

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-121

FINAL DECISION

ANDREWS, Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on June 2, 1999, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated March 30, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant is a xxxxxxxx in the Coast Guard Reserve. He asked the Board to order the Coast Guard to pay him a Reserve enlistment bonus that he was promised in writing when he enlisted in the Reserve on May 25, 199x.

APPLICANT'S ALLEGATIONS

The applicant alleged that when he enlisted in the Reserve, he was promised an enlistment bonus of \$2,000. He alleged that he signed documents indicating that his enlistment would entitle him to receive the bonus. He alleged that he has unjustly been denied the bonus he was promised.

SUMMARY OF THE EVIDENCE

On May 25, 199x, the applicant enlisted in the Coast Guard Reserve xxx. He signed an enlistment contract (DD Form 4/1) indicating in block B that he was enlisting for four years and would receive a "reserve bonus." Block D of the contract requires the

member to sign the following statement: "I fully understand that only those agreements in section b of this document or recorded on the attached annex(es) will be honored."

In addition, the applicant signed an Administrative Remarks (page 7) stating that the applicant was eligible for a Level 2 Selective Reserve Enlistment Bonus and that his bonus would be "computed based on 72 [sic] months of obligated service." The page 7 also requires the applicant to acknowledge that he has read and understood the contents of COMDTINST 7220.1, the Commandant's Instruction for Reserve bonuses.

On March 1, 199x, the applicant's commanding officer (CO) wrote a letter to the Coast Guard Personnel Command asking that the applicant be paid the bonus he was promised. The CO stated that the petty officer who recruited the applicant promised him an enlistment bonus and was unaware that to receive a bonus, a member enlisting in the xx rating had to be assigned to a xxxx.

VIEWS OF THE COAST GUARD

On January 14, 2000, the Chief Counsel of the Coast Guard recommended that the Board "grant relief" not by awarding the applicant the promised bonus but by giving him a choice of three options:

- Correct his enlistment contract to show that he entered a rating that qualifies him for a bonus under ALDIST 072/98 (he would also have to attend "A" School in the new rating).
- Void his enlistment contract and award him an honorable discharge.
- Continue in his current enlistment and rating without receiving a bonus (the status quo).

The Chief Counsel admitted that the applicant's recruiter promised him a bonus upon enlistment but alleged that "the Coast Guard has no legal authority to pay the Applicant the [bonus] promised." Because ALDIST 072/98 did not authorize bonuses for members in the xx rating unless they were assigned to xx units, "the Coast Guard is barred from paying the Applicant."

The Chief Counsel also argued that the government is not estopped from repudiating the inaccurate advice of the applicant's recruiter even assuming the applicant detrimentally relied on the bad advice. *Utah Power & Light v. United States*, 243 U.S. 389, 409 (1917). For example, the Chief Counsel argued, in *Montilla v. United States*, 457 F.2d 978 (Ct. Cl. 1972),

the Court of Claims held that the misrepresentations of officers of the U.S. Army to the plaintiff, leading him to believe that he had completed twenty years of active military service and was thus eligible for retirement pay upon reaching age sixty, could not alter the fact that the plaintiff had not actually completed twenty years of active service as computed under 10 U.S.C. § 1332 (1964). The Montilla court reasoned that unless a law has been repealed or declared unconstitutional by the courts, it is a part of the supreme law of the land and no officer or agency can by his actions or conduct waive its provisions or nullify its enforcement. 457 F.2d at 987.

The Chief Counsel also quoted the following passage from *Goldberg v. Weinberger*, 546 F.2d 477 (2d Cir. 1976), *cert. denied sub nom. Goldberg v. Califano*, 431 U.S. 937 (1977):

The government could scarcely function if it were bound by its employees unauthorized representations. Where a party claims entitlement to benefits under federal statutes and lawfully promulgated regulations, that party must satisfy the requirements imposed by Congress. Even detrimental reliance on misinformation obtained from a seemingly authorized government agency will not excuse a failure to qualify for the benefits under the relevant statutes and regulations. *Id.* at 481.

Therefore, the Chief Counsel argued, because the recruiter's "advice was contrary to the applicable statute, 37 U.S.C. § 308, and the Coast Guard's regulations as established in COMDTINST 7220.1A," the Coast Guard cannot waive the statutes and regulations to pay the applicant the promised bonus. However, he stated "in the interests of justice, the Coast Guard recommends that Applicant be provided the options detailed [above]."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 19, 1999, the Chairman of the BCMR sent a copy of the Chief Counsel's advisory opinion to the applicant and invited him to respond. The applicant did not respond.

APPLICABLE LAW

According to 10 U.S.C. § 1552(a)(1), "[t]he Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice."

ALDIST 072/98, issued on March 20, 1998, announced the continuation of bonuses for certain Reserve members who enlisted, reenlisted, or extended their enlistments before September 30, 1998. Xxxxx assigned to a xxxxxx were authorized to receive Level II bonuses of \$2,000 if they obligated themselves to perform six additional years of service. If the member had prior service, he or she could receive a Level II bonus of

\$1,000 for enlisting for at least three years. No bonus was provided for xxx not assigned to a xxxx billet.

Enclosure (4) to COMDTINST 7220.1A, issued on February 5, 1998, contains the terms of the Selected Reserve (SELRES) Enlisted Bonus Program for members with prior military service. One criterion for receiving a bonus is that the member "hold a bonus-eligible permanent rating or be assigned to a bonus-eligible billet or unit listed in the current ALDIST bonus message at the time of enlistment."

PREVIOUS BCMR DECISION

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 she acted promptly when she discovered the error. The Board granted the applicant's request.

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 application was timely.
2. Under COMDTINST 7220.1A and ALDIST 072/98, members who enlisted in the xxxx rating were only eligible for a bonus if they were assigned to a xxxxx. The applicant, apparently, was not assigned to a xxxxx. Therefore, although his recruiter promised him a bonus, he was not legally eligible for one.
3. The Coast Guard erred when it told the applicant he would be eligible for an enlistment bonus if he enlisted in the xxxxx rating even though he was not assigned to a xxxxxx.
4. The Chief Counsel argued that the Board should deny relief because the government is not estopped from repudiating the advice of its employees. However, just because the government may repudiate the erroneous advice of its officers does not mean that the government should always do so. 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.

5. The facts of this case are very similar to the facts in BCMR Docket No. 1999-027. Like the applicant in that case, the applicant in this case was promised an enlistment bonus by his recruiter, gave due consideration for the bonus, and acted promptly upon discovering the error. However, in Docket No. 1999-027, the Chief Counsel recommended that the Board grant relief. Therefore, although the government is not estopped from repudiating the advice of its employees, the Board sees no reason why the result in this case should be different than that in Docket No. 1999-027.

6. Accordingly, the applicant's request should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application for correction of the military record of XXXXXXXX, USCGR, is hereby granted. His records shall be corrected to show that he was eligible for the Level II enlistment bonus he was promised in his enlistment contract, dated May 25, 199x. The Coast Guard shall pay the applicant the amount he is due as a result of this correction.

Harold C. Davis, M.D.

Michael K. Nolan

Thomas A. Phemister