

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-082

XXXXXXXXXXXXXXXXXX.
XXXXXXXXXXXX

FINAL DECISION

Author: Hale, D.

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 March 18, 2003, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated December 16, 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, a food service specialist second class (FS2), asked the Board to correct his record to show that he is entitled to enlistment bonuses totaling \$10,000 for signing a three-year enlistment contract on June 26, 2002.

The applicant alleged that when he enlisted in the Coast Guard, he was promised two separate enlistment bonuses totaling \$10,000. He alleged that the Coast Guard recruiter promised him the bonuses and that he (applicant) signed an enlistment contract indicating that he would receive the bonuses. The applicant alleged, however, that he was never put on any of the "bonus lists" and has unjustly been denied the bonuses he was promised.

The applicant also alleged that his recruiter promised him two separate bonuses of \$8,000 for the food service rating under the direct shipper program, and \$2,000 for his prior military service. He further alleged that he signed an enlistment contract containing the bonus provisions.

SUMMARY OF THE EVIDENCE

On June 26, 2002, the applicant enlisted in the Coast Guard as a FS3. He signed an enlistment contract (DD Form 4/1) indicating in block B that he was enlisting for three years. Section C of the contract requires the member to sign the following statement: "The agreements in this section and attached annex(es) are all promises made to me by the Government. ANYTHING ELSE ANYONE HAS PROMISED ME IS NOT VALID AND WILL NOT BE HONORED" (emphasis in original). The applicant signed his initials in the space immediately following the statement. The record is devoid of any documents that indicate the applicant was promised an enlistment bonus.

On February 26, 2004, the applicant's commanding officer (CO) wrote a letter to the Chair of the Board for Correction of Military Records, asking that the applicant be paid the bonuses he was allegedly promised. The CO asked the Board to correct the applicant's record for the following reasons:

Due to an apparent oversight by his recruiter and through no direct fault of the member, [the applicant] did not receive his prior service initial enlistment bonus for \$2,000. In addition, [the applicant] was recruited into the "direct shipper" program as an FS3 with the understanding that he was entitled to \$8,000 once he enlisted in the Coast Guard, totaling \$10,000 in bonuses

[The applicant] enlisted in good faith under the instructions that he received from his recruiter at that time. However, the recruiter never placed [the applicant] on the prior service bonus list, nor the FS "direct shipper" bonus list. [The applicant] has yet to receive either bonus.

VIEWS OF THE COAST GUARD

On May 27, 2004, the Judge Advocate General (TJAG) of the Coast Guard recommended that the Board deny the applicant's request. TJAG stated that the applicant failed to prove that his recruiter promised him any enlistment bonuses, and that the applicant bears the burden of proving error pursuant to 33 C.F.R. § 52.24. He also stated that the record indicates that the bonuses requested by the applicant were not available to any service member at the time he enlisted. Moreover, he stated that even if bonuses were available, there is no evidence the applicant would be entitled to them, because the Coast Guard routinely offers bonuses to "close the deal", but no such offers were made in this case.

TJAG also argued that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

TJAG attached to his advisory opinion a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC noted that the applicant was not eligible for any enlistment bonuses when he enlisted on June 26, 2002. Specifically,

CGPC stated that the applicant was enlisted as an FS3 based on his prior military service, and it found no evidence that the applicant was offered an enlistment bonus. Finally, CGPC stated that bonuses for the applicant's rating were not being offered at the time of the applicant's enlistment.

On April 30, 2004, the Coast Guard Recruiting Command (CGRC) issued a memorandum on the case to CGPC asserting that the applicant was not entitled to any enlistment bonus. In its comments, the CGRC noted that for fiscal year 2002, there were 50 bonuses available for the food service rate, and their records indicate that the last bonus for that rate was given on April 2, 2002. CGRC pointed out that the applicant's reservation request, which would also be used to request a bonus, assuming one was available, was not made until June 7, 2003. CGRC also noted that the applicant enlisted in the Coast Guard at a higher pay-grade because of his prior military service, and that the recruiter made no request for any bonuses simply because there were none available at that time.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 1, 2004, the Chair sent a copy of TJAG's advisory opinion to the applicant and invited him to respond. No response was received. However, on June 2, 2004, the Chair did receive a copy of a letter drafted by the applicant on May 25, 2004, in which he elaborated on his allegations.

In the letter, the applicant alleged that the Coast Guard recruiter told him that if he enlisted in the Coast Guard, he would receive two separate bonuses totaling \$10,000. The applicant alleged that the recruiter told him he would receive an \$8,000 bonus for going into the food service rating under the "direct shipper" program and an additional bonus of \$2,000 because of his prior military service. The applicant also alleged that he signed an enlistment contract containing the bonus of \$10,000, and alleged that a copy of that enlistment contract has never been found.

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."

Article 3.A.1. of the Coast Guard Personnel Manual states that the Enlistment Bonus (EB) program is an incentive to attract qualified personnel to critical skills or ratings to help meet the Coast Guard's recruiting goals. This program applies to new enlistments.

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. The applicant has provided no evidence other than his bare assertion that his recruiter promised him two enlistment bonuses, and his bare assertion without corroborating evidence is insufficient to overcome the presumption of regularity in accordance with 33 C.F.R. § 52.24. The only piece of evidence submitted by the applicant in support of his claim is a letter from his current CO dated February 26, 2004, stating the applicant was promised and is entitled to the enlistment bonuses. However, this letter does not prove that the applicant was promised the bonuses by his recruiter on June 26, 2002.

3. While the Board has previously granted relief in cases where the applicant did not receive a promised enlistment bonus, those cases can easily be distinguished from the instant case. In those cases, the applicants provided documentation, in the form of their enlistment contracts and page 7s, that they were indeed promised an enlistment bonus. Here, the applicant has provided no such evidence. In fact, the applicant's enlistment contract contains a statement that the applicant initialed which stated that anything else he may have been promised is not valid and would not be honored.

4. The applicant has not provided the Board with any persuasive evidence that he is entitled to relief. The Board agrees with TJAG that the applicant must overcome the rebuttable presumption that, in this case, the "administrators of the military, like other public officers, discharge[d] their duties correctly, lawfully, and in good faith." *Sanders*, 594 F.2d at 813. The applicant has not persuaded the Board that the Coast Guard failed to do otherwise. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXX, USCG, for correction of his military record is denied.

Donald A. Pedersen

J. Carter Robertson

Darren S. Wall