

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS


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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 1999-133

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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. It was commenced on June 10, 1999, upon the BCMR's receipt of the applicant's request for correction of her military record.

The final decision, dated April 13, 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 a yeoman third class (YN3; pay rate E-4), originally enlisted in the Coast Guard Reserve on April 25, 1986, following service in the Navy and Navy Reserve. Her most recent reenlistment in the Coast Guard took place on November 13, 1998.

She alleged that on November 13, 1998, her Coast Guard recruiter promised her a \$2,000 Selective Reserve Reenlistment Bonus (SRRB). A written agreement to pay the applicant that \$2,000 SRRB was contained in a reenlistment contract signed by her.

**Views of the Coast Guard**

On January 3, 2000, the Chief Counsel of the Coast Guard recommended that this application be denied on the ground that the applicant was not eligible for the SRRB promised. "Unfortunately," in the opinion of the Chief Counsel, "the Coast Guard has no legal authority to pay the Applicant the SRRB promised."

The Chief Counsel admitted that the applicant was incorrectly counseled, but he said that the government is not estopped from repudiating the inaccuracy in the November 13, 1998 contract. Even if the applicant had detrimentally relied on the promised SRRB, the doctrine of estoppel does not apply as a matter of law because the applicant was not entitled to an SRRB. The Chief Counsel also argued that the applicant is estopped from making any claim against the government based on her reliance on the alleged erroneous advice.

The applicant was not eligible for a SRRB, notwithstanding the promise, because she had more than 14 years of service, and there is a prohibition against paying a reenlistment bonus to a member who has served so long. On March 26, 1999, the head of the Coast Guard Personnel Command wrote the applicant that she was not "counseled properly" and she should be paid because "an agent of the Coast Guard" committed the error. "However, because the 14-year eligibility limitation is established by law, the Coast Guard has no authority to pay you the SRRB regardless of our counseling mistake."

#### LEGAL ISSUES

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 November 13, 1998 enlistment contract.

The law is clear that the government is not estopped under general military law. 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 of Appeals 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 the applicant appears to have relied on the advice of a seemingly authorized government employee.

Another legal issue is whether payment is appropriate under the military records correction act (10 U.S.C. 1552), which is an Act of Congress that mandates relief where the Board "considers it necessary to . . . remove an injustice." Equitable powers are granted to the Board to remove injustice. In this case it is appropriate to grant relief to remove an injustice.

### Applicant's Response to the Coast Guard Views

On January 7, 2000, the Board sent the applicant a copy of the views of the Coast Guard on this matter and notified the applicant that she could submit a response to the Coast Guard's views if she did so within 15 days of the notification.

No response was received from the applicant within the deadline.

### 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 reenlisted in the Coast Guard Reserve on November 13, 1998. On that date, she signed a reenlistment contract containing a written agreement by the CG to pay her a \$2,000 SRRB. The Coast Guard erred when it promised her a bonus for which she was not legally eligible. The record indicates that she relied on that promise.

3. The Coast Guard is not bound by the representation of the recruiter who told the applicant that she 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 should be honored

4. Accordingly, the application should be granted.

[ORDER AND SIGNATURE ON FOLLOWING PAGE]

ORDER

The application to correct the military record of \_\_\_\_\_  
r-USCG, is granted as follows. Her record shall be corrected to show that she was  
eligible for the reenlistment bonus she was promised when she reenlisted on November  
13, 1998. The Coast Guard shall pay the applicant the amount she is due as a result of  
this correction.

