The recruiter admitted that he miscalculated the applicant's total prior service, stating that "[t]he DD 214s and the recruiting manual are easy to misread/misunderstand."

3. The Board also notes that the Page 7 in the applicant's record cites a non-existent article of the Personnel Manual, Article 3.E., as having been read and understood by the applicant. The Reserve enlistment and reenlistment bonus regulations are contained in COMDTINST 7220.1.A.

4. The recruiter clearly failed to pay any attention to the rules and promised the applicant an \$8,000 bonus for which he was not eligible. Although the Government is not estopped from repudiating the bad promises made by its employees,¹⁰ the Board believes that,

⁹ The Board has been unable to obtain a current SOCS for the applicant. However, in his response to the AO, the applicant acknowledged that at the time of his 2006 reenlistment he had more than 14 years of prior service.

¹⁰ *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).

whenever reasonable, such promises should be kept, especially when the member relies on the erroneous advice of a chief petty officer and gives due consideration for the promised benefit, i.e., a six-year reenlistment in the Coast Guard Reserve. There is no evidence that the applicant would have reenlisted for six years but for the promise of an \$8,000 bonus. In fact, the applicant stated that the bonus was a big factor in deciding to enlist in the Coast Guard instead of the Army. Discharging him nearly two years later, as recommended by the JAG, would not correct the error or remove the injustice that has been done. 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."¹¹

5. Since the applicant was not a current member of the Coast Guard at the time he signed the reenlistment contract, he had to rely on his recruiter to inform him of his entitlements. Moreover, the applicant should have been able to rely on the advice provided by his recruiter, who was a Coast Guard chief petty officer with presumably more than ten years of service. Furthermore, the recruiter sought the advice of his supervisor and a senior chief yeoman, neither of whom were able to determine that the applicant was not eligible for the bonus. Finally, the recruiter stated that the applicant's enlistment took "several months," so the Coast Guard had more than enough time to ensure the applicant's eligibility for the bonus before he signed the six-year reenlistment contract.

6. The facts of this case are 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 a 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 Coast Guard 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 should be kept when the enlistees give due consideration for the promised benefit. In BCMR Docket No. 2004-063, the Board denied relief to an applicant who was erroneously promised a SELRES bonus. That case is distinguished from this case, however, because the member in that case was an eight-year veteran of the regular Coast Guard who enlisted in the SELRES immediately upon discharge and had ready access to the regulations. The Board felt that after serving eight years on active duty in the regular Coast Guard, the member should have read the ALCOAST and realized his ineligibility for the bonus, which was obvious on its face. In the instant case, the applicant was never on active duty in the Coast Guard, and he had not been affiliated with the Coast Guard Reserve since December 2004. His only access to the bonus regulations was through his recruiter, and the Page 7 prepared by the recruiter did not even cite the proper SELRES bonus regulation. Thus, the applicant had no way to confirm the veracity of the recruiter's promise.

7. Accordingly, the applicant's request should be granted by correcting his record to show that he is eligible to receive an \$8,000 reenlistment bonus for signing the six-year SELRES reenlistment contract on March 9, 2006.

¹¹ *Caddington v. United States*, 178 F. Supp. 604, 607 (1959).

ORDER

The application of BM1 xxxxxxxxxx, XXXXXXXX, USCGR, for correction of his military record is granted. His record shall be corrected to show that he is entitled to receive an \$8,000 reenlistment bonus for signing the six-year SELRES reenlistment contract on March 9, 2006. The Coast Guard shall pay him the amount due as a result of this correction.

George J. Jordan

James E. McLeod

Dorothy J. Ulmer