

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-151

XXXXXXXXXXXX

XXXXXXXX, BM3 (E-4)

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 June 21, 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 January XX, 2008, 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 third class (BM3), in the Coast Guard Reserve, asked the Board to correct his record to show that he is entitled to a \$4000 Selected Reserve (SELRES) affiliation bonus for signing a six-year Reserve enlistment contract on April 4, 2006. He alleged that his recruiter promised him the bonus and that the promise was documented with a Page 7.¹ He alleged that the recruiter told him that he was the last person to get in under "the old program" and that he was the last one from that recruiting office who would be receiving the bonus.

SUMMARY OF THE RECORD

On April 3, 2006, the applicant and his Coast Guard recruiter, who was a chief petty officer, signed a Page 7 documenting that the applicant was eligible to receive a \$4000 bonus if he enlisted in the SELRES for six years in the BM rate. The heading of the Page 7 states that the reference is "ALCOAST 268/04." The Page 7 further states:

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.

04/04/06: I have been advised that I am eligible for a \$4000.00 SELRES enlistment or affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through 03/12/12. I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7220.1 Series and ALCOAST 093/05.

Signature of Member

Date Signed:

/s/ _____

4-3-06

Signature of Recruiter

Date Signed:

/s/ _____

3 APR 06

The applicant signed a six-year enlistment contract for the SELRES on April 4, 2006. The contract does not mention an enlistment bonus or integrate any document promising a bonus. The applicant's record also contains DD Form 1966 dated April 4, 2006, signed by both the applicant and his recruiter, which contains detailed information regarding the applicant's enlistment. Block 32a of the form titled Specific Option/Program Enlisted For, contains the following entry "GUARANTEED BM A SCHOOL. \$4000 BONUS."

In Block 33 of the form, "Certification of Recruiter or Acceptor," the applicant's recruiter certified that he did not make

any promises or guarantees other than those listed in 32a above. I further certify that service regulations governing such enlistments have been strictly complied with and any waivers required to effect applicant's enlistment have been secured and are attached to this document.

The applicant's record also contains a "reservation request" which was prepared by the applicant's recruiter and submitted to the Coast Guard Training Center. Line AA of the request states: "Bonus/Reason..... 4000.00/BM ANY UNIT."

The applicant completed his initial active duty for training May 26, 2006, and reported to BM "A" School on June 8, 2006. He completed "A" School on September 1, 2006, and was assigned to a SELRES billet at Coast Guard Station Saginaw River.

VIEWS OF THE COAST GUARD

On November 6, 2007, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant the requested relief but grant alternate relief. The JAG stated that the applicant signed a Page 7 on April 3, 2006, which cited an ALCOAST which had been canceled on February 1, 2006, when ALCOAST 056/06 was issued. The JAG further stated that under ALCOAST 056/06, a SELRES bonus was not available for members with no prior military service enlisting in the SELRES and in the BM rate. Accordingly, the JAG stated, the Page 7 that the applicant and recruiter signed on April 3, 2006, promising the \$4000 bonus was "invalid." The JAG also argued that although block 32a of the applicant's DD Form 1966 stated that he was guaranteed the \$4000 bonus, it was nonetheless "unauthorized for

payment as no authority exists to pay the bonus.” The JAG recommended that the Board grant alternate relief by voiding the applicant’s enlistment contract and allowing him to be immediately discharged or by allowing him to “remain in the SELRES without eligibility for the SELRES bonus.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 13, 2007, the Chair sent a copy of the JAG’s advisory opinion to the applicant and invited him to respond within 30 days. The Chair did not receive a response.

APPLICABLE REGULATIONS

ALCOAST 268/04 was issued on June 1, 2004, and was in effect until ALCOAST 093/05 was issued on February 22, 2005. Under ALCOAST 268/04, a bonus of \$4000 was available to an initial enlistee assigned to a critical unit or scheduled to serve in a critical rating (BM, MK, MST, OS), for a six-year SELRES assignment.

ALCOAST 093/05 was issued on February 22, 2005, and was in effect until ALCOAST 056/06 was issued on February 1, 2006. Under ALCOAST 093/05, a Level 2 bonus of \$4000 was available to an initial enlistee permanently assigned to a critical unit or scheduled to serve in a critical rating (BM, MK, MST, OS), for a six-year SELRES assignment.

ALCOAST 056/06 was issued on February 1, 2006, and replaced ALCOAST 093/05. Under ALCOAST 056/06, a SELRES bonus was available only to an initial enlistee who enlisted in the MK, MST, or OS ratings.

PREVIOUS BCMR DECISIONS

In BCMR Docket No. 1999-027, the applicant had been promised a \$2000 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. 1999-121, the applicant was promised a \$2000 SELRES enlistment bonus by his recruiter and that promise had been memorialized on a Page 7. However, the Coast Guard refused to honor that promise because the applicant did not enlist for an eligible unit listed in the applicable ALCOAST. The Chief Counsel argued that despite the Page 7, the Coast Guard had no legal authority to pay the applicant because the applicable ALDIST did not authorize a bonus for a member in the applicant’s rating unless they were assigned to a bonus eligible unit. However, the Board granted relief, stating that whenever reasonable, promises made by recruiters 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 reenlistment bonus of \$50 per month. 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 code² 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.

In BCMR Docket No. 2005-117, the applicant was promised a \$4000 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. 2007-098, the applicant had been promised an \$8000 SELRES bonus for reenlisting in the SELRES for six years. The promise was documented on a Page 7 signed by the applicant and his recruiter. The JAG argued that relief should be denied, asserting that the applicant was not eligible for the bonus because he had previously received a six-year SELRES bonus for a previous enlistment. The Board found that there was no evidence that the applicant would have reenlisted for six years but for the promise of an \$8000 bonus. In granting relief, the Board found that the Coast Guard’s recommended corrections were inadequate to remedy the injustice committed in this case as they would not provide thorough and fitting relief.

In BCMR Docket No. 2007-119, the applicant had been promised a \$4000 SELRES bonus for enlisting in the BM rating. The promise was documented on a Page 7 signed by the applicant and his recruiter, and was also documented on the applicant’s record of military processing. The JAG argued that despite the Page 7, the Coast Guard had no legal authority to pay the applicant because the applicable ALCOAST did not authorize a bonus for a member in the applicant’s rating. However, the Board granted relief, stating that whenever reasonable, promises made by recruiters 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:

² 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.”

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The Board finds that the Coast Guard committed an error when the applicant's recruiter promised him in writing that he would receive a \$4000 SELRES bonus for signing a six-year enlistment contract on April 4, 2006. The Page 7 signed by the recruiter and the applicant on April 3, 2006, clearly states that the applicant is eligible to receive a \$4000 SELRES bonus. The Page 7 cites ALCOAST 093/05 as the authority for the applicant's SELRES bonus, but ALCOAST 093/05 expired on February 1, 2006, three months before the applicant signed his enlistment contract. When the applicant signed the contract on April 4, 2006, ALCOAST 056/06 was in effect and did not provide a bonus for SELRES enlistments in the BM rate. Thus, when the applicant signed the Page 7 on April 3, 2006, and the enlistment contract on April 4, 2006, he was not eligible for a SELRES enlistment bonus.

3. The Board notes that in addition to documenting the promise of a bonus on the Page 7, the recruiter also documented that promise elsewhere in the applicant's enlistment papers. To wit, the applicant's DD 1966 enlistment form dated April 4, 2006, contains the promise of a \$4000 bonus in block 32a, and the recruiter affirmed that entry by signing block 33. Therefore, the applicant has proved by a preponderance of the evidence that the Coast Guard promised him a SELRES bonus of \$4000 for enlisting for six years in the BM rate.

4. 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 that the recruiter promised the applicant the \$4000 bonus as an enticement to enlist in the Reserve and in the BM rate. In previous advisory opinions, the Coast Guard has admitted that recruiters use enlistment bonuses when necessary "to close the deal."³ Although the Government is not estopped from repudiating the bad promises made by its employees,⁴ the Board believes that, whenever reasonable, such promises should be kept, especially when the member relies on the erroneous advice of a recruiter and gives due consideration for the promised benefit, i.e., a six-year enlistment in the Reserve. There is no evidence that the applicant would have enlisted for six years but for the promise of the \$4000 bonus. 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 correction is inadequate to remedy the injustice committed in this case as it would not provide "thorough and fitting relief."⁵

5. The facts of this case are very similar to the facts in BCMR Docket Nos. 1999-027, 1999-121, 2005-117, 2007-098, and 2007-119. 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. Since the applicant had no military experience whatsoever at the time he signed the enlistment contract, he had to rely on his Coast Guard recruiter to inform him of his entitlements. Moreover, the applicant

³ See advisory opinions for Coast Guard BCMR Docket Nos. 2003-111, 2004-082, and 2004-121.

⁴ *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).

⁵ *Caddington v. United States*, 178 F. Supp. 604, 607 (1959).

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 eight years of service, and who was designated by the Coast Guard as a recruiter – the primary source of information for anyone interested in enlisting in the Reserve.

6. Accordingly, the applicant's request should be granted. His record should be corrected to show that he is eligible for a \$4000 enlistment bonus for signing a six-year SELRES reenlistment contract on April 4, 2006.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXX, xxxxxxxx USCGR, for correction of his military record is granted. His record shall be corrected to show that he is eligible for a \$4000 enlistment bonus for signing a six-year SELRES enlistment contract on April 4, 2006. The Coast Guard shall pay him the amount due as a result of this correction.

Francis H. Esposito

Randall J. Kaplan

Darren S. Wall