

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2008-124**

**XXXXXXXXXXXXXX**  
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**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 May 7, 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 January 8, 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 third class (BM3), in the Coast Guard Selected Reserve (SELRES), asked the Board to correct his record to show that he is entitled to a \$6,000 college credit enlistment bonus for signing a six-year Reserve enlistment contract on July 31, 2007. He alleged that although his Coast Guard recruiter promised him a \$6,000 college credit enlistment bonus, the Coast Guard has refused to pay him the bonus.

In support of his allegation, the applicant submitted a copy of "Annex 'T': Enlisted Bonus for College Credit," signed by himself and his recruiter, which states the following in pertinent part:

An original and three copies of this form shall be prepared. It will become an Annex to the Enlistment/Reenlistment Document, Armed Forces of the United States (DD-4).

Date: May 13, 2007

Prior to enlisting in the United States Coast Guard and receiving an Enlistment Bonus, I [applicant's name], understand that:

1. I have been offered an Enlistment Bonus of \$ 0 to affiliate with the N/A rating. In order to affiliate with this rating, I have been offered a Type 1 guaranteed school, or guaranteed enrollment to an eligible "Striker" program, or I am a prior service member who is already qualified in the skill/rating in accordance with eligibility criteria established by the Coast Guard.

2. Furthermore, I have been offered an Enlistment Bonus for College Credit of 6000 for having attained 113 Semester Hours or N/A hours of Technical School.
3. I agree to enlist for four (4) years in the rating for which the bonus is paid. Therefore, if I am a prior service member with a qualifying skill or specialty, I will enlist in the eligible rating for at least four years or if I am a non prior service member, I will be assigned to a Class "A" school or enrolled into a "Striker" program for the eligible rating identified above.
4. Any enlistment bonus I am entitled to as a result of this annex will be paid to me in one lump sum payment. If I am a non-prior service member, this payment will occur after successful completion of recruit training and Class "A" school or advancement to pay grade E-4 from the striker advancement eligibility list for an eligible rating that does not have an associated "A" school. If I am prior service member who already has the qualifying skill, this payment will be made upon my arrival at my Permanent Duty Station.

The applicant also submitted an e-mail from YN1 B at the USCG Recruiting Office Newark to YN2 S at the TRACEN Cape May Recruit PERSRU division, dated August 13, 2007. In the e-mail, YN1 B states that the applicant's college credit enlistment bonus was approved when she put in his reservation, but that "[w]hen they realized they had made an error, they removed it." She also stated in the e-mail "[y]ou can remove the Annex T and inform him [the applicant] that due to him being a reservist, it is only an active duty incentive."

### **SUMMARY OF THE RECORD**

On May 13, 2007, the applicant and his recruiter signed Annex "T" to document that the applicant had been promised a \$6,000 college credit enlistment bonus for agreeing to enlist. On July 31, 2007, the applicant enlisted in the SELRES for six years. The annex, with the promise of the \$6,000 enlistment bonus is entered in his official military record and incorporated in his enlistment contract by reference. Block B of the applicant's enlistment contract incorporated all of the following documents by reference:

- Annex A is a statement of understanding for original enlistment in the Coast Guard.
- Annex G affirms that the applicant will enlist in the pay grade E-3 because he had completed at least 60 semester hours or 90 quarter hours as a college student.
- Annex P affirms that the applicant will begin basic training on July 31, 2007.
- Annex T affirms that the applicant was promised a \$6,000 enlistment bonus for college credit.
- Annex U 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 GUARAN-

TEES MADE TO ME BY ANYONE ARE WRITTEN BELOW: (If none, X "NONE" and initial.)  NONE [applicant's initials] (Initials of enlistee/reenlistee)

### **VIEWS OF THE COAST GUARD**

On September 24, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny the applicant's request. The JAG admitted that the record "does document that Applicant was advised in an Annex "T" form (CG-3301T) dated 13 May 2007, that he was eligible for a \$6,000 enlistment bonus for college credit." However, the JAG alleged, the Annex "T" was "invalid, erroneous, and unauthorized" because Article 3.A.2.3. of the Coast Personnel Manual states that one must enlist for at least four years on **active duty** to receive an enlistment bonus. The JAG stated that the applicant enlisted in the Reserve, and not on active duty.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 2, 2008, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within thirty days. The Board did not receive a response.

### **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.2.3. of the manual states that in order to receive an enlistment bonus, members must agree to enlist for at least four years of *active duty* in a skill determined as critical.

Article 3.A.9. of the manual contains the enlistment bonus agreements annexes (Annexes T, T.1 and T.2), used by the Coast Guard to document the eligibility criteria and conditions under which an enlistment bonus is paid.

ALCOAST 064/07 was issued on February 5, 2007, and states the following:

#### **3. SELRES ENLISTMENT BONUS**

A. Eligibility Requirements 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 upon completion of IADT and 3,000 dollars may be paid one year later if participation standards contained in Chapter 4 of Ref C have been met. IADT consists of basic training and 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 \$2,000 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 \$2,000 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 \$4,000 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 \$4,000 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 \$6,000 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 \$6,000 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 \$6,000 college credit bonus for enlisting for six years in the SELRES. His recruiter documented the promise of a bonus on an Annex “T” dated two months before the applicant signed the enlistment contract and incorporated Annex “T” in his reenlistment contract dated July 13, 2007, by reference. Both the contract and Annex “T” were entered in the applicant’s official military record. However, the Coast Guard has refused to pay him the promised bonus and claims that reservists are ineligible for enlistment bonuses under Article 3.A.2.3. of the Personnel Manual.

3. ALCOAST 064/07 was in effect when the applicant signed the enlistment contract on July 31, 2007. ALCOAST 064/07 authorized a SELRES enlistment bonus for recruits signing a six-year SELRES contract, but only if they elected to enlist in the IV, MK, or OS ratings. There was no enlistment bonus for SELRES recruits enlisting in the BM rate.

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 enlistment 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,<sup>1</sup> 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.”<sup>2</sup> 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 enlisted in the Coast Guard SELRES had he not been promised the \$6,000 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 has 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. Moreover, the applicant should have been able to rely on the advice provided by his recruiter, who was a yeoman first class 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 assuming he meets or has met the requirements of paragraph 4 of Annex “T” by completing his initial training and Class “A” School or by being advanced to BM3 from a striker advancement eligibility list.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

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<sup>1</sup> *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).

<sup>2</sup> *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959).

**ORDER**

The application of BM3 XXXXXXXXXXXX, USCGR, for correction of his military record is granted as follows:

If he meets or has met the participation standards under Paragraph 4 of the Annex "T" incorporated by reference in his enlistment contract dated July 31, 2007, his record shall be corrected to show that he is eligible for and entitled to the \$6,000 enlistment bonus for college credit that he was promised on the Annex "T" dated May 13, 2007.

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

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Philip B. Busch

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Diane Donley

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Jeff M. Neurauter