

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-047

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 after receiving the applicant's completed application on December 15, 2008, 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 10, 2009, 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 boatswain's mate, second class (BM2), in the Coast Guard Selected Reserve (SELRES), asked the Board to correct his record to show that he is entitled to an \$8,200 bonus for agreeing to affiliate with the SELRES upon his release from active duty. He alleged that his unit's executive petty officer (XPO) "convinced me to reenlist in the reserves" with the promise of an \$8,200 bonus, but that the Coast Guard refused to pay him the bonus.

In support of his allegation, the applicant submitted a copy of a CG-3307 (Page 7),¹ which he signed on April 2, 2007, and which states the following:

I have been advised that I am eligible for an 8,200 Dollar SELRES Affiliation Bonus as listed in ALCOAST 056/06, which has been made available to me.

Receipt of this bonus commits me to SELRES participation through 07/07/2011. I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7220.1 (series) and ALCOAST 056/06.

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.

SUMMARY OF THE RECORD

The applicant served on active duty in the regular Coast Guard from February 8, 2000, through July 7, 2007. The Page 7 with the Affiliation Agreement dated April 2, 2007, and the promise of the \$8,200 Affiliation Bonus, which the applicant submitted, was not included in the copy of his military record provided to the Board by the Coast Guard.

On July 8, 2007, the applicant was released from active duty (RELAD) to the Reserve and began drilling with the SELRES. His original eight-year military service obligation (MSO) was slated to end seven months later on February 7, 2008.

On December 7, 2007, the applicant enlisted in the Reserve for four years. Block 8 of his enlistment contract states "MBR NOT SELLING LEAVE. MBR NOT ENTITLED TO A BONUS." The contract was entered in the Coast Guard's Direct Access database with the same notation.

VIEWS OF THE COAST GUARD

On April 23, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board grant alternative relief in this case.

The JAG admitted that the record "does document that Applicant was advised in an Administrative Remarks Form (CG-3307) signed on 02 April 2007, that he was eligible for an \$8,200 SELRES affiliation bonus." However, the JAG stated, the CG-3307 erroneously cites ALCOAST 056/06, which had been superseded by ALCOAST 064/07. The JAG noted that under ALCOAST 064/07, only "personnel in the FS, MK, or OS ratings" were eligible for a bonus. He stated that "unfortunately, the applicant is serving in the BM rating, not in the FS, MK, or OS ratings, so he does not qualify for the SELRES affiliation bonus."

Therefore, the JAG recommended that the Board afford the applicant the opportunity to void his Reserve enlistment contract dated December 7, 2007.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 4, 2009, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within thirty days. The Chair did not receive a response.

APPLICABLE REGULATIONS

ALCOAST 056/06, which was issued on February 1, 2006, and cited on the Page 7, states the following:

4. AFFILIATION BONUS.

A. Eligibility requirement for RELAD [released from active duty] personnel in the BM, MK, MST, or OS ratings, E-5 or above, who are obligated to serve the remainder of their initial eight-year military service obligation (MSO) in the ready reserve: Member agrees to affiliate with the SELRES for a minimum of three years after RELAD. The SELRES affiliation agreement for

bonus payment should be executed before the member is released from active duty. However, if necessary, the agreement may be executed up to one year after the RELAD date.

D. BONUS AMOUNT: A maximum of 9,600 dollars is authorized for a four-year obligation. (2,400 dollars may be paid for each full year for those with a remaining military service obligation (MSO) if participation standards contained in Chapter 4 of Ref D have been met). For example, if a member has served six years and three months of active duty and has a remaining obligation of one year and nine months in the IRR to fulfill the member's MSO, then the member is eligible to receive twenty-one months of bonus entitlements. Half of the bonus will be paid upon affiliation and the second half will be paid one year later. For the remaining partial year, the member shall receive the equivalent of 200 dollars for each full month remaining.

ALCOAST 064/07, which was issued on February 5, 2007, canceled ALCOAST 056/06 and became effective immediately. ALCOAST 064/07 states the following:

2. The following eligibility criteria and bonus amounts are effective immediately and will remain in effect until further notice. Applicants who were eligible to receive a bonus under the provisions of Ref. B [ALCOAST 056/06] will remain eligible under those provisions for 45 days after the release date of this ALCOAST.

5. AFFILIATION BONUS.

A. Eligibility Requirements for RELAD personnel in the FS, MK, or OS ratings at a critical unit or in the MK or OS ratings at a non-critical unit, who are E-4 or above and obligated to serve the remainder of their initial eight-year MSO in the ready reserve: Member agrees to affiliate with the SELRES for a minimum of three years. The SELRES affiliation agreement for bonus payment should be executed before the member is released from active duty. However, if necessary, the agreement may be executed up to one year after the RELAD date.

Article 3.E.5 of the Personnel Manual contains the following regulations for the Affiliation Bonus Program:

1. 37 U.S.C. 308e authorizes a bonus for eligible personnel leaving active duty who affiliate with the SELRES. ...

2. Eligibility. To be eligible to receive a bonus for SELRES affiliation a person:

a. must be released from active duty (RELAD) under honorable conditions from the Coast Guard or another military service;

b. must be eligible for reenlistment or for extension of his or her active duty;

c. must not have previously received an affiliation bonus for service in the SELRES;

d. must have satisfactorily completed his or her term of enlistment or period of obligated active duty service, or have 180 days or less remaining on his or her active duty obligation;

e. must affiliate with the SELRES within six months of RELAD date, for a minimum of three years in the rating or unit for which the bonus was authorized unless authorized to change to another bonus eligible rating or unit;

f. must not already have a mandatory SELRES obligation at the time of RELAD; and,

g. must execute a written agreement (see Enclosure (6) of Personnel and Pay Procedures Manual, PSCINST M1000.2 (series)).

3. Amount and payment method. The amount of the bonus shall be prescribed annually by Commandant (CG-13) in accordance with Article 3.E.4. The bonus will be paid in an initial payment of one-half of the total bonus amount. Members must submit a written request to PSC (mas) via their chain of command for the remainder of the bonus amount one year after the date of the initial payment.

4. Application.

a. Servicing SPO. Prepare or review completed Report of Separation from Active Duty (DD Form 214), orders to a SELRES assignment, and the appropriate Administrative Remarks (CG-3307). The Administrative Remarks (CG-3307) shall be faxed to PSC (mas).

b. PSC (mas). Upon receipt of the Administrative Remarks (CG-3307), and at such time as the documents are processed by the pay system, make bonus payments as directed in paragraph 3 above.

Paragraph 2 of Enclosure (3) to COMDTINST 7220.1A, which also contains SELRES bonus regulations, states that to receive an Affiliation Bonus, a member must hold a bonus-eligible rating or be assigned to a bonus-eligible unit under the bonus bulletin in affect at the time of affiliation and must continue to serve in that rating or at that unit.

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 Page 7 submitted by the applicant shows that on April 2, 2007, he was advised that he would receive an \$8,200 Affiliation Bonus for committing to affiliate with the SELRES from his release from active duty (RELAD) on July 8, 2007, through July 7, 2011. This advice was erroneous because it was based on ALCOAST 056/06, which was no longer in effect. Under ALCOAST 056/06, the applicant's BM rating was one of the critical ratings eligible for SELRES Affiliation Bonuses. However, under the new SELRES bonus bulletin, ALCOAST 064/07, which superseded ALCOAST 056/06 on February 5, 2007, the applicant's BM rating was not eligible for an Affiliation Bonus. COMDTINST 7220.1, which the applicant claimed to have read and understood on the Page 7, and Article 3.E.5.2.e. of the Personnel Manual both state that to be eligible for an Affiliation Bonus, the member must be assigned in one of the ratings or to one of the units for which the bonus has been authorized.

3. The record indicates that the applicant signed the Page 7 affiliation agreement with the promise of the bonus on April 2, 2007, and did in fact affiliate and begin drilling upon being RELAD on July 7, 2007. Therefore, it appears to the Board that the applicant met all of the written requirements for an Affiliation Bonus under Article 3.E.5. of the Personnel Manual, except for being in a designated critical rating. In this regard, the Board notes that he

- was RELAD under honorable conditions from the Coast Guard, as required by Article 3.E.5.2.a.;
- was eligible for reenlistment on active duty, as required by Article 3.E.5.2.b.;
- had not previously received an Affiliation Bonus, as required by Article 3.E.5.2.c.;
- had less than 180 days remaining on his active duty obligation, as required by Article 3.E.5.2.d.;
- affiliated with the SELRES for at least three years within six months of being RELAD, as required by Article 3.E.5.2.e. (which also requires that the member be in a critical rating or assigned to a critical unit authorized the bonus);

- did not already have a mandatory SELRES obligation at the time of RELAD, as required by Article 3.E.5.2.f.; and
- executed a written agreement in accordance with Enclosure (6) of PSCINST M1000.2 (which provides the text of the Page 7 affiliation agreement that the applicant signed on April 2, 2007), as required by Article 3.E.5.2.g.

4. The applicant was not paid the first half of the bonus upon affiliation, as provided under the ALCOASTs. However, he apparently affiliated and drilled regularly beginning in July 2007, and there is no evidence in the record that he was told he was not entitled to a bonus prior to December 7, 2007, the date of his Reserve enlistment contract. In block 8 of that contract, the applicant was clearly advised that he was not entitled to a bonus.

5. The Board notes that when the applicant signed the Page 7, agreeing to affiliate with the SELRES through July 7, 2011, he did not actually have sufficient obligated service to fulfill that agreement because his MSO was ending on February 7, 2008. He did not obligate the additional Reserve service until he enlisted on December 7, 2007. However, the applicable ALCOASTs, the Personnel Manual, and COMDTINST 7220.1A are completely silent on how a member with only a few months of remaining MSO upon RELAD should obligate sufficient service to fulfill an affiliation agreement and qualify for the bonus. In addition, the regulations for Affiliation Bonuses are silent on whether a member is entitled to the bonus in effect on the date the Page 7 is signed, the date of RELAD and affiliation, or the date sufficient service is obligated to fulfill the affiliation agreement in the Page 7.² Given the silence of all the applicable regulations on these points, the Board does not believe that the applicant's lack of sufficient obligated service on April 2, 2007, should disqualify him from receiving an Affiliation Bonus.

6. The Board also notes that the \$8,200 bonus amount on the Page 7 greatly exceeds the Affiliation Bonus that he could have been paid under either ALCOAST. Under both ALCOAST 056/06, which the applicant acknowledged reading, and ALCOAST 064/07, the Affiliation Bonus was calculated as \$2,400 for each full year of remaining MSO and \$200 per month for any partial year of remaining MSO. Because the applicant had only seven months of remaining MSO upon his RELAD date, if his rating had been authorized an Affiliation Bonus under ALCOAST 064/07, he would have been eligible for a bonus of just \$1,400.

7. Article 3.E.5.2.d. of the Personnel Manual allows members in the critical ratings to execute a Page 7 affiliation agreement for a bonus within the last 180 days of their active duty enlistments. The applicant's active duty enlistment ended on July 7, 2007. Therefore, he could have signed the required Page 7 as early as January 7, 2007. On that date, ALCOAST 056/06 was still in effect, authorizing an Affiliation Bonus for members in the applicant's BM rating. The applicant did not actually agree to affiliate with the SELRES before ALCOAST 056/06 expired. However, under the circumstances of this case and because he was promised the bonus in writing, the Board finds that in the interest of justice the applicant should have the option of

² In contrast, the Board notes that the regulations for active duty Selective Reenlistment Bonuses (SRBs) include the following provision under Article 3.C.5.11. of the Personnel Manual: "Entitlement to SRB multiple and bonus ceiling is established on the actual date of reenlistment or the date the member executes an Agreement to Extend Enlistment by signing Form CG-3301B."

having his Page 7 agreement backdated to a date when ALCOAST 056/06 was in effect so that he would be entitled to the Affiliation Bonus members in the BM rating were then authorized.

8. The JAG recommended that the Board afford the applicant the opportunity to void the December 7, 2007, Reserve enlistment contract and be expeditiously discharged from the Reserve. The applicant was told on April 2, 2007, that his Affiliation Bonus would be \$8,200, but he did not reveal when he was told that the Page 7 was in error. Therefore, it is possible that he drilled from July 7 to December 7, 2007, believing that he would receive an \$8,200 bonus. As of his reenlistment on December 7, 2007, however, he clearly knew that he was not entitled to a bonus under the regulations. Therefore, the Board finds that if the applicant does not want to continue drilling for the \$1,400 Affiliation Bonus he would receive if his Page 7 were backdated in accordance with finding 7, above, he should have the alternative option of changing the term of his Reserve enlistment from four years to two years, so that he may be discharged from the Reserve on December 6, 2009.

9. Accordingly, the Board finds that within 60 days of the date of this decision, the applicant should be counseled about his options and given the option of either (a) having his Page 7 affiliation agreement backdated to February 1, 2007, when ALCOAST 056/06 was in effect, and receiving the \$1,400 Affiliation Bonus pursuant to that ALCOAST; or (b) having the term of his December 7, 2007, Reserve enlistment contract changed from four years to two years so that he may be expeditiously discharged from the Reserve on December 6, 2009.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Within 60 days of the date of this decision, the Coast Guard shall provide him with proper counseling concerning his options under this Order. Following that counseling, he shall have the option of either

(a) having his Page 7 affiliation agreement backdated from April 2, 2007, to February 1, 2007, when ALCOAST 056/06 was in effect, and receiving the \$1,400 Affiliation Bonus pursuant to that ALCOAST; or

(b) having the term of his December 7, 2007, Reserve enlistment contract changed from four years to two years so that he may be expeditiously discharged from the Reserve on December 6, 2009.

If he makes no election pursuant to this Order, no correction shall be made to his record.

The Coast Guard shall pay him any amount he may be due as a result of any correction made to his record pursuant to this Order.

Bruce D. Burkley

Robert S. Johnson, Jr.

Randall J. Kaplan