

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-078

XXXXXXXXXXXXXX
xxxxxxx, MST3/E-4

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 February 22, 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 October 23, 2008, 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 marine science technician third class (MST3), in the Coast Guard Selected Reserve (SELRES), asked the Board to correct his record to show that he is entitled to a \$5,000 enlistment bonus for signing a six-year enlistment contract on June 19, 2007. He alleged that his Coast Guard recruiter promised him a \$5,000 bonus but that the Coast Guard refused to pay him the bonus.

In support of his allegation, the applicant submitted an "Enlistment Package Check-Off List," which shows that he was enlisting in the Reserve RP program as an E-3 and that a \$5,000 SELRES enlistment bonus had been offered as an enlistment incentive. In addition, the Check-Off list indicates that he was guaranteed a slot at the Marine Science Technician "A" School scheduled to begin on September 4, 2007. The applicant also submitted a copy of a CG-3307 ("Page 7")¹, which was signed by himself and his recruiter on June 13, 2007, and states the following:

I have been advised that I am eligible for a \$5000 SELRES enlistment or affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through 06/19/13 . I

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.

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).

SUMMARY OF THE RECORD

On June 13, 2007, the applicant and his recruiter signed a Page 7 to document that the applicant had been promised a \$5,000 bonus for agreeing to enlist for six years in the SELRES. On June 19, 2007, the applicant enlisted in the SELRES for six years. He had never previously served in the military. The Page 7, with the promise of the \$5,000 enlistment bonus is entered in his official military record. The applicant's enlistment contract, however, includes only the following promises and commitments in Block B:

- Annex G, which is incorporated by reference, provides that the applicant will be enlisted at the pay grade of E-3 because he had completed 60 semester hours of college or had completed two years or 2000 hours of an accredited post secondary technical program.
- Annex O, which is incorporated by reference, affirms that the applicant will begin basic training on June 19, 2007, and that he will be assigned to MST "A" School on September 4, 2007.
- Annex U, which is incorporated by reference, concerns the applicant's eligibility for educational benefits under the Montgomery G.I. Bill.

In Block D of the contract, the applicant signed below the following statement:

I CERTIFY THAT I HAVE CAREFULLY READ THIS DOCUMENT. ANY QUESTIONS I HAD WERE EXPLAINED TO MY SATISFACTION. I FULLY UNDERSTAND THAT ONLY THOSE AGREEMENTS IN SECTION B OF THIS DOCUMENT OR RECORDED ON THE ATTACHED ANNEX(ES) WILL BE HONORED. ANY OTHER PROMISES OR GUARANTEES MADE TO ME BY ANYONE ARE WRITTEN BELOW: *(If none, X "NONE" and initial.)* NONE [applicant's initials] *(Initials of enlistee/reenlistee)*

The applicant completed Reserve Enlisted Basic Indoctrination (REBI) and MST "A" School and began serving in the SELRES as an MST on November 20, 2007.

VIEWS OF THE COAST GUARD

On July 10, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny relief in this case. The JAG admitted that the record "does document that Applicant was advised in an Administrative Remarks Form (CG-3307) that he was eligible for a \$5000 SELRES enlistment or affiliation bonus." However, the JAG stated that there is nothing on the applicant's reenlistment contract authorizing a \$5,000 SELRES enlistment bonus. The JAG further stated that the CG-3307 signed by the applicant and his recruiter on June 13, 2007, cites ALCOAST 056/06, which was replaced by ALCOAST 064/07 on February 5, 2007. The JAG noted that under ALCOAST 064/07, the applicant was not entitled to a bonus because he enlisted for the MST rating, and this rating was not eligible for a bonus under ALCOAST 064/07. Under ALCOAST 064/07, which went into effect on February 5, 2007, the critical ratings that would garner a bonus for new enlistees were IV, MK, and OS.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 22, 2008, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within thirty days. No response was received.

APPLICABLE REGULATIONS

Article 3.A.1. of the 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.

Article 3.A.3.2. states that enlistment bonuses "are linked to a member's recruitment and affiliation with a critical rating by attending a guaranteed Class 'A' School or participating in a guaranteed 'Striker' program in that rating or, for prior service personnel who already have the qualifying skill, agreeing to enlist in the designated rating for a minimum of four years. An additional amount may be offered for the member to accept an enlistment of six years."

ALCOAST 056/06, which was issued on February 1, 2006, and cited on the Page 7 prepared by the applicant's recruiter, 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). 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 064/07, which was issued on February 5, 2007, canceled ALCOAST 056/06 and became effective immediately. ALCOAST 064/07 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 IV, MK, or OS ratings for at least six years and must complete initial active duty for training (IADT). Applicants must be assigned a vacant billet. 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 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.

PREVIOUS BCMR DECISIONS

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.

In BCMR Docket No. 1999-121, the applicant stated that he had been promised a Level II \$2000 SELRES enlistment bonus by his recruiter. The bonus was cited on his enlistment contract and in a Page 7 dated the same day. He did not receive the bonus because he was not assigned to a designated critical unit under the ALCOAST then in effect. The Chief Counsel stated that the contract was voidable so the applicant could be discharged but recommended against granting the applicant the unauthorized bonus. The Board, however, granted relief, finding that while "the government may repudiate the erroneous advice of its officers or agents, ... whenever reasonable, such promises should be kept, especially when the member relies on the erroneous advice and gives due consideration for the promised benefit."

In BCMR Docket No. 1999-135, the applicant stated that she had been promised a Level II \$2000 SELRES enlistment bonus by her recruiter. The bonus was not mentioned in her contract but was documented on a Page 7 dated the day of her enlistment. She did not receive the bonus because she had not enlisted in a critical rating, although her rating was listed in the applicable ALCOAST as one of those eligible for Level I bonuses if the members were assigned to a critical unit. The Chief Counsel provided the same recommendation as in BCMR Docket No. 1999-121, and the Board granted relief for the reasons stated in that case as well.

In BCMR Docket No. 2005-117, the applicant stated that he was promised a \$4000 SELRES enlistment bonus by his recruiter. His enlistment contract cited a "RES BON PG7" along with the incorporated annexes, and the Page 7, dated the day of enlistment, documented the promised \$4000 Level II bonus under ALCOAST 268/04. He did not receive the bonus because he had not enlisted in a critical rating or been assigned to a critical unit. Although the JAG recommended only that the Board make the contract voidable, the Board granted relief, finding that the recruiter had promised the applicant the bonus as an enticement to enlist and 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."

In BCMR Docket No. 2007-006, the applicant alleged that he was promised a \$2,000 SELRES enlistment bonus for enlisting in the health services rating as well as a \$5,000 bonus for having a certain number of college credits. His enlistment contract incorporated Annex T, which documented the promised bonuses. However, he received only the \$5,000 bonus because the health services rating was not one of the critical ratings eligible for the \$2,000 bonus. Although the JAG recommended only that the Board make the contract voidable, the Board granted relief, finding that the recruiter had promised the applicant the bonus as an enticement to enlist and 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 four-year enlistment in the Coast Guard."

In BCMR Docket No. 2007-207, the applicant alleged that he was promised a \$6,000 SELRES enlistment bonus for enlisting to serve as a PS3 at a port security unit (PSU). The promise of the bonus was documented on a Page 7 and the Page 7 was cited on his enlistment contract. ALCOAST 093/05, however, authorized payment of only a \$4,000 bonus because the applicant was to be assigned to a critical unit—the PSU—but PS3 was not listed as a critical rating. Although the JAG recommended that the Board deny relief, the Board granted relief finding 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.” The Board also found that “although the government is not estopped from repudiating the advice of its employees, the promises made by the Coast Guard to new recruits should be kept when the recruits give due consideration for the promised benefit.”

In BCMR Docket No. 2008-048, the applicant alleged that he was promised an \$8,000 SELRES enlistment bonus by his recruiter for enlisting in the SELRES for six years and completing marine science technician (MST) “A” School. The promise of the bonus was documented on a Page 7. The applicant did not receive the bonus because the recruiter cited an incorrect ALCOAST, and the applicant was not eligible for a bonus under the ALCOAST that was actually in effect. Although the JAG recommended that the Board deny relief, the Board granted relief finding that the Coast Guard’s refusal to pay him the “bonus he was promised and for which he has given due consideration by enlisting for six years constitutes an injustice that must be corrected.”

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 proved by a preponderance of the evidence that the Coast Guard erred when his recruiter promised him a \$5,000 SELRES enlistment bonus for enlisting for six years as an MST. His recruiter documented that promise on a Page 7 dated six days prior to the day the applicant signed the enlistment contract, as well as on an Enlistment Package Check-Off List. However, ALCOAST 056/06, which was cited by the recruiter as the authority for the bonus, had been canceled for more than two months when the applicant signed his enlistment contract.

3. The applicant was not actually eligible for an enlistment bonus when he signed the enlistment contract on June 19, 2007. Although he was promised a \$5,000 bonus under ALCOAST 056/06, that ALCOAST had expired with the issuance of ALCOAST 064/07 on February 4, 2007. ALCOAST 064/07 did not authorize any enlistment bonus for reservists joining the MST rating.

4. The JAG argued that the Board should deny the requested relief because the applicant was not eligible for an enlistment bonus. However, the record indicates that the recruiter promised the applicant the bonus as an enticement to enlist for six years in the SELRES. 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 bad promises made by its employees,² 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.”³ The applicant’s recruiter promised him the \$5,000 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 enlisted had he not been promised the \$5,000 bonus. Releasing the applicant from the contract by discharging him more than a year later would not correct the error or remove the injustice that has been done.

5. The facts of this case are very similar to the facts in the prior cases summarized above. Like the applicants in those cases, 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, but in most cases the JAG recommended denying the applicants the unauthorized bonuses. In all these cases, the Board granted relief, finding that although the government is not estopped from repudiating the advice of its employees, the promises made by the Coast Guard to new recruits should be kept when the recruits give due consideration for the promised benefit.

6. Accordingly, the applicant’s request should be granted by awarding him \$2,500—the first half of the promised \$5,000 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 MST “A” School as required under ALCOAST 056/06 and ALCOAST 064/07.

7. The Board notes that the ALCOAST cited by the applicant’s recruiter authorized an enlistment bonus of \$6,000. However, the Page 7 and the Enlistment Package Check List prepared by the recruiter state that the applicant was entitled to receive only a \$5,000 bonus. Because the applicant was promised only a \$5,000 bonus, the Board will order the Coast Guard to pay the applicant only that amount.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

² *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).

³ *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959).

ORDER

The application of MST3 XXXXXXXX, XXXXXXXX, USCGR, for correction of his military record is granted as follows:

The Coast Guard shall pay him \$2,500—the first half of the \$5,000 enlistment bonus he was promised on the CG-3307 dated June 13, 2007—because he has already successfully completed 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 \$5,000 SELRES enlistment bonus he was promised on the Page 7 dated June 13, 2007, and the Coast Guard shall pay that amount.

Erin McMunigal

Richard Walter

Ryan Wedlund