DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1999-122

FINAL DECISION

[redacted]

This is a proceeding under the provisions of section 1552 of title 10, and section 425 of title 14, United States Code. It was commenced on May 27, 1999, upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated March 30, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request

The applicant, who is an ensign and former port securityman third class, enlisted in the Coast Guard Reserve on September 10, 1998. He alleged that upon that date the Coast Guard promised him a Reserve Enlistment Bonus.

The applicant was commissioned as an ensign in the Coast Guard on August 6, 1999.

The applicant signed a page 7 entry (CG-3307) acknowledging that he was eligible to receive a Level II Selective Reserve Bonus. The entry stated as follows: "I have been advised that I am currently eligible for a Selective Reserve Enlistment Bonus." In his application for relief, the applicant alleged that the amount of the promised reserve bonus was $2,000.

Views of the Coast Guard

On January 14, 2000, the Chief Counsel of the Coast Guard recommended that this application be denied on the ground that the applicant was not eligible for a reserve enlistment bonus. In the opinion of the Chief Counsel, the applicant was incorrectly counseled that he was eligible for an SRRB (Selective Reserve Enlistment Bonus). The Coast Guard, he said, "had no authority to pay the applicant the SRRB promised."

An initial entry SRRB was available to any person for enlisting in the Coast Guard Reserve "who was initially assigned at a Port Security Unit Training Detachment or to RPAL billets at any unit in critical ratings. . ." But the Coast Guard alleged that the applicant did not meet either of those eligibiliy requirements and therefore the Coast Guard said it was barred from paying the applicant the SRRB he now seeks.

The Chief Counsel said that the applicant is estopped from making any claim against the Government based on his reliance on the alleged erroneous advice.

SUMMARY OF ARGUMENT

A legal issue in this case is whether the Government is estopped from repudiating the inaccurate SRRB advice and promises of the applicant's recruiter on the September 10, 1998 enlistment contract.

The law is clear that the Government is not estopped under circumstances like those of this case. In Montilla v. United States, 457 F.2d 978 (Ct.Cl. 1972), the Court of Claims said that the misrepresentations of Army officers to the plaintiff leading him to believe that he had completed 20 years of service could not alter the fact that he had not actually completed 20 years of active service as computed under 10 U.S.C. § 1332. The Montilla court reasoned that unless a law has been repealed or declared unconstitutional by the courts, no officer or agency can by his conduct waive its provisions or nullify its enforcement,

In Goldberg v. Weinberger, 546 F.2d 477 (2d Cir. 1976), the Court explained that "the government could scarcely function if it were bound by its employees unauthorized representations. Where a party claims entitlement to benefits under federal statutes and lawfully promulgated regulations that party must satisfy the requirements imposed by Congress. Even detrimental reliance on misinformation from a seemingly authorized government agency will not excuse a failure to qualify for the benefits under the relevant statutes and regulations." In this case, as in Goldberg, the applicant appears to have relied on the advice of a seemingly authorized government employee.

The Chief Counsel stated that the applicant was discharged from his enlistment on August 6, 1999 when he elected to take the oath of office as an Ensign in the Coast

Guard Reserve. Therefore, he has no current obligated service requirement and is free to resign from the Service.

Applicant's Response to the Coast Guard Views

On February 17, 2000, the applicant told the Board that he does not concur with the Coast Guard's advisory opinion "because it does not leave anyone accountable for their action." He added that "he would be satisfied with [any] decision by the Board."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and of the Coast Guard and on the basis of the applicant's military record and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The applicant enlisted in the Coast Guard Reserve for six years on September 10, 1998. On that date, he signed an acknowledgment that he was eligible to receive an SRRB.

3. As of that date, initial entry SRRBs were not available to persons in the applicant's position.

4. The Coast Guard is not bound by the representation of the recruiter who told the applicant that he was eligible for a bonus. Although the government is not estopped from repudiating erroneous advice of its otherwise authorized officers, this does not mean that it must repudiate such advice. Justice requires that, whenever reasonable, such a promise be honored

5. It has been established in this case that the applicant relied on the representation. The Coast Guard therefore committed an injustice in repudiating that representation.

6. Accordingly, the application should be granted.

[ORDER AND SIGNATURE ON FOLLOWING PAGE]

ORDER

The application to correct the military record of [redacted] USCG, is granted as follows. His record shall be corrected to show that he was eligible for the Level II enlistment bonus he was promised when he enlisted on September 10, 1998. The Coast Guard shall pay the applicant the amount he is due as a result of this correction.