

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-196

XXXXXXXXXXXXX.
xxxxxxx, MK3/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 August 29, 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 April 30, 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 machinery technician third class (MK3), 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 enlistment contract on July 12, 2007. 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 July 12, 2007, 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 07/12/13. 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).

SUMMARY OF THE RECORD

On July 12, 2007, 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.

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.

Also, on July 12, 2007, the applicant enlisted in the SELRES for six years in the pay grade E-3. His enlistment contract shows that he had eight years of previous military service. The Page 7 with the promise of the \$6,000 enlistment bonus is entered in his official military record. The applicant's enlistment contract includes the following promises and commitments in Block B:

- Annex A, which is incorporated by reference, is a statement of understanding for original enlistment in the Coast Guard.
- Annex L, which is incorporated by reference, affirms that the applicant will begin basic training on July 17, 2007, and begin MK "A" School on October 1, 2007.
- Annex U, which is incorporated by reference, concerns the applicant's eligibility for educational benefits under the Montgomery G.I. Bill.
- Annex G, which is incorporated by reference, is a statement of understanding for enlistment in an advanced pay grade based on the applicant's college credits.

Block B(b) of the enlistment contract is labeled "REMARKS: (*if none, so state.*)" There is nothing noted in this section. However, the applicant's record contains five Page 7s (remarks) also signed on July 12, 2007, including the Page 7 stating that the applicant is eligible for a \$6,000 bonus.

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

My acceptance for enlistment is based on the information I have given in my application for enlistment. If any of that information is false or incorrect, this enlistment may be voided or terminated administratively by the Government or I may be tried by a Federal, civilian, or military court and, if found guilty, may be punished. 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*)

VIEWS OF THE COAST GUARD

On January 12, 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 12 July 2007, that he was eligible for a \$6,000 SELRES enlistment or affiliation bonus." However, the JAG stated that there is nothing on the applicant's reenlistment contract authorizing a \$6,000 SELRES enlistment bonus. The JAG further stated that the CG-3307 signed by the applicant and his recruiter erroneously cites ALCOAST 056/06, which had been superseded by ALCOAST 064/07. The JAG noted that under ALCOAST 064/07, the applicant was not entitled to an enlistment bonus because he had previously served in the military, and ALCOAST 064/07 states that bonuses were not available to enlistees with prior military service.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 14, 2009, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within thirty days. The Chair granted the applicant a thirty-day extension on March 2, 2009. The applicant responded to the advisory opinion on March 6, 2009, and stated the following:

I formally and spiritually disagree with the recommendation presented by [the JAG] on the subject of the high command not standing behind the best efforts of the recruiter which presented to me the bonus incentive upon completion of MKA school. I fulfilled my obligations as I understood them, leaving TRACEN Yorktown as MKA class 06-08 Honor Graduate. I was looking forward to the bonus and it was, and is, an important part of my financial planning.

Frankly, I am surprised that the USCG high command chose a bureaucratic judgment rather than the spirit of military history that is rich and heroic in nature. Men and women have heeded the call of duty from the Lifeboat Service to Katrina and had shown that the USCG put the mission first, and paperwork second. I fully understand that administration excellence is necessary for the long term health of an organization; however, I am also confident that when there is a person in the water, crossing the "t" and dotting the "i"s can be completed after the action to the best outcome to all involved.

In the recommendation presented in the United States Coast Guard Memorandum, I feel as if I have been left in the water.

In closing, I am proud to be called "Shipmate" by my fellow Coasties, and no matter the outcome as decided [by the] Board for the Correction of Military Records, I fully intend to uphold my duty, "Loud and Proud", eyes on the horizon.

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.

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).² 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.

3. PRIOR SERVICE ENLISTMENT BONUS.

A. Eligibility requirement for former enlisted member with over seven years nine months but less than 13 years of combined military service: Member must commit to either a three-year or a six-year SELRES agreement under the RQ program and must serve in the BM, MK, MST, or OS ratings as an E-5 or above. Applicants may be assigned either to an RPAL vacancy or as on over billet.

B. BONUS AMOUNTS:

(1) For a six-year SELRES agreement, a total of \$8,000 dollars is authorized to be paid in two equal amounts (4,000 dollars may be paid upon completion of IADT and 4,000 dollars may be paid one year later if participation standards contained in Chapter 4 of Ref C have been met).

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.

...

4. PRIOR SERVICE ENLISTMENT BONUS.

A. Eligibility Requirements for active duty coast guard and non-coast guard prior enlisted members with no remaining military service obligation (MSO) and over seven years nine months but less than 13 years of combined military service: Member must commit to either a three-year or a six-year SELRES agreement, be an E-4 or above under the RQ program, and in the FS, MK, or OS ratings at a critical unit or in the IV, MK, or OS ratings at a non-critical unit.^[3]

B. BONUS AMOUNTS:

...

(3) For a six-year SELRES agreement in a critical rate not at a critical unit, 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.

² IADT (initial active duty for training) consists of basic training or reserve enlisted basic indoctrination (REBI) plus A-School completion if required.

³ The applicant was assigned to USCG Station Humboldt Bay, which is not a critical unit. Paragraph 2 of ALCOAST 064/07.

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 SELRES enlistment bonus for enlisting for six years. His recruiter documented that promise on a Page 7 dated the same day the applicant signed his enlistment contract, and the Page 7 was included in the applicant’s official military record. However, ALCOAST 056/06, which was cited by the recruiter as the authority for the bonus, had been canceled for more than five months when the applicant enlisted. Moreover, the applicant was not eligible for a bonus under either ALCOAST 056/06 or its successor, ALCOAST 064/07, because neither ALCOAST authorized a bonus for a prior service SELRES recruit enlisting as an E-3 in the MK rating.

3. 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 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.

4. 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, 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 should have been able to rely on the advice provided by his recruiter, who was a petty officer first class 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. In addition, the Page 7 promising the bonus was accepted by the Recruiting Command and entered in his official military record.

5. Accordingly, the applicant’s request should be granted by awarding him \$3,000—the first half of the promised \$6,000 bonus—since he has already completed REBI and MK “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 MK “A” School as required under ALCOAST 064/07.

6. The Board notes that the ALCOAST cited by the applicant’s recruiter authorized an enlistment bonus of \$8,000 for prior service members enlisting as an E-5 or above in the MK rate. However, the Page 7 prepared by the recruiter states that the applicant eligible for only a \$6,000 bonus. Because the applicant was promised only a \$6,000 bonus, the Board will order the Coast Guard to pay the applicant only that amount.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

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).

ORDER

The application of XXXXXXXXXX, XXXXXXXXXX, 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 July 12, 2007—because he has already successfully completed his IADT, including REBI and MK “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 MK “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 July 12, 2007, and the Coast Guard shall pay him that amount.

Paul B. Oman

Thomas H. Van Horn

Janice Williams-Jones