

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-044

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
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 December 19, 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 September 11, 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 asked the Board to order the Coast Guard to pay him a \$7,000.00 Combined Reserve Bonus. He did not make any allegations of error on his application form, but in support of this request, he submitted the following documents:

- A copy of a Reserve enlistment contract, which indicates that on February 6, 2003, in San Diego, California, the applicant enlisted for six years. Block B.8. on page 1 of this document incorporates by reference "ANNEX N SIX YEAR ENLISTMENT, \$7000.00 COMBINED RESERVE BONUS." Above his signature and that of the recruiter on page 2, the contract states, "I fully understand that only those agreements in Section B of this document or recorded on the attached annex(es) will be honored."
- A copy of an "Annex N: Statement of Understanding," which was signed by the recruiter on December 8, 2003, and by the applicant on December 9, 2003. It states that the applicant would enter the Reserve "RX" program of the Selected Reserve and would undergo Reserve Enlisted Basic Indoctrination (REBI) beginning on January 11, 2004. It also spells out other participation requirements, such as attending at least 90% of all scheduled drills and performing 12 days of active duty for training annually during the six-year contract. The annex does not contain any language about a bonus.
- A series of email messages dated from November 13 to 21, 2007, in which the Personnel Services Center (PSC) notes that the applicant had requested a \$7,000.00 Reserve

enlistment bonus pursuant to language on his reenlistment contract but that he was not entitled to any of the authorized bonuses. A PSC Military Pay Technician advised the applicant's command that when he enlisted on February 6, 2003, there was no such thing as a \$7,000.00 Combined Reserve Bonus.

SUMMARY OF THE APPLICANT'S MILITARY RECORD

On February 6, 2003, the applicant enlisted in the Reserve for six years in pay grade E-6. He had more than eleven years of prior military service in the Navy. The enlistment contract in his record is different from the one submitted by the applicant in that Block B.8. states "ANNEX N SIX YEAR ENLISTMENT" and does not mention any bonus. This contract was also signed by the applicant and the same recruiter in San Diego on February 6, 2003.

The applicant's record also contains an Annex "N" that was signed the day of his enlistment, February 6, 2003. This first Annex "N" deviates from the one submitted by the applicant only in that it states that he would begin REBI on July 13, 2003.

The applicant completed REBI on January 23, 2004, and has since been assigned at various times to an Electronics Systems Detachment in San Diego, an Integrated Support Command in Alameda, and a deployable Port Security Unit. He stopped serving in the Selected Reserve on February 11, 2007, and was transferred to the IRR on June 13, 2007.

VIEWS OF THE COAST GUARD

On May 20, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request. The JAG stated that the applicant's official enlistment contract in his military record states only "ANNEX N SIX YEAR ENLISTMENT" in block B.8. He stated that this contract and the Annex "N" dated February 6, 2003, "are correct and valid."

In addition, the JAG stated that when the applicant enlisted on February 6, 2003, ALCOAST 231/02 was in effect and it authorized a combined bonus only for members permanently assigned to Naval Coastal Warfare Forces units. The JAG stated that the applicant was never assigned to such a unit.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 30, 2008, the applicant responded to the JAG's advisory opinion. He stated that he "do[es] not disagree with the recommendation."

APPLICABLE LAW

ALCOAST 231/02, issued on May 6, 2002, announced “Selected Reserve (SELRES) Bonus Amounts/Eligibility,” which went into effect immediately. The ALCOAST contains the following eligibility requirements:

3. Reserve bonuses offer an extra incentive to fill ratings and billets experiencing critical shortages, particularly at Naval Coastal Warfare Forces Units (Port Security Units (PSU), Naval Coastal Warfare Groups (NCWG) and Harbor Defense Command Units (HDCU) and Maritime Safety and Security Teams (MSST)). ...
4. Additional Eligibility Requirements:
 - A. For initial enlistments or prior service enlistments, to receive a Level I or Level II bonus, personnel must agree to be assigned to a vacant RPAL billet at a Naval Coastal Warfare Forces Unit or a MSST. ...
 - B. Personnel receiving a bonus must complete a full tour (05 years) at Naval Coastal Warfare Forces Units, or a full tour (04 years) at a MSST, to avoid bonus recoupment unless needs of the Service require otherwise. ...
5. For Reenlistments/extensions into the SELRES. No bonus at this time.
6. For Initial enlistments, the following bonus amounts and eligibility apply:
 - A. Level I Bonus – For a six-year contract, 5000 dollars (2,500 dollars paid upon completion of IADT, and 2,500 dollars paid one year later). Level I bonuses are authorized for member enlisting under the RP, RK, or RX programs who agree to serve in the MK, BM, PS, FS, TC, YN or ET ratings and be permanently assigned to Naval Coastal Warfare Forces units.
 - B. Level II Bonus – For a six-year contract, 2,000 dollars (1,000 dollars paid upon completion of IADT, and 1,000 dollars paid one year later). Level II bonuses are authorized for members enlisting under the RP, RK, or RX programs who agree to serve in the GM or DC ratings and be permanently assigned to Naval Coastal Warfare Forces units. Level II bonuses are authorized for all enlisted personnel, regardless of rating, permanently assigned to MSSTs.

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.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error in her record. 10 U.S.C. § 1552(b). Although the applicant alleged that he discovered the error on November 1, 2007, he knew or should have known that he had not been paid an enlistment bonus when he did not receive the first half of the bonus upon completing IADT/REBI on January 23, 2004. Therefore, his application is untimely.
3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The court further instructed that “the

longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.” *Id.* at 164, 165.

4. The applicant failed to explain why he did not timely seek the bonus. Moreover, the enlistment contract he submitted is not the same as the enlistment contract submitted by his recruiter for entry into his official military record. The contract in his military record reflects no promise of any bonus. While the applicant’s submission indicates that at one point the recruiter may have told the applicant he might be eligible for a bonus, the contract in his military record proves that the applicant agreed to enlist without a bonus. In the absence of a statement from the recruiter supporting the applicant’s allegation of error (i.e., supporting his implicit claim that the version of the contract showing a promise of a bonus reflects their final understanding and was the final contract approved by the Recruiting Command), the contract that was entered in his military record is presumptively correct. 33 C.F.R. § 52.24(b). In addition, the Board notes that the applicant was not otherwise entitled to an enlistment bonus under ALCOAST 231/02 because he was not permanently assigned to a Naval Coastal Warfare Forces unit or a Maritime Security and Safety Team.

5. Accordingly, it is not in the interest of justice to waive the statute of limitations in this case, and the applicant’s request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of ET1 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his Coast Guard military record is denied.

Philip B. Busch

Kathryn Sinniger

Dorothy J. Ulmer