

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-063

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

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 January 26, 2004, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated October 13, 2004, is 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 order the Coast Guard to pay him an enlistment bonus that he was promised when he enlisted in the Selected Reserve (SELRES) after completing eight years and four months of active duty. The applicant alleged that sometime before his discharge from active duty on May 31, 2003, he was counseled that he would be entitled to the bonus under ALCOAST 192/03 if he enlisted in the SELRES. He alleged that "the proper documentation procedures were not correctly completed." The applicant also alleged that the word "Reserve" was written on his enlistment contract after he signed it.¹

SUMMARY OF THE RECORD

On January 31, 1995, the applicant enlisted in the regular Coast Guard for four years, through January 30, 1999, to be followed by a four-year Reserve obligation, through January 30, 2003. On January 31, 1999, however, he reenlisted for another four

¹ The applicant has not alleged that he intended to reenlist in the regular Coast Guard, and he has not asked the Board to correct his record to show that he reenlisted in the regular Coast Guard. Therefore, this allegation is not relevant to the matters at issue in the application.

years, through January 31, 2003, with no subsequent Reserve obligation. He later extended that enlistment and was discharged from the regular Coast Guard on May 31, 2003, with no Reserve obligation.

On June 1, 2003, the applicant signed a contract to serve in the SELRES for three years. The contract states that he "is entitled to SELRES SRB as per ALCOAST 192/03."

ALCOAST 192/03, which was issued on April 29, 2003, contains the following provisions:

2. RELAD personnel [personnel being released from active duty into the Reserve instead of discharged] who are obligated to serve the remainder of their initial eight-year military service obligation in the Ready Reserve are eligible to receive a bonus for affiliation with the SELRES, to equal 50 dollars per month of remaining service obligation. ... Affiliation bonuses may be paid to members who served on active duty in the Coast Guard or in another service, who have remaining Ready Reserve obligation, and have no prior obligation to drill with the SELRES. ...

3. ... Before advising members of bonus eligibility, commands should ensure that all requirements in [COMDTINST 7220.1] and this msg are met. 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 XXXX dollar SELRES 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 192/03.

The applicant's record does not contain a form CG-3307 ("page 7") documenting counseling about the affiliation bonus.

VIEWS OF THE COAST GUARD

On June 3, 2004, the Judge Advocate General (TJAG) of the Coast Guard recommended that the Board either deny relief or allow the applicant to cancel his Reserve enlistment. TJAG stated that "[a]lthough the Coast Guard erred in this case by incorrectly advising Applicant that he was eligible for a bonus, the remedy Applicant seeks is inappropriate. The Yeoman who misadvised Applicant has no legal authority to bind the Coast Guard."

TJAG attached to his advisory opinion and adopted a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC stated that it had contacted the applicant's yeoman and confirmed that she verbally miscounseled the applicant by telling him that he was eligible for the bonus. CGPC stated that if the applicant chooses to be discharged from the Reserve, his separation would be characterized as honorable under Article 12.B.12.; his narrative reason for separation would be

“Defective Enlistment Agreement”; his separation code would be KDS;² and his reentry code would be RE-1 (eligible).

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 4, 2004, the Chair sent a copy of the Coast Guard’s views to the applicant and invited him to respond. No response was received.

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. Even a cursory review of ALCOAST 192/03 reveals that the applicant could not possibly receive a three-year affiliation bonus by enlisting in the Reserve upon his discharge. The ALCOAST states that “*RELAD* personnel who *are obligated to serve the remainder of their initial eight-year military service obligation* in the Ready Reserve are eligible to receive a bonus for affiliation with the SELRES, to equal 50 dollars per month of remaining service obligation.” (Emphasis added.) First, as his discharge papers clearly show, the applicant was being discharged from active duty—not RELAD. Second, he had no Reserve obligation at the time, which must have been known to him and his yeoman since he had to enlist to enter the Reserve. Third, the bonus is paid only for the months remaining on a member’s initial eight-year service obligation, not for new enlistments. Therefore, the Board is not persuaded that anyone—much less an experienced yeoman and the applicant, who had more than eight years of service—could discuss the affiliation bonus under ALCOAST 192/03 and believe that someone in the applicant’s situation could earn a bonus by enlisting in the Reserve.

3. The applicant’s Reserve enlistment contract, however, indicates that he was promised a bonus, and CGPC confirmed that fact with his yeoman. When an applicant submits evidence that he has received improper counseling, the Board’s policy is not to fulfill the erroneous promises made by the applicant’s yeoman, but to return the applicant to the position he would have been in had he been properly counseled. If the applicant had not been promised the bonus, he might not have enlisted in the Reserve. Therefore, the Board finds that the contract is voidable. The applicant should be entitled to be expeditiously discharged if he so desires. As CGPC stated, if the applicant chooses to be discharged pursuant to the Board’s order, under Article 12.B.12. of the Personnel Manual, his separation should be honorable; his narrative reason for

² Under the Separation Program Designator (SPD) Handbook, a KDS code denotes a “voluntary discharge allowed by established directive resulting from non-fulfillment of service contract.”

separation should be "Defective Enlistment Agreement"; his separation code should be KDS; and his reentry code should be RE-1.

4. Accordingly, the alternative relief recommended by the Coast Guard should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is granted in part as follows:

He shall be entitled, at his discretion, to be discharged expeditiously from the Reserve in accordance with Article 12.B.12. of the Personnel Manual. If he chooses to be discharged pursuant to this order, the character of his separation shall be honorable; his narrative reason for separation shall be "Defective Enlistment Agreement"; his separation code shall be KDS; and his reentry code shall be RE-1.

Julia Andrews

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