

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-021

XXXXXXXXXX.

XXXXXXXXXX, SNMST/E-3

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 November 14, 2008, 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 July 16, 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 seaman with marine science technician designation (SNMST) in the Coast Guard Selected Reserve (SELRES), asked the Board to correct his record to show that he is entitled to a \$6,000 enlistment bonus for signing a six-year SELRES enlistment contract on February 26, 2008. He alleged that his Coast Guard recruiter promised him a \$6,000 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 was signed by him and his recruiter on February 26, 2008, and states the following:

I have been advised that I am eligible for a \$ 6000 SELRES enlistment or affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through 0/26/14. I hereby acknowledge that I read and fully understand the contents of COMDTINST 7220.1 Series, ALCOAST 056/06 and the Selected Reserve Bonus Matrix (updated 02/01/06).

The applicant also submitted a reservation request prepared by his Coast Guard recruiter, a first class petty officer, which shows that the applicant was enlisting in the marine science technician (MST) rate in pay grade E-3, and was going to receive a \$6,000 bonus for college credit, pursuant to the Coast Guard's enlistment bonus for college credit program (EBCC).

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.

The applicant also submitted a copy of an enlistment package check off list, which shows that he had been approved by Coast Guard Recruiting Command to receive an advance pay grade of E-3 and a \$6,000 enlistment bonus under the EBCC program. However, the check off list shows that the EBCC is “available only to active duty enlistees.” The applicant stated that he graduated from MST “A” School² on August 22, 2008.

SUMMARY OF THE RECORD

On February 26, 2008, the applicant and his recruiter signed a Page 7 to document that the applicant had been promised a \$6,000 bonus for agreeing to enlist for six years in the SELRES. Also, on February 26, 2008, the applicant enlisted in the SELRES for six years in the pay grade E-3. The military record submitted by the Coast Guard does not contain either the Page 7 with the promise of the \$6,000 enlistment bonus or his SELRES enlistment contract.

VIEWS OF THE COAST GUARD

On April 6, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny the requested relief in this case. The JAG admitted that the record “does document that Applicant was advised in an Administrative Remarks Form (CG-3307) dated 26 February 2008, that he was eligible for a \$6,000 SELRES enlistment bonus.” However, the JAG alleged that the applicant is not eligible for an enlistment bonus, because under ALCOAST 060/08, only members agreeing to serve in the MK rate are eligible for a bonus. The JAG noted that the applicant enlisted in the MST rate. The JAG further stated that although the recruiter’s enlistment package check off list indicates that the applicant is entitled to a \$6,000 EBCC, per the Coast Guard Personnel Manual, COMDTINST M1000.6A, Article 3.A.2.3., “in order to receive the EB, members must agree to enlist for at least four years of active duty in a skill determined as critical.” The JAG noted that the applicant enlisted in the Reserve and thus is not eligible for the EBCC.

Although the JAG recommended denying the requested relief, the JAG recommended that the Board offer the applicant two options: (1) have his record corrected by voiding his enlistment contract and being discharged from the Coast Guard; or, (2) remain in the SELRES without receiving a bonus.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 10, 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

Article 3.A.1. of the Coast Guard Personnel Manual states that the enlistment bonus program is an incentive to attract qualified personnel to critical skills or ratings to help meet the Coast Guard’s recruiting goals. The program applies to new enlistees.

² “A” School is where Coast Guard members receive training for their specific rating.

ALCOAST 056/06 was issued on February 1, 2006, and was cancelled on February 5, 2007. It was cited on the Page 7 prepared by the applicant's recruiter and states the following:

2. SELRES ENLISTMENT BONUS.

A. Eligibility Requirement for Initial Enlistment (new accession with no prior military service) under the RP, RK, RX, or RA programs: Applicant must enlist in either the MK, MST, or OS ratings for at least six years and must complete initial active duty for training (IADT).³ Applicants may be assigned either to an RPAL vacancy or as an over billet.

B. Bonus Amount: A total of 6,000 dollars is authorized to be paid in two equal amounts. (3,000 dollars may be paid after completion of IADT and 3,000 dollars may be paid one year later if participation standards contained in Chapter 4 of [Reserve Policy Manual] have been met). IADT consists of basic training or Reserve Enlisted Basic Indoctrination (REBI) plus A-School completion if required.

ALCOAST 060/08 was issued on February 7, 2008, and states the following:

3. SELRES ENLISTMENT BONUS.

A. Eligibility requirement for initial enlistment (new accession with no prior military service) under the RP, RK, RX or RA programs: Applicant must enlist in the MK rating for at least six years and must complete initial active duty for training (IADT) within 18 months. Applicants must be assigned to a vacant position. Applicants assigned to an overbilled or unbudgeted position are not authorized to receive this bonus.

B. BONUS AMOUNT: A total of 6,000 dollars is authorized to be paid in two equal amounts. 3,000 dollars may be paid after completion of IADT and 3,000 dollars may be paid one year later if participation standards contained in chapter 3 of Ref. C had been met. IADT consists of basic training or reserve enlisted basic indoctrination (REBI) plus A-School completion if required.

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 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 Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

³ IADT (initial active duty for training) consists of basic training or reserve enlisted basic indoctrination (REBI) plus A-School completion if required.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The applicant has proved by a preponderance of the evidence that the Coast Guard erred when his recruiter promised him a \$6,000 SELRES enlistment bonus for enlisting for six years. His recruiter documented that promise on the reservation request and on a Page 7 dated the same day the applicant signed his enlistment contract. In addition, the Coast Guard Recruiting Command approved the bonus. However, ALCOAST 056/06, which was cited by the recruiter as the authority for the bonus, had been canceled for more than a year when the applicant enlisted. Moreover, the applicant was not eligible for a bonus under the correct ALCOAST (060/08), because he was enlisting in the MST rate, and only recruits enlisting in the MK rate were eligible for a bonus under ALCOAST 060/08. Finally, the Board notes that the check off list clearly states that the EBCC is “available only to active duty enlistees.”

4. The JAG argued that the Board should deny the requested relief because the applicant was not eligible for an enlistment bonus under the applicable ALCOAST. However, the record indicates that the recruiter promised the applicant the bonus as an enticement to enlist for six years in the SELRES, and the Recruiting Command approved his eligibility for the bonus. 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—i.e., a six-year enlistment in the SELRES. Although the Government is not estopped from repudiating the false promises made by its employees,⁴ this Board has “an abiding moral sanction to determine . . . the true nature of an alleged injustice and to take steps to grant thorough and fitting relief.”⁵ The applicant’s recruiter promised him the \$6,000 bonus for enlisting, and the applicant has already given consideration on the contract by enlisting in the SELRES for six years. Since he had never been a member of the Coast Guard, he had to rely on his recruiter to ascertain his entitlements. There is no evidence that the applicant would have chosen to enlist in the Coast Guard Reserve had he not been promised the \$6,000 bonus.

5. The facts of this case are very similar to the facts in the prior case summarized above. Like the applicant in that case, the applicant in this case was promised an enlistment bonus by his recruiter, although he did not meet the eligibility requirements, and gave due consideration for the bonus. In Docket No. 1999-027, the Chief Counsel recommended that the Board grant relief. In that case, the Board granted relief, finding that although the Government is not estopped from repudiating the advice of its employees, in the interest of justice, the promises made by the Coast Guard to new recruits should be kept when the recruits give due consideration for the promised benefit. Moreover, the applicant in the instant case should have been able to rely on the advice provided by his recruiter, who was a first class petty officer in the Coast Guard and who was designated by the Coast Guard as a recruiter – the primary source of information for anyone interested in enlisting in the Reserve.

6. Accordingly, the applicant’s request should be granted by awarding him \$3,000—the

⁴ *Montilla v. United States*, 457 F.2d 978 (Ct. Cl. 1972); *Goldberg v. Weinberger*, 546 F.2d 477 (2d Cir. 1976), *cert. denied sub nom. Goldberg v. Califano*, 431 U.S. 937 (1977).

⁵ *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959).

first half of the promised \$6,000 bonus—since he has already completed REBI and MST “A” School and by ordering the Coast Guard to pay him the second half of the promised bonus if he met the participation standards under Chapter 4 of the Reserve Policy Manual during his first year following “A” School (as required under ALCOASTs 056/06 and 060/08).

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXX, xxxxxxxx, USCGR, for correction of his military record is granted as follows:

The Coast Guard shall pay him \$3,000—the first half of the \$6,000 enlistment bonus he was promised on the CG-3307 dated February 26, 2008—because he has already successfully completed his IADT, including REBI and MST “A” School. In addition, if he meets or has met the participation standards under Chapter 4 of the Reserve Policy Manual during the year following his completion of MST “A” School, his record shall be corrected to show that he is eligible for and entitled to the second half of the \$6,000 SELRES enlistment bonus he was promised on the Page 7 dated February 26, 2008, and the Coast Guard shall pay him that amount as well.

Lillian Cheng

Nancy L. Friedman

Vicki J. Ray