

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-188

XXXXXXXXXXXX
XXXXXXXXXXXX

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 upon receiving the applicant's completed application on June 29, 2009, 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 March 11, 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 reverse the Coast Guard's recoupment of her Reserve enlistment bonus. She stated that when she enlisted on active duty in the regular Coast Guard, she was not told that her Reserve enlistment bonus would be recouped. She alleged that she was invited to enlist on active duty and that she is still earning that Reserve enlistment bonus through "her continued service as an active duty Operations Specialist filling the same position" that she did as a reservist.

SUMMARY OF THE RECORD

On May 15, 2007, the applicant enlisted in the Reserve for 8 years and affiliated with the Selected Reserve (SELRES). She signed a Page 7 acknowledging having been advised that she was eligible for a \$6,000 SELRES enlistment bonus and having read and fully understood COMDTINST 7220.1 series and ALCOAST 056/06.¹ She was paid \$3,000—the first half of her SELRES bonus—upon completion of "A" School. She was never paid the second half of the bonus because on October 22, 2008, she enlisted in the regular Coast Guard for four years. The applicant submitted copies of her Leave and Earnings Statements showing that the Coast Guard has recouped \$1,558.33 of her SELRES bonus from her active duty pay.

¹ COMDTINST 7220.1 states that a SELRES enlistment bonus will be recouped if a member enlists on active duty. ALCOAST 056/06 refers members who do not complete their SELRES obligation to the recoupment policy in COMDTINST 7220.1 and online.

VIEWS OF THE COAST GUARD

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

The JAG stated that under COMDTINST 7220.1, SELRES enlistment bonuses are paid for the duration of the contract and that a breach of the contract causes recoupment of the unearned portion of the bonus. COMDTINST 7220.1 expressly states that enlistment on active duty will cause recoupment of the bonus. Therefore, the JAG stated, because the applicant did not complete her SELRES commitment, she was not paid the second half of the SELRES bonus and was sent a notice of overpayment regarding the unearned portion of the \$3,000 she had already been paid. He stated that the "indebtedness of \$1,558.33 resulted from the prorated amount of the unearned enlistment bonus that was paid to the member in accordance with the time that was served" in the SELRES.

The JAG noted that the applicant had already requested waiver of the indebtedness through the Coast Guard, and her request was denied. The JAG alleged that if the Board "grant[s] the upholding of the reserve bonus, you will further entitle this member to an additional \$3,000.00 from the initial \$6,000.00 that has not been paid to the member."

RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 28, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to submit a response within 30 days. No response was received.

APPLICABLE REGULATIONS

ALCOAST 056/06 authorizes an enlistment bonus of \$6,000 for members enlisting in the SELRES for at least six years. Paragraph 2 states that half the bonus is paid upon completion of initial active duty for training (IADT) and half may be paid one year later if the reservist meets SELRES participation standards. Paragraph 7 states that "information on recoupment of bonuses should a member not satisfactorily complete a contract" is contained in COMDTINST 7220.1. It further states that "commands shall initiate recoupment action on members who receive a SELRES bonus and then do not meet satisfactory participation requirements."

COMDTINST 7220.1 contains the regulations for all Reserve bonuses. Enclosure (2) contains the regulations for SELRES enlistment bonuses. Paragraph 4 states that members receiving an enlistment bonus should be counseled about their eligibility on a Page 7 (form CG-3307), and the following template is provided:

Entry Type: Selective Reserve Enlistment Bonus (BON-2)
Reference: COMDTINST 7220.1 (series)
Responsible Level: Recruiting Office: _____
Entry:

(DATE): I have been advised that I am currently eligible for a Level ____ Selective Reserve Enlistment Bonus as listed in ALDIST _____, which has been made available to me.

I am eligible to enlist for up to a maximum of ____ years. My bonus will be computed based on ____ months of obligated service.

I hereby acknowledge that I have read and fully understand the contents and explanation of COMDTINST 7220.1 (series).

(signature of member/date)

(signature of counselor)

Paragraph 4 of Enclosure (2) also states that reservists will receive the first half of an enlistment bonus when they complete their IADT, which may include “A” School. Paragraph 5 of Enclosure (2) states the following:

Members will submit a request (enclosure (5) to this Instruction) for the remainder of the bonus amount via their chain of command to HRSIC one year after having completed all phases of IADT. HRSIC will make the subsequent payment within two pay periods after receipt of the member’s properly endorsed request. Refer to enclosure (7) for termination and recoupment procedures for members who fail to maintain eligibility requirements.

Paragraph 3 of Enclosure (7) states that bonus recoupment action will be initiated if the member fails to perform the required drills and training; if the member leaves her bonus-eligible rating or billet; or if the member separates from the SELRES “for any reason other than death, injury, illness, or other impairment not the result of own misconduct. Separation or termination from the SELRES includes active duty enlistment in the active forces”

Paragraph 4 of Enclosure (7) shows that bonuses are recouped on a pro-rata basis for each month of the six-year (72-month) enlistment contract that the applicant did not serve in the SELRES. For example, a reservist who serves only one year in the SELRES but who received a \$6,000 bonus for a six-year contract (which amounts to \$83.33 per month of service) will be entitled to just \$1,000, and any amount in excess of \$1,000 that has already been paid to the member will be recouped.

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 over this matter under 10 U.S.C. § 1552(a). The application was timely.

2. The applicant alleged that it is unjust for the Coast Guard to recoup the unearned portion of her SELRES enlistment bonus when she left the SELRES to enlist on active duty in the regular Coast Guard because no one warned her about the recoupment. She noted that her work as an OS3 remained the same after her integration into the regular Coast Guard. 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.² Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”³

3. Under Enclosure (7) to COMDTINST 7220.1, SELRES enlistment bonuses are recouped on a pro-rata basis when the member separates from the Reserve by enlisting on active duty. The applicant had received half (\$3,000) of the \$6,000 bonus but had completed only 17 of the 72 months of her Reserve contract when she left the Reserve. Therefore, the applicant has not shown that the Coast Guard committed any error by recouping \$1,558.33 from her pay after she enlisted in the regular Coast Guard on October 22, 2008.

4. The applicant alleged that she was not warned when she enlisted on October 22, 2008, that her SELRES enlistment bonus would be recouped, and she herself apparently did not ask about whether her enlistment in the regular Coast Guard would affect her entitlement to her bonus for enlisting in the Reserve. The Board knows of no regulation that requires a Coast Guard recruiter to inquire into a potential recruit’s prior receipt of bonuses to ascertain whether one might be subject to recoupment. Such an inquiry would be prudent and would avert the potential disgruntlement and financial hardship that the applicant in this case might have suffered, but current regulations do not require it.

5. When the applicant was counseled about her SELRES enlistment bonus on May 15, 2007, she acknowledged having read and fully understood COMDTINST 7220.1, which clearly states that SELRES enlistment bonuses are subject to recoupment if the reservist enlists on active duty instead of completing her contract in the Reserve. She also acknowledged having read and fully understood ALCOAST 056/06, which notes that SELRES bonuses may be recouped if a member does not participate satisfactorily in the SELRES for the term of her contract and refers the reader to COMDTINST 7220.1. Perhaps the applicant did not actually read these regulations or, if she did, she must have forgotten them by the time she enlisted on active duty. However, under these circumstances, the Board cannot conclude that the Coast Guard’s recoupment of the unearned portion of her SELRES enlistment bonus is unjust.⁴

6. Accordingly, the applicant’s request should be denied.

² 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the “clear and convincing” evidence standard recommended by the Coast Guard and adopting the “preponderance of the evidence” standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ 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). 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).

ORDER

The application of XXXXXXXXXXXXXXX, USCG, for correction of her military record is denied.

Lillian Cheng

George J. Jordan

Paul B. Oman