

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-053

XXXXXXXXXXXXXX.

xxxxxxx, PS1 (E-6)

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 on December 29, 2006, upon receipt of the applicant's completed application, and assigned it to staff members D. Hale and J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 20, 2007, 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, a port security specialist first class (PS1), in the Coast Guard Reserve, asked the Board to correct his record to show that he is entitled to a \$5000 Selective Reserve (SELRES) reenlistment bonus for signing a six-year reenlistment contract on August 30, 2001. He stated that he never received the promised bonus. The applicant further stated that in November 2006 he inquired into the status of the bonus and was told that "the authorization for the bonus was rescinded." He argued that the Board should consider his application despite the delay because "[t]he injustice is ongoing as my enlistment has not expired. The bonus was owed over the term of the enlistment."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on January 12, 1996. On August 19, 2001, the applicant and a Coast Guard yeoman signed a Page 7 (form CG-3307)¹ documenting that he had been advised by the yeoman that he was eligible to receive a \$5000 bonus if he reenlisted in the Coast Guard Reserve for six years. The Page 7, which was entered into the applicant's record, states the following:

¹ A Page 7 (CG-3307, or Administrative Remarks) entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

19 Aug 01: I have been advised that I am currently eligible for a Level __1__ Selective Reserve Re-Enlistment Bonus as listed in ALDIST __224/98__, which has been made available to me.

I am eligible to Enlist for up to a maximum of __8__ years. My bonus will be computed on __72__ months of obligated service. The total amount of the bonus is \$5000.00.

I hereby acknowledge that I have read and fully understand the contents and explanation of COMDTINST M7220.1A.

Signature of member/date

Signature of counselor

On August 30, 2001, the applicant signed a six-year reenlistment contract for SELRES, with an effective date of August 31, 2001. His reenlistment contract does not reference any bonus or any documentation of any bonus.

The applicant's August 30, 2001, reenlistment contract contains two pre-printed sections (B.8.c. and D.13.a.) concerning any additional promises made by the Coast Guard. Each one of these sections required the applicant to sign with his initials, documenting that he understood the information within that section. He did not initial either one of these sections.

When the applicant reenlisted on August 30, 2001, ALCOAST 040/01 was in effect and provided the regulations for SELRES bonuses. Paragraph A.1. of ALCOAST 040/01 states:

This message announces eligibility and amounts paid for SELRES enlistment, prior service enlistment, and affiliation bonuses. The amounts and eligibility are in effect immediately, and will remain in effect until further notice.

Paragraph C.4. of ALCOAST 040/01 states:

For reenlistments/extensions into the SELRES. No bonus at this time.

VIEWS OF THE COAST GUARD

On May 22, 2007, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant the requested relief but grant alternate relief. The JAG stated that the applicant signed a Page 7 on August 19, 2001, which cited an ALDIST which had been canceled on February 1, 2001, when ALCOAST 040/01 was issued. Accordingly, the JAG stated, the Page 7 "that the applicant and counselor signed on 19 August 2001, granting the SELRES reenlistment incentive bonus for \$5000 was invalid, erroneous, and unauthorized." The JAG also noted that although the applicant and the yeoman signed the Page 7 acknowledging

that they had read and understood COMDTINST 7220.1A, it is “evident that neither member understood the contents of this document.” The JAG recommended that the Board grant alternate relief by correcting the errors on the erroneous Page 7.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 24, 2007, the Chair sent a copy of the JAG’s advisory opinion to the applicant and invited him to respond within 30 days. The Chair did not receive a response.

APPLICABLE REGULATIONS

Commandant Instruction (COMDTINST) 7220.1A, was issued on February 5, 1998, and provides the policies governing reenlistment bonuses for the SELRES. It states that bonus levels and amounts will be announced via an ALDIST at least 15 days in advance of their effective date.

Article 3.c. of Enclosure (1) to COMDTINST 7220.1A provides that a member who is eligible for a \$5000 SELRES bonus will receive an initial payment of up to \$2500, “with a single subsequent payment of the remaining amount one year from the date of the reenlistment/extension.”

ALDIST 224/98 was issued on September 24, 1998, and was in effect until ALCOAST 040/01 was issued on February 1, 2001. Under ALDIST 224/98, the Level 1 bonus of \$5000 was available to any SELRES member permanently assigned to any port security unit.

ALCOAST 040/01 was issued on February 1, 2001, and replaced ALDIST 224/98. Under ALCOAST 040/01, there were no bonuses available for SELRES members who reenlisted or extended their 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 section 1552 of title 10 of the United States Code.

2. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). On August 19, 2001, the applicant signed a Page 7 indicating that he was eligible to reenlist for a \$5000 bonus. He signed a six-year reenlistment contract on August 30, 2001. Article 3.c. of COMDTINST 7220.1A provides that a member will receive an initial payment of \$2500 and the balance will be paid one year from the date of the reenlistment. Accordingly, because the applicant signed his reenlistment contract on August 30, 2001, he should have known within two or three months after signing that contract that he had not received the initial payment of his reenlistment bonus. Moreover, when the applicant did not receive *any* payment after one year he should have known

that something was awry. However, the applicant did not submit his application to the Board until December 12, 2006, alleging that he discovered in November 2006 that he would not be receiving the bonus. Therefore, the Board finds that the application was filed two years after the statute of limitations expired and is untimely.

3. Under 10 U.S.C. § 1552(b), the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The court further instructed that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.” *Id.* at 164, 165. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. A cursory review of the record indicates the Coast Guard committed an error when the yeoman counseled the applicant that he was eligible for a SELRES bonus. The Page 7 promises a reenlistment bonus of \$5000 under ALDIST 224/98, but that ALDIST was canceled when ALCOAST 040/01 was released on February 1, 2001. Thus, when the applicant signed the Page 7 on August 19, 2001, and the reenlistment contract on August 30, 2001, ALCOAST 040/01 was in effect, and it clearly states that no bonuses were available for reenlistments into the SELRES.

5. The Coast Guard recommended that the Board correct the mistakes on the August 19, 2001, Page 7 in the applicant’s record. However, the applicant did not request such a correction, and on August 30, 2007, he completed the service obligated by his August 30, 2001, six-year reenlistment. Accordingly, the Board finds that any mistakes on the Page 7 should not and need not be corrected.

6. If the applicant had timely filed his application, then the Board might have found that his reenlistment contract was voidable based on the erroneous promise of the \$5000 bonus made by the Coast Guard on the Page 7. However, the applicant waited six years after he signed the reenlistment contract to file his claim with the Board. Accordingly, due to the delay and the probable lack of success on the merits of his claim, the Board finds that it is not in the interest of justice to waive the statute of limitations in this case. It should be denied because it is untimely.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of PS1 XXXXXXXXXXXX, service number xxxxxxxx, USCGR, for correction of his military record is denied.

Randall J. Kaplan

Steven J. Pecinovsky

George A. Weller