

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-135

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 24, 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 seaman recruit (SR; pay grade E-1) in the Coast Guard Reserve. She asked the Board to order the Coast Guard to pay her a Reserve enlistment bonus that she was promised in writing when she enlisted in the Reserve on April 27, 199x.

APPLICANT'S ALLEGATIONS

The applicant alleged that when she enlisted in the Reserve, she agreed to go into either the xxxxxx or xxxxxx rating and she was promised a Level II enlistment bonus. She alleged that although she signed documents indicating that her enlistment would entitle her to receive the bonus, she has unjustly been denied the bonus she was promised.

SUMMARY OF THE EVIDENCE

On April 27, 199x, the applicant enlisted in the Coast Guard Reserve for a term of eight years. She signed an enlistment contract (DD Form 4/1) indicating in block B that additional details of the enlistment appeared in Annex L to the contract. 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. Any other promises or guarantees made to me by anyone are written below: *If none, X "NONE" and initial.*)" The "NONE" box has an "X" in it and is initialed by the applicant. Annex L, which is incorporated into the contract by reference, states that she is guaranteed an assignment in xxxxxx Class "A" School. Annex L does not mention a bonus.

Also on April 27, 199x, however, the applicant and her recruiter signed an Administrative Remarks (page 7) stating that the applicant was eligible for a Level II Selective Reserve Enlistment Bonus and that her bonus would be "computed based on 72 months of obligated service." The page 7 also requires the applicant to acknowledge that she has read and understood the contents of COMDTINST 7220.1, the Commandant's Instruction for Reserve bonuses.

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 her a choice of three options:

- Correct her enlistment contract to show that she entered a rating that qualifies her for a bonus under ALDIST 224/98 (she would also have to attend "A" School in the new rating).
- Void her enlistment contract and award her an honorable discharge.
- Continue in her current enlistment and rating without receiving a bonus (the status quo).

The Chief Counsel admitted that the applicant's recruiter may have promised her a bonus upon enlistment but alleged that the Coast Guard has no legal authority to pay her the promised bonus because ALDIST 224/98 did not authorize Level II bonuses for members in the xxxx or xxxx ratings. He stated that the error may have been made because of some apparent confusion over what rating the applicant wanted at the time of her enlistment.

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. He further stated that regulations provide that "in no event can the bonus amount be established through private negotiation or contract between the member and his/her recruiter." GAO Military Personnel Law Manual, Chapter 2.IV.C.

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 her 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 224/98, issued on September 24, 1998, announced the continuation of bonuses for certain Reserve members who enlisted, reenlisted, or extended their enlistments. For members enlisting for the first time, no Level II bonus was authorized for members in the xxx or xxx ratings. Level I bonuses were authorized for members in the xxx rating if they were assigned to a xxxxxx unit.

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 224/98, members who enlisted in the xxx or xx ratings were not eligible for Level II bonuses, and members in the xxx rating were only eligible for a bonus if they were assigned to a xxx unit. The applicant, apparently, was not assigned to a xxx unit. Therefore, although her recruiter promised her a bonus, she was not legally eligible for one.

3. The Coast Guard erred when it told the applicant she would be eligible for a Level II enlistment bonus if she enlisted in the xx or xx ratings.

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 or agents 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 her 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 XXXXXXXXX, USCGR, is hereby granted. Her records shall be corrected to show that she was eligible for the Level II enlistment bonus she was promised when she enlisted on April 27, 199x. The Coast Guard shall pay the applicant the amount she is due as a result of this correction.

Harold C. Davis, M.D.

Michael K. Nolan

Thomas A. Phemister