

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-214

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 21, 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 June 12, 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 March 8, 2007. He alleged that his Coast Guard recruiter promised him a \$6,000 bonus and documented his entitlement to the bonus in writing. Moreover, his recruiter submitted this enlistment package with the promise of the bonus to the Coast Guard Recruiting Command, and the bonus was approved. However, after he enlisted in the Reserve, the Coast Guard refused to pay him the bonus.

In support of his allegations, the applicant submitted an "Enlistment Package Check-Off List," which shows that he was enlisting in the Reserve RX program as a PS3 with an approved "ship date" of April 15, 2007, and that a \$6,000 SELRES enlistment bonus had been offered as an enlistment incentive. In addition, a "Reservation Request" completed by the recruiter to reserve the applicant's place in a Reserve Enlisted Basic Indoctrination (REBI) class also documents the \$6,000 bonus and shows that he would be assigned to unit "SEC HOU/GAL V INSP," which is a Reserve vessel inspection unit at Sector Houston-Galveston. The applicant also submitted a copy of a CG-3307 ("Page 7"), which was signed by himself and his recruiter on the day he enlisted and which states the following:

I have been advised that I am eligible for a \$6,000 SELRES enlistment or affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through 04/14/13. I

hereby acknowledge that I read and fully understand the contents of COMDTINST 7220.1 Series, ALCOAST 056/06 and the Selected Reserve Bonus Matrix (updated 02/01/06).

VIEWS OF THE COAST GUARD

On February 6, 2008, 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 admitted the record “does document that Applicant was advised in an Enlistment Package Check-Off List for a \$6,000 enlistment bonus, in a Reservation Request for a \$6,000 enlistment bonus, and in an Administrative Remarks (CG-3307) dated 08 March 2007, that he was eligible for a \$6,000 SELRES enlistment bonus based upon ALCOAST 056/06.” The JAG stated that under ALCOAST 056/06, only members enlisting in a critical rating were eligible for the bonus, and PS3 was not cited as a critical rating. Only the MK, MST, and OS ratings were listed as critical. Moreover, by March 8, 2007, ALCOAST 064/07 had been issued to cancel ALCOAST 056/06 and announce new bonus eligibility criteria. Under ALCOAST 064/07, which went into effect on February 5, 2007, the critical ratings that would garner a bonus for new enlistees were IV, MK, and OS. The JAG recommended that the Board deny the applicant request because no authority existed to pay him the bonus.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 8, 2008, the Chair sent the applicant a copy of the JAG’s advisory opinion and invited him to respond within thirty days. No response was received.

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 056/06, which was issued on February 1, 2006, and cited on the Page 7 prepared by the applicant’s recruiter, states the following:

2. SELRES Enlistment Bonus

A. Eligibility Requirement for Initial Enlistment (new accession with no prior military service) under the RP, RK, or RX programs: Applicant must enlist in either the MK, MST, or OS ratings for at least six years and must complete initial active duty for training (IADT). Applicants may be assigned either to an RPAL vacancy or as an over billet.

B. Bonus Amount: A total of 6,000 dollars is authorized to be paid in two equal amounts. (3,000 dollars may be paid after completion of IADT and 3,000 dollars may be paid one year later if participation standards contained in Chapter 4 of [Reserve Policy Manual] have been met). IADT consists of basic training or Reserve Enlisted Basic Indoctrination (REBI) plus A-School completion if required.

ALCOAST 064/07, which was issued on February 5, 2007, canceled ALCOAST 056/06 and became effective immediately. ALCOAST 064/07 states the following:

3. SELRES Enlistment Bonus

A. Eligibility Requirement for Initial Enlistment (new accession with no prior military service) under the RP, RK, RX, or RA programs: Applicant must enlist in the IV, MK, or OS ratings for at least six years and must complete initial active duty for training (IADT). Applicants must be assigned a vacant billet. Applicants assigned to an overbilled or unbudgeted position are not authorized to receive this bonus.

B. Bonus Amount: A total of 6,000 dollars is authorized to be paid in two equal amounts. 3,000 dollars may be paid after completion of IADT and 3,000 dollars may be paid one year later if participation standards contained in Chapter 4 of [Reserve Policy Manual] have been met. IADT consists of basic training or Reserve Enlisted Basic Indoctrination (REBI) plus A-School completion if required.

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.”

In BCMR Docket No. 2007-207, the applicant alleged that he was promised a \$6,000 SELRES enlistment bonus for enlisting to serve as a PS3 at a port security unit (PSU). The promise of the bonus was documented on a Page 7 and the Page 7 was cited on his enlistment contract. ALCOAST 093/05, however, authorized payment of only a \$4,000 bonus because the applicant was to be assigned to a critical unit—the PSU—but PS3 was not listed as a critical rating. Although the JAG recommended that the Board deny relief, the Board granted relief finding 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.” The Board also found 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.”

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 his recruiter promised him a \$6,000 SELRES enlistment bonus for enlisting for six years as a PS3. His recruiter documented that promise on a Page 7 dated the day he enlisted, March 8, 2007, as well as on an approved Reservation Request and an Enlistment Package Check-Off List. ALCOAST 056/06, which was cited by the recruiter, had been canceled for more than a month when the applicant enlisted, and the applicant was not authorized the bonus under either ALCOAST 056/06 or ALCOAST 064/07, which was actually in effect.

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 for six years in the SELRES. 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 deny relief. 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 enlisted had he not been promised the \$6,000 bonus.

5. The applicant’s enlistment contract is voidable because of the false promise of the \$6,000 bonus. However, releasing him from the contract by discharging him more than a year later would not correct the error or remove the injustice that has been done. 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.

6. Accordingly, the applicant’s request should be granted in the interest of justice if he meets or has met the requirements of paragraph E.1.3.B. of ALCOAST 064/07 for receiving each half of the \$6,000 bonus by completing his IADT, which was apparently REBI, and then by meeting the participation standards under Chapter 4 of the Reserve Policy Manual during his first year.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

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).

ORDER

The application of PS3 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is granted as follows:

If he has met the participation requirement of paragraph E.1.3.B. of ALCOAST 064/07 by completing his IADT or REBI, his record shall be corrected to show that he is eligible for and entitled to the first \$3,000 payment of the \$6,000 SELRES enlistment bonus he was promised on the Page 7 dated March 8, 2007.

If he meets or has met the participation requirement of paragraph E.1.3.B. of ALCOAST 064/07 by meeting the participation standards under Chapter 4 of the Reserve Policy Manual during the year following his completion of IADT or REBI, his record shall be corrected to show that he is eligible for and entitled to the second \$3,000 payment of the \$6,000 SELRES enlistment bonus he was promised on the Page 7 dated March 8, 2007.

The Coast Guard shall pay him any amount due as a result of a correction made to his record pursuant to this order.

Evan R. Franke

Robert S. Johnson

Adrian Sevier