

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-207

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XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 September 13, 2007, upon receipt of the applicant's completed application, 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 May 29, 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 port security specialist, third class (PS3) in the Coast Guard Selected Reserve (SELRES), asked the Board to correct his record to show that he is entitled to a \$6,000 enlistment bonus for signing a six-year enlistment contract on December 1, 2005. He alleged that his Coast Guard recruiter promised him a \$6,000 bonus to be paid in two installments of \$3,000 each and documented his entitlement to the bonus in writing. However, the Coast Guard paid him only a \$4,000 enlistment bonus, which is \$2,000 shy of the amount he was promised. The applicant stated that he signed his contract "with the understanding and expectation that I was going to be paid a \$6,000 bonus" and that the \$6,000 bonus "was a large factor in my decision to sign my enlistment contract."

In support of his allegations, the applicant submitted documents from his record and a copy of an email from a military pay technician on the Bonus Team at the Coast Guard's Personnel Services Center. The technician stated that, although the applicant's Page 7 promises a bonus of \$6,000, the Page 7 "is not a binding contract. It is a 'counseling tool' that tells the member that he is eligible for a bonus; it does not guarantee a bonus since we have no idea what choices the member may make that might change his eligibility for his bonus." The technician stated that the applicant was paid the \$4,000 bonus in accordance with section 2.b. of ALCOAST 093/05 because he was enlisting in a non-critical rating (port security specialist) at a critical unit. The technician stated that, to be eligible for a \$6,000 bonus, the applicant "would have to be serving in a critical rate at a critical unit. At the time of counseling ... maybe the member was planning on serving in a critical rate but later changed his mind. There is also the chance that

maybe the member was miscounseled by his recruiter, who made an error. ... If the member feels he was miscounseled, then he may want to go the BCMR route for their determination.”

The applicant also submitted a statement from his supervisor, PS1 W, who wrote that the applicant enlisted in good faith “with the knowledge that if he completed his enlistment contract requirements he would get the full amount of the bonus that he was promised.” PS1 W stated that the applicant “is an asset to my unit and has always performed his job well. He follows orders without complaint and is always willing to go the extra mile.” He recommended that the applicant be paid the remainder of the bonus he is due.

SUMMARY OF THE RECORD

On December 1, 2005, at the Recruiting Office in Vancouver, Washington, the applicant and his recruiter signed a Page 7 (form CG-3307), which states the following:

I have been advised that I am eligible for a \$ 6000.00 SELRES enlistment or affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through 01/08/06. I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7220.1 Series and ALCOAST 093/05.

Also on December 1, 2005, the applicant signed a six-year Reserve enlistment contract, which states the following in pertinent part:

B. AGREEMENTS

8. I am enlisting/reenlisting in the ... Coast Guard Reserve this date for 6 years and 0 weeks beginning in paygrade E-4. The additional details of my enlistment/reenlistment are in Section C and Annex(es) N, U & SELRES BONUS.

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D. CERTIFICATION AND ACCEPTANCE

13a. ... 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. ...

The “annexes” incorporated in the contract include the Page 7 concerning the applicant’s eligibility for a \$6,000 enlistment bonus. Annex N indicates that he was assigned to position 50432 at a port security unit (PSU).

A career summary printout shows that on December 1, 2005, the applicant was assigned to position 50432 with job title third class port security specialist (PS3/E-4). Another database printout dated August 13, 2007, shows that he is entitled to two bonus installments of \$2,000, for a total enlistment bonus of \$4,000.

VIEWS OF THE COAST GUARD

On February 1, 2008, 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 \$6,000 enlistment bonus for enlisting in the PS rating. The JAG stated that under ALCOAST 093/05, the applicant was eligible for only a Level II bonus of \$4,000 because

he was enlisting at a critical unit but not in a critical rate. The JAG concluded that the Page 7 prepared and signed by the applicant's recruiter was "invalid, erroneous, and unauthorized." The JAG stated that despite the language on the Page 7 acknowledging understanding of the ALCOAST and the Reserve bonus instruction, "it is evident that neither the applicant nor the recruiter understood the contents of those documents."

The JAG argued that the relief requested by the applicant "is an inappropriate remedy as no authority exists to pay him" and recommended that the Board correct the Page 7 dated December 1, 2005, to reflect a promise of a \$4,000 bonus.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 15, 2008, the applicant responded to the JAG's advisory opinion, stating that he disagreed with the recommended correction because he was promised a \$6,000 bonus but has only received \$4,000.

APPLICABLE REGULATIONS

Article 3.A.1. of the 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. 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. An additional amount may be offered for the member to accept an enlistment of six years."

ALCOAST 093/05, which was issued on February 22, 2005, and was still in effect on December 1, 2005, states the following:

2. Bonus Categories

A. SELRES Enlistment Bonus

(1) Eligibility Requirement: Initial enlistment (new accession with no prior military service) under the RP, RK, or RX programs. Member must either be assigned to a critical unit (PSU or NCS unit) or scheduled to serve in a critical rating (BM, MK, MST, OS) for a six-year SELRES assignment. ...

(2) Bonus Amount:

(A) Level I Bonus: 6,000 dollars authorized to members in a critical rating at a critical unit (3,000 upon completion of IADT [initial active duty training] and 3,000 paid one year later).

(B) Level II Bonus: 4,000 dollars authorized for members either assigned to a critical unit or scheduled to serve in a critical rating but not both (2,000 dollars upon completion of IADT and 2,000 dollars paid one year later). ...

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. 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. 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."

In BCMR Docket No. 2007-006, the applicant alleged that he was promised a \$2,000 SELRES enlistment bonus for enlisting in the health services rating as well as a \$5,000 bonus for having a certain number of college credits. His enlistment contract incorporated Annex T, which documented the promised bonuses. However, he received only the \$5,000 bonus because the health services rating was not one of the critical ratings eligible for the \$2,000 bonus. 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, i.e., a four-year enlistment in the Coast Guard."

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 applicant has proved by a preponderance of the evidence that the Coast Guard erred when the recruiter promised the applicant a Level I \$6,000 SELRES enlistment bonus for enlisting for six years as a port security specialist at a PSU. His recruiter documented that promise on a Page 7 and the applicant's enlistment contract, which affirms in several places that the promises written in section B of the contract will be honored by the Coast Guard. Section B of the applicant's enlistment contract incorporates the Page 7 documenting his eligibility for a \$6,000 SELRES bonus. However, ALCOAST 093/05 authorized \$6,000 bonuses only for members enlisting in a critical rating at a critical unit. The applicant was assigned to a critical unit upon enlistment—a PSU—but he was not assigned to a critical rating. Therefore, under ALCOAST 093/05, he was eligible only for the Level II \$4,000 bonus.

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 an enticement to enlist in the SELRES. The applicant stated that the promised bonus was a significant factor in his decision to enlist. 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 six-year enlistment in the SELRES.

4. Although the Government is not estopped from repudiating the bad promises made by its employees,¹ 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.”² The Coast Guard recommended that the Board “correct” the applicant's record to indicate that he was promised a \$4,000 bonus instead of the \$6,000 bonus he was actually promised. However, the applicant's recruiter promised him the \$6,000 bonus for enlisting, and the applicant has already given consideration on the contract by enlisting in the SELRES. 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 chosen to enlist in the Coast Guard Selected Reserve had he been promised only a \$4,000 bonus.

5. Although the applicant's enlistment contract is clearly voidable because of the false promise incorporated therein, releasing him from the contract by discharging him more than two years later would not correct the error or remove the injustice that has been done, especially since his discharge would also result in the recoupment of the \$4,000 bonus he has received.

¹ *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).

² *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959).

6. The facts of this case are very similar to the facts in the prior cases summarized above. 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 most cases the JAG recommended denying the applicants the unauthorized bonuses. In all these 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 when the recruits give due consideration for the promised benefit.

7. Accordingly, the applicant's request should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is granted. His record shall be corrected to show that he is eligible for and entitled to the Level I \$6,000 enlistment bonus he was promised on the Page 7 dated December 1, 2005, incorporated in his SELRES enlistment contract (in lieu of the Level II \$4,000 enlistment bonus he was paid). The Coast Guard shall pay him the amount due as a result of this correction.

Donna M. Bivona

Diane L. Donley

Richard Walter