

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-017

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 November 14, 2008, 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 July 16, 2009, 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 machinery technician, second class (MK2) 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 Reserve reenlistment contract on April 14, 2007. He alleged that he was promised a \$6,000 bonus, but did not receive it.

SUMMARY OF THE RECORD

On May 26, 1999, the applicant enlisted in the Reserve for eight years—through May 25, 2007—under the Delayed Entry Program (DEP). On September 28, 1999, he enlisted on active duty in the regular Coast Guard for four years. He was advised that his time in the Reserve DEP had been "creditable toward completion of the 8-year military service obligation." The applicant later extended his active duty enlistment through July 27, 2006.

On March 30, 2006, while serving on active duty in Bahrain, the applicant was counseled on a CG-3307 ("Page 7") about his eligibility for a SELRES Affiliation Bonus as follows:

I have been advised that I am eligible for an \$1,800.00 dollar SELRES Affiliation Bonus. Receipt of this bonus commits me to SELRES participation through 05/25/2007.

I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7220.1 (series) and ALCOAST 056/06.

On June 27, 2006, a month shy of the end of his enlistment, the applicant was released from active duty into the Ready Reserve. He was not immediately affiliated with the SELRES. Because of his original eight-year Reserve enlistment, he had a remaining military service obligation (MSO) through May 25, 2007.

On October 19, 2006, the applicant affiliated with the SELRES and was assigned to an unbudgeted position on a Maritime Safety and Security Team (MSST) based in New York. He began drilling regularly. He did not sign a reenlistment contract at this time.

On April 14, 2007, with six weeks of his MSO remaining to run, the applicant reenlisted in the Reserve for six years as an MK2. Block 8 of the reenlistment contract states the following: "MBR ELIGIBLE FOR SELECTED RESERVE BONUS." There is no document in his record showing the amount or specific type of the SELRES bonus he was promised. He has continued to drill in his unbudgeted position at the MSST. On April 14, 2008, the applicant received a \$1,400 SELRES Affiliation Bonus as a result of his affiliation with the SELRES for seven full months during his MSO from October 19, 2006, through May 25, 2007, and his reenlistment on April 14, 2007.

APPLICABLE REGULATIONS

When the applicant reenlisted in the Reserve on April 14, 2007, ALCOAST 064/07 was in effect. It stated that "[f]or the purpose of this ALCOAST and the SELRES Bonus Program, critical units are defined as port security units (PSU) and Naval Coastal Warfare Units (NCW)." ALCOAST 064/07 provided for the following types of SELRES bonuses for people with prior military service:

4. Prior Service Enlistment Bonus.

A. Eligibility requirements for active duty Coast Guard and non-Coast Guard prior enlisted members with no remaining military service obligation (MSO) and over seven years nine months but less than 13 years of combined military service: Member must commit to either a three-year or a six-year SELRES agreement, be an E-4 or above under the RQ program, and in the FS, MK, or OS ratings at a critical unit or in the IV, MK, or OS ratings at a non-critical unit. Applicants assigned to an overbilled or unbudgeted position are not authorized to receive this bonus.

B. Bonus Amounts:

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(3) For a six-year SELRES agreement in a critical rate not at a critical unit, a total of 6,000 dollars is authorized to be paid in two equal amounts. 3,000 dollars may be paid upon completion of IADT and 3,000 dollars may be paid one year later if participation standards contained in Chapter 4 of [the Reserve Policy Manual] have been met.

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5. Affiliation Bonus.

A. Eligibility requirement for RELAD personnel in the FS, MK, or OS ratings at a critical unit or in the MK or OS ratings at a non-critical unit, who are E-4 or above and obligated to serve the remainder of their initial eight-year MSO in the Ready Reserve: Member agrees to affiliate with the SELRES for a minimum of three years. The SELRES affiliation agreement for bonus payment should be executed before the member

is released from active duty. However, if necessary, the agreement may be executed up to one year after the RELAD date.

B. Assignments to overbilled and unbudgeted positions are highly discouraged, but will not preclude RELAD members from receiving an affiliation bonus unless they are pursuing a lateral change in rate.

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D. Bonus Amount: The amount of the bonus paid will be determined by multiplying 200 dollars times the number of months, up to 48, of Reserve obligation the member has remaining or, if member is on active duty, will have remaining at the time of discharge. For example, if a member has a remaining [MSO] of one year and nine months and agrees to affiliate with the SELRES for a minimum of three years, the member is eligible to receive only one year and nine months of bonus entitlements.

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7. Reenlistment/Extension Bonus. Due to the current high rate of retention, the reenlistment/extension bonus is not offered at this time.

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9. ... Bonus eligibility shall be documented on an Administrative Remarks (CG-3307) entry reading as follows: "I have been advised that I am eligible for a XXX dollar SELRES Enlistment or Affiliation Incentive Bonus. Receipt of this bonus commits me to SELRES participation through MM/DD/YYYY. I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7220.1 (series) and ALCOAST XXX/07."

VIEWS OF THE COAST GUARD

On April 9, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief.

The JAG stated that on April 14, 2007, the applicant was an MK2 with more than seven years and nine months but less than thirteen years of combined military service, and he had only six weeks remaining to run on his original eight-year MSO. Therefore, the JAG alleged, the applicant was within six weeks of being eligible for the \$6,000 Prior Service Enlistment Bonus authorized under paragraph 4 of ALCOAST 064/07.

The JAG asked, "Why would Applicant accept a \$1,400 SELRES affiliation bonus, when he could have waited to enlist at the end of the following month and receive a \$6,000 prior service enlistment bonus for a six-year SELRES agreement?" The JAG argued that if the applicant had been "counseled per SELRES bonus policy within ALCOAST 064/07, he would have waited until the end of the following month to enlist to be eligible for the \$6,000 bonus."

The JAG submitted the applicant's drill record and alleged that since the applicant has already completed IADT and met the SELRES participation standards under the Reserve Policy Manual during the year following his reenlistment, he would have qualified for the \$6,000 bonus if he had waited six weeks to reenlist in the Reserve. Therefore, the JAG recommended that the Board void the applicant's April 14, 2007, reenlistment contract and reenlist him on May 29, 2007, instead to fully qualify him for the \$6,000 Prior Service Enlistment Bonus. The JAG noted that the \$1,400 Affiliation Bonus would be deducted from his new bonus amount.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 10, 2009, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within thirty days. On June 30, 2009, the applicant responded and disagreed with the Coast Guard's recommendation. He alleged that he had intended to affiliate immediately upon his release from active duty in order to receive the Affiliation Bonus of \$200 per month for nine months, but a yeoman lost his forms. Therefore, he did not drill upon being RELAD. Instead, he affiliated in October 2006, when he resubmitted his affiliation paperwork. As a result, he received an Affiliation Bonus of only \$1,400, and it was taxable because his paperwork was submitted stateside. He stated that when he originally completed the paperwork to affiliate with the SELRES, he was in Bahrain, a combat zone, and so his Affiliation Bonus should have been tax exempt.

The applicant further alleged that the Affiliation Bonus he received has nothing to do with his claim for a Prior Service Enlistment Bonus, which is based on the April 14, 2007, Reserve reenlistment contract. He asked that the promised bonus be honored or that the reenlistment contract be voided.

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 alleged that his command promised him a \$6,000 SELRES bonus for reenlisting for six years on April 14, 2007. The reenlistment contract he signed shows that he was promised a SELRES bonus but does not state the type (Affiliation or Prior Service Enlistment) or the amount promised. The applicant submitted no evidence that supports his claim that he was promised a Prior Service Enlistment Bonus of \$6,000, instead of the \$1,400 Affiliation Bonus he received. Eligibility for either type of SELRES bonus required him to obligate additional service by reenlisting in the Reserve, which he did not do until April 14, 2007.

3. The applicant further alleged that he completed and submitted all of the paperwork to affiliate when he was in Bahrain prior to being RELAD, but a yeoman lost it, so he had to resubmit the paperwork after he was RELAD. The record before the Board, however, does not contain any documentation showing that he attempted to affiliate with the SELRES and to obligate additional service prior to his release from active duty. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.¹ Absent evidence to the con-

¹ 33 C.F.R. § 52.24(b)

trary, the Board presumes that Coast Guard officials have carried out their duties “correctly, lawfully, and in good faith.”²

4. The JAG argued that the applicant was poorly counseled and that he should have been advised to wait six weeks and reenlist after his MSO ended, when, the JAG alleged, the applicant would have been eligible for the \$6,000 Prior Service Enlistment Bonus under ALCOAST 064/07. However, in so arguing, the JAG has ignored one of the requirements for a Prior Service Enlistment Bonus under ALCOAST 064/07, which is that the member must be assigned to a budgeted position. The Coast Guard’s Direct Access database shows that the applicant has been assigned to an unbudgeted position ever since he affiliated with the SELRES on October 19, 2006. Therefore, if the applicant had waited six weeks and reenlisted when his MSO ended, he would not have been eligible for either an Affiliation Bonus (because it required remaining MSO) or a Prior Service Enlistment Bonus (because it required a budgeted position).

5. The Board notes that there is no CG-3307 (Page 7) in the record documenting bonus counseling in April 2007, as required by ALCOAST 064/07. However, the applicant was an active member of the SELRES with more than 7 years of active duty experience and presumably had access to ALCOAST 064/07, which is published on the Coast Guard’s website. The applicant has not proved that he was miscounseled about his bonus amount, but even assuming *arguendo* that he was, proper counseling would have informed him that he should reenlist to take advantage of the Affiliation Bonus (which is what he did) because he would soon be ineligible for any SELRES bonus.

6. The only evidence in the record that supports the applicant’s allegation that he was promised the \$6,000 Prior Service Enlistment Bonus is the fact that he reenlisted in the Reserve for six years rather than the minimum of three years required for an Affiliation Bonus. The potential inference of the six-year contract, however, is by itself insufficient to overcome the presumption of regularity accorded the Coast Guard. The Board finds that the applicant has not proved by a preponderance of the evidence that his failure to receive a \$6,000 Prior Service Enlistment Bonus under ALCOAST 064/07 was erroneous or unjust.³ The preponderance of the evidence shows that he was entitled to and received an Affiliation Bonus under that ALCOAST and that he was ineligible for a Prior Service Enlistment Bonus.

7. Because of the possibility that the applicant was erroneously promised a \$6,000 Prior Service Enlistment Bonus for reenlisting for six years and because the Affiliation Bonus he received required only a three-year reenlistment contract, the Board finds that, in the interest of justice, the applicant should have the option of reducing the term of his Reserve reenlistment contract from six years to three years.

8. Accordingly, the applicant’s request for a \$6,000 bonus should be denied, but he should have the option of reducing the term of his Reserve reenlistment from six years to three years.

² *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

³ For the purposes of the BCMRs, “[i]njustice”, when not also ‘error’, is treatment by the military authorities, that shocks the sense of justice, but is not technically illegal.” *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976).

ORDER

The application of MK2 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is denied, except that within 60 days of the date of this decision, he shall be given the option of reducing the term of his April 14, 2007, Reserve reenlistment contract from six years to three years, at his discretion.

Lillian Cheng

Nancy L. Friedman

Vicki J. Ray