

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-141

**XXXXXXXXXXXXXX
XXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receipt of the applicant's completed application on May 1, 2009, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated January 28, 2010, 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 correct his military record so that he is paid the \$6,000 affiliation bonus that he was promised in a written reenlistment contract dated September 7, 2005. The applicant submitted a copy of his reenlistment contract which contains the following term: "This contract is for four years in the U.S. Coast Guard Reserve. Member is entitled to a selected Reserve (SELRES) affiliation bonus as per ALCOAST 293/05 in the amount of \$6,000."

BACKGROUND

The applicant enlisted in the Reserve on May 19, 1998, for six years. However, the applicant acknowledged on the enlistment contract that "I am incurring a military service obligation (MSO) of 8 years, unless discharged sooner." The applicant further acknowledged that he was required to participate satisfactorily in the SELRES for six years from the date of enlistment, but that he could serve the last two years of his MSO in the Individual Ready Reserve. The applicant was promised a Level II (\$2,000) SELRES enlistment bonus for this enlistment. After recruit training and "A" school, the applicant entered into a three-year extended active duty agreement on September 22, 1999 and served on active duty until his discharge due to immediate reenlistment on September 19, 2001. His DD 214 indicates that at the time he still had a Reserve obligation until May 18, 2006.

Although there is no enlistment contract in the record, the Coast Guard's "Direct Access" computerized database indicates that the applicant reenlisted in the regular Coast Guard on September 20, 2001 for four years with an end of enlistment date of September 19, 2005. An administrative remarks page (page 7) states that the applicant was released from active duty on August 21, 2005 and immediately transferred to the Coast Guard reserve to complete the remainder of his military service obligation (MSO). The page 7 indicates that the applicant was provided with a DD 214 for this period of active duty, but none is in the record provided to the Board by the Coast Guard.

The same day as his release from active duty on August 21, 2005, the applicant signed a page 7, which stated that he was eligible for a \$1,500 Level 1 SELRES affiliation bonus in accordance with ALCOAST 293/05. The page 7 also stated that the applicant was eligible to serve a maximum of 12 months and his bonus would be computed based on 12 months of obligated service. The applicant acknowledged on the page 7 that he had read and fully understood the contents and explanations of Chapter 3 of the Personnel Manual.

Subsequently, on September 7, 2005, the applicant and the Coast Guard entered into a reenlistment contract in which the applicant agreed to serve four years in the SELRES, for which he was promised a \$6,000 affiliation bonus under ALCOAST 293/05. The applicant and the Coast Guard also signed a page 7 informing the applicant that he was eligible for a \$6,000 level 1 SELRES affiliation bonus in accordance with ALCOAST 293/05 and that his bonus would be computed based on 48 months of obligated service. Again, the applicant verified on the page 7 that he had read and understood the contents of Chapter 3 of the Personnel Manual.

The record indicates that the applicant served four years in the SELRES as required by his 2005 reenlistment contract, but apparently the Coast Guard refused to pay the \$6,000 bonus. The applicant seeks payment of the promised bonus through the correction of his military record.

VIEWS OF THE COAST GUARD

On April 23, 2008, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the requested relief and grant alternative relief as follows:

A review of the applicant's record . . . document[s] a counseling session took place on 7 September 2005, thus aids in supporting part of the applicant's allegation of error. However, according to COMDTINST M1000.6A, Article 3.E.5.2.c.^[1] one of the eligibility factors that the applicant must meet is that the applicant "must not have previously received an affiliation bonus for service in the SELRES." When the applicant enlisted into the Coast Guard SELRES program on 19 May 1998, he was eligible for a Level II SELRES bonus . . . A review of the applicant's pay record does indicate one of the two installments was made. In accordance with COMDTINST M1000.6A, Article 3.E.5.3 the "Member must submit a written request to PSC (mas) via their chain of command

¹ This provision was not a part of the Personnel Manual in September 2005 when the applicant entered into his reenlistment contract or when he signed the page 7. The governing instruction at that time was COMDTINST 7220.1A, which seems to indicate that a member can receive only one affiliation bonus.

for the remainder of the bonus amount one year after the date of the initial payment. The applicant's second installment should have been paid. No negative or adverse page 7s were found in the applicant's record that would disqualify him from receiving the second half of the initial bonus.

Recommendation: The Coast Guard recommends that the Board deny the applicant's request, but recommends that the applicant receives the second half of his initial bonus that was processed on May 19, 1998 . . .

The Coast Guard submitted a computer print out from the Pay Center showing that in 1998 the applicant was entitled to a \$2,000 of which he received one installment of \$1,000.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On October 8, 2009, the Board received the applicant's response to the views of the Coast Guard. The applicant argued that he has a valid enlistment contract that promised him a \$6,000 affiliation bonus for four years in the SELRES. He stated that he honored the contract by serving four years in the SELRES. He stated that the bonus was incentive for his enlistment in the Reserve and that he needed the money because of unemployment. He stated that the Coast Guard's refusal to pay the bonus caused his family financial hardship. In the applicant's view, the Coast Guard is obligated to pay the \$6,000 as well as the \$1,000 that the Coast Guard admitted he was owed from the 1998 affiliation bonus.

APPLICABLE REGULATIONS

ALCOAST 293/05 that became effective on June 22, 2005, stated the following with respect eligibility requirements for a SELRES affiliation bonus:

2. Bonus Amounts.

A. For petty officers who serve in a critical rating (BM, MK, OS) and are assigned to a critical unit (PSU or NCW unit) \$2,500 for each full year of remaining military service obligation, not to exceed a total authorized bonus of 10,000 dollars (one half of the bonus will be paid upon affiliation and the remaining one half will be paid one year later.

B. For petty officers who either serve in a critical rating (BM, MK, MST, OS) or are assigned to a critical unit but not both, 1,500 dollars for each full year remaining military service obligation not to exceed a total authorized bonus of 6,000 dollars (one half of the bonus will be paid upon affiliation and the remaining one half will be paid one year later . . .

3. Eligibility:

A. An affiliation bonus is authorized for RELAD personnel obligated to serve the remainder of their initial eight-year military service obligation in the Ready Reserve. It is preferred that the SELRES affiliation agreement for bonus payment

be executed before the member leaves active duty. And it must be executed not later than 90 days after the RELAD date.

B. Commands my authorized Reserve Extensions of enlistment for a member to achieve one-additional full year of remaining obligated service in order to become eligible for an increased bonus amount . . . The affiliation bonus eligibility period runs from the date the affiliation agreement is effected, not the member's RELAD date . . .

4. Additional application procedures and information relating to recoupment of bonuses should a member not satisfactorily complete a contract . . . Before advising members of bonus eligibility, commands or recruiters shall ensure that all members meet all requirements in [SELRES Enlisted Bonus Programs, COMDTINST 7220.1 (Series)] and this message. Bonus eligibility shall be documented on a [page 7] entry reading as follows: 'I have been advised that I am eligible for a xxxx dollar SELRES affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through MM/DD/YY. I hereby acknowledge that I have ready and fully understand the contents of COMDTINST 7220.1 . . . and ALCOAST XXX/05.'

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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. The applicant was released from active duty on August 22, 2005, and entered into a reenlistment in the Reserve on September 7, 2005 for which he received a promise for a \$6,000 SELRES affiliation bonus. The BCMR did not receive his application until April 29, 2009. Therefore the application is not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered or should have discovered the alleged error or injustice. See 33 CFR 52.22. This application was submitted approximately six months beyond the statute of limitations. The applicant asserted that he did not discover the alleged error until March 29, 2009. He failed to explain why he did not or could not discover the alleged error earlier, particularly since he did not receive the first installment of the promised SRB which was due upon affiliation with the SELRES on or about September 7, 2005. The applicant should have discovered the alleged error when he did not receive the first installment of the bonus upon affiliation with the Reserve.
3. 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 argued that although untimely it is in the interest of justice to consider his application because he has faithfully served the country and the Coast Guard for 12 years. He asserted that based upon his devotion to duty, a core Coast Guard Value, he reenlisted and served in the Coast Guard Reserve. He argued that the Coast Guard should honor its Core Values (Honor, Respect and Devotion to Duty) and pay the affiliation bonus that it promised to him when he reenlisted in the Reserve and agreed to serve four years in the SELRES. Due to the apparent misunderstanding of the applicable ALCOAST and regulation by the parties involved, the potential for success on the merits, and the short six-month delay in bringing this application, the Board will excuse the untimeliness of the application in the interest of justice.

5. ALCOAST 293/05 amended paragraph 2.C. (affiliation bonuses) of ALCOAST 093/05. The portion of ALCOAST 293/05 pertinent to the applicant's application states that "for petty officers who serve in a critical rating . . . or are assigned to a critical unit but not both, 1,500 dollars for each full year of remaining military service obligation, not to exceed a total authorized bonus of 6,000 dollars." When the applicant was released from active duty on August 22, 2005, he had approximately 9 months of military service obligation remaining from his initial enlistment. According to his 2001 DD 214, his Reserve obligation ended on May 18, 2006. ALCOAST 293/05 permitted a one-time extension of enlistment "to achieve one additional full year of remaining obligated service in order to become eligible for an increased bonus amount." The Coast Guard seems to have complied with ALCOAST 293/05 on the August 22, 2005 page 7 by promising the applicant a \$1,500 bonus for 12 months of remaining military service obligation in the SELRES. There is no evidence in the record that the Coast Guard took any action with regard to this page 7 and there certainly is no evidence in the record that the applicant received the \$1,500.

6. Rather for reasons that remain unexplained, on September 7, 2005, the Coast Guard counseled the applicant on a new page 7 that he was eligible for a \$6,000 affiliation bonus for 48 months in the SELRES under ALCOAST 293/05. On the same date, the applicant reenlisted in Reserve and agreed to serve in the SELRES for four years, which he did. He was promised a \$6,000 affiliation bonus based on the new four-year reenlistment contract.

7. The Coast Guard stated in the advisory opinion that the applicant was not entitled to the September 2005 affiliation bonus because under Article 3.E.5.3. of the Personnel Manual (COMDTINST M1000.6A.)², he could receive only one affiliation bonus, and he had already received a \$2,000 SELRES enlistment bonus in 1998, of which only \$1000 was paid. While the Coast Guard's assertion that a member can receive only one affiliation bonus may be correct, it does not apply in this situation. The 1998 SELRES bonus was an enlistment bonus and not an affiliation bonus. It even states this on the 1998 page 7 counseling regarding the enlistment bonus. The Coast Guard has apparently confused enlistment and affiliation bonuses. Enlistment bonuses are offered to individuals who have never served in the military to entice enlistment. Article 2.a. of Enclosure (2) to COMDTINST 7220.1A. Affiliation bonuses are offered to individuals who are released from active duty, but have a remaining initial military service

² The Board notes that Article 3.E.5.3. of COMDTINST M1000.6A cited by the Coast Guard was not a part of the Personnel Manual when the applicant executed his 2005 reenlistment contract. The Personnel Manual was modified on June 18, 2007 to include regulations pertaining to SELRES bonuses. COMDTINST 7220.1A was in effect in 2005 and arguably permitted only one affiliation bonus.

obligation and commit to serve that time in the SELRES. Article 2.a. of Enclosure (3) to COMDTINST 7220.1A. As far as the Board can determine, neither the Personnel Manual nor COMDTINST 7220.1A prohibited receiving an enlistment bonus and a subsequent affiliation bonus. In light of the above, the Coast Guard's reason for not paying the September 2005 affiliation bonus is erroneous, and it has not offered a legitimate reason for refusing to pay the bonus.³

8. Even if the applicant did not meet all of the eligibility requirements for the 2005 affiliation bonus, ALCOAST 293/05, placed responsibility on the commands for ensuring that members meet all eligibility requirements for the affiliation bonus. See paragraph 4. of ALCOAST 293/05. Therefore, the Service had a responsibility to know and should have known whether the applicant was eligible for a SELRES affiliation bonus before promising it to him in September 2005. If the Coast Guard promised the applicant an affiliation bonus for which he was not eligible, it committed an error by not checking the record to ensure his eligibility. The Coast Guard committed a further error by having the applicant sign the September 2005 page 7 counseling entry stating that he has read and understands the contents of *Chapter 3* of the Personnel Manual (which related to active duty bonuses) rather than having him sign an entry stating that he has read and understands the contents of *COMDTINST 7220.1A* (which related to SELRES bonuses), as required by ALCOAST 293/05.

9. By refusing to pay the promised \$6,000 affiliation bonus and without offering a valid reason for doing so, particularly after the applicant fulfilled his obligations under the contract, the Coast Guard committed error and injustice against the applicant that shocks the Board's sense of justice.⁴ Further, the applicant relied to his detriment on the counseling provided by the Coast Guard and the promise of an affiliation bonus in his reenlistment contract. He stated that because the Coast Guard refused to honor the promised bonus, he was forced to borrow money to meet his family's needs because he was unemployed at the time. The Board finds the applicant's argument persuasive because he was discharged from active duty on August 22, 2005 and there is no evidence that he had a civilian job waiting for him at that time. If the Board were to ignore the Coast Guard's ultimate responsibility in this situation, it would punish the applicant and fail to live up to its "abiding moral sanction to determine, insofar as possible, the true nature of an alleged injustice and to take steps to grant thorough and fitting relief." *Yee v. United States*, 512

³ The Board notes that Section 3.A. of ALCOAST 293/05 could have been the reason for the Coast Guard's refusal to pay the 2005 bonus. This provision states, "An affiliation bonus is authorized for [personnel released from active duty] obligated to serve the *remainder of their initial eight-year military service obligations* in the Ready Reserve" [Emphasis added.] The applicant's 2005 reenlistment constituted a new period of service, which is not the same thing as the remainder of his initial eight-year military service obligation. The Coast Guard does not offer this provision as a basis for its non-payment of the 2005 bonus and the Board will accept that it did not pay the bonus because it believed that the applicant had already received one affiliation bonus.

⁴ For BCMR purposes "[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). The Board has authority to determine whether an injustice exists on a "case-by-case basis." Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002). "Indeed, 'when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate.'" *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)). And "[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious." *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

F2d. 1383, 1387-88 (Ct. Cl. 1975). In light of the above, the Coast Guard's refusal to pay the \$6,000 bonus was erroneous and unjust.

9. The Board will not direct payment of the second installment from the 1998 bonus because it is not persuaded that the Coast Guard's refusal to pay the remaining installment from the 1998 SELRES Enlistment bonus was error. The reason for non-payment of the 1998 bonus was probably the fact that the applicant did not serve in the SELRES but rather served on active duty for approximately seven years. Article 3. of Enclosure (7) to COMDTINST 7220.1A authorizes bonus termination or recoupment if the member accepts an extended active duty contract, which the applicant did. Rather than serving in the SELRES for the six-year period under his 1998 enlistment, the applicant accepted an extended active duty contract on September 22, 1999 and served continuously on active duty for the next seven years. Therefore, the Coast Guard acted in accordance with the regulation by not paying the applicant the remaining \$1,000 of the 1998 enlistment bonus.

10. With respect to the immediate issue at hand, the Coast Guard should be directed to pay the applicant the September 2005 \$6,000 affiliation bonus. To avoid confusion, the September 7, 2005 reenlistment contract and the page 7 of the same date should indicate that the affiliation bonus was the applicant's first.

11. Accordingly, the applicant is entitled to the relief discussed above and directed below.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXX USCG, for correction of his military record is granted as follows:

The Coast Guard shall pay the applicant the \$6,000 affiliation bonus promised to him on his September 7, 2005 reenlistment contract.

The September 7, 2005, reenlistment contract and Page 7 of the same date shall be clarified to indicate that the \$6,000 affiliation bonus was his first.

No other relief is granted.

Robert S. Johnson, Jr.

Randall J. Kaplan

Thomas H. Van Horn