


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-021

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 docketed on November 3, 2003, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated July 27, 2004, is 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 asked the Board to correct his military record to make him entitled to an enlistment bonus. He alleged that when he enlisted in the Reserve, his recruiter was not aware that enlistment bonuses were available for affiliating with certain ratings. He further alleged that he only recently discovered that he was entitled to an enlistment bonus.

In support of his contention, the applicant submitted a statement from his recruiter. The recruiter stated the following:

At the time of [the applicant's] enlistment, I was unfortunately unaware of the bonus offered for the Reserve MST billets. During the recent Reserve Recruiting Conference . . . held in Florida, I learned of the bonus and [the applicant] had already shipped to boot camp. Therefore, I did not request one when making his reservation for A-School and basic training.

[The applicant] excelled during basic training being selected as Honor Graduate of his company. This outstanding young man finished a B.S. in

Biology before enlisting with the Coast Guard and his goal is to become a doctor. He is making a concerted effort to work diligently towards reaching his aspirations while serving as a member of this service.

[The applicant's] performance speaks for itself on how committed he is to serve and go beyond the call of duty. I am certain our investment of time, training and money in this young man is not in vain. If there is an opportunity to help [the applicant] in reaching his goal through offering the bonus available for MST Reserve, I respectfully request for this bonus to be granted.

The applicant submitted a document entitled "SELRES ENLISTMENT BONUSES FOR FY03", which shows an enlistment bonus for the MST rating.¹

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve (not on full-time active duty) for six years on July 14, 2003. On the enlistment contract, he initialed an acknowledgment that no promises or guarantees other than those shown on the contract had been made to him. The contract does not mention an enlistment bonus.

VIEWS OF THE COAST GUARD

On March 15, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request.

TJAG asserted that the applicant's recruiter never promised him an enlistment bonus and therefore a bonus was not part of an inducement to enlist. He stated that recruiters use enlistment bonuses when they are necessary to close the deal. The offer of a bonus was not necessary in the applicant's case. TJAG argued that the applicant has produced no evidence to support his claim that he was entitled to a bonus. He further stated as follows:

The Board may disagree with the Coast Guard's recruiting practice of offering bonuses selectively, but it is not free to substitute its judgment for the Coast Guard's in this matter. Applicant produced no evidence in support of his claim that he was "entitled" to an enlistment bonus. The fact that he might have succeeded in striking a better bargain during his enlistment than he did is not grounds for rewriting the contract he entered into freely and willingly at the time. Applicant received the benefit of the bargain he struck; he has been accepted into the Coast Guard at the pay

¹ The Board has been unable to locate an ALDIST/ALCOAST that lists the ratings for enlistment bonuses during the time the applicant enlisted in the Reserve.

grade of E-3 and is receiving pay and allowances for the same. He is "entitled" to no more.

TJAG attached to his advisory opinion a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC stated the following:

According to input received from the Coast Guard Recruiting Command [CGRC], an enlistment incentive bonus to attend Marine Science Technician "A" School was offered to prospective enlistees on a case-by-case basis during the time the Applicant enlisted. At the time of the applicant's enlistment, recruiters were authorized to offer this incentive at their discretion, depending on their determination that an incentive was necessary to successfully recruit an individual². ...

Enlistment bonuses are not offered to everyone and are not always available. Recruiters use the bonuses as a recruiting tool, but the CGRC "reservations" office ultimately authorizes bonuses for enlistees. If the recruiter feels that a bonus is not needed to enlist an applicant, the bonus will not be offered.

Based on the evidence . . . [i]t is clear that the [applicant] was neither promised nor expected any kind of enlistment bonus. The recruiter acknowledges that he was unaware of the bonus and did not have [the applicant] complete the paperwork to make a bonus possible. The recruiter had no obligation to offer a bonus to the Applicant and no blanket entitlement existed for students attending MST "A" school. Even with the knowledge that he would not receive a bonus, the applicant volunteered to attend MST "A" school. Because many of the applicant's schoolmates did receive a bonus (presumably because their recruiters determined it was necessary to offer one as an enlistment incentive), [the applicant] erroneously became convinced that he was entitled to one.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On March 17, 2004 and March 31, 2004, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond. Each letter was returned to the BCMR as "not deliverable as addressed, unable to forward." Therefore, the Board has not received a reply from the applicant to the views of the Coast Guard.

APPLICABLE REGULATION

Selected Reserve Enlisted Bonus Programs (COMDTINST 7220.1A)

² The Executive Officer of the Recruiting Command, in an earlier case, confirmed the recruiting policy in this regard.

Paragraph 1 of Enclosure (2) states that the Selected Reserve Enlistment Bonus Program provides a bonus to eligible personnel who enlist in the SELRES (selected reserve) in ratings, billets, or units designated most critical (Level 1) or critical (Level 11). The criticality of ratings, billets, or units is periodically revised by ALDIST to maintain currency.

Paragraph 2 states that "[i]n order to meet the eligibility criteria for the enlistment bonus program the member:

- "a. Must be a graduate of a secondary school.
- "b. Must have never previously served in an armed force.
- "c. Must enlist for a period of not less than six years in the SELRES.
- "d. Must be assigned to a bonus-eligible permanent rating, billet, or unit listed in the current ALDIST bonus message at the time of enlistment.
- "e. Member must agree to serve in the rating, billet, or unit, for which the bonus was authorized . . ."

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, 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 he suffered an injustice because his recruiter's lack of knowledge about the availability of enlistment bonuses denied the applicant any opportunity to obtain a bonus for enlisting and affiliating with the MST rating. TJAG essentially argues that the recruiter's lack of knowledge is irrelevant because it is not the Coast Guard's policy to offer a bonus to each potential enlistee and it is left to each individual recruiter to determine whether a bonus will be offered. However, if the decision to offer a bonus to a potential enlistee is left to the discretion of the recruiters, who are enlisted petty officers in most cases, it is incumbent upon the Coast Guard or the COs of CGRCs to ensure that each recruiter is informed about the availability of enlistment bonuses.

3. The applicant's recruiter stated that he was not aware that bonuses were available at the time the applicant enlisted and did not become aware of such bonuses until September 9, 2003, while attending a recruiting conference. While the Board is unaware of any requirement for the Coast Guard to inform a potential enlistees about the availability of enlistment bonuses, it appears to the Board that the Coast Guard has a responsibility to ensure that all recruiters and their potential enlistees are operating on

a level playing field by providing each recruiter with the necessary training and information about all available benefits.

4. The Coast Guard's apparent failure to ensure that all recruiters, including the applicant's, received or obtained information on the availability of bonuses for affiliating with certain ratings resulted in the applicant being denied a potential benefit. Those enlistees who had non-informed recruiters, such as the applicant, had no opportunity whatsoever to receive enlistment bonuses, while those enlistees with knowledgeable recruiters had the opportunity to receive bonuses.

5. TJAG suggested that those enlistees who actually received bonuses were difficult to recruit and were probably offered the bonuses to "close the deal." In contrast, he stated that it was not necessary to offer the applicant a bonus because the recruiter was able to "close the deal" without having to do so. However, the Coast Guard offered no evidence to support this reasoning and none exists in the record. It may well have been that the recruiters who offered bonuses to potential enlistees did so whether or not the enlistees were hesitant about enlisting. The fact that the applicant still enlisted in the Reserve, in a critical rating, without the benefit of a bonus, should not be used to excuse the fact that his recruiter's lack of information resulted in the applicant having no chance of receiving an enlistment bonus. The applicant's recruiter could make no decision on the bonus issue because he was not aware that enlistment bonuses existed. The Board is persuaded that this failure on the part of the Coast Guard and/or the recruiter resulted in an injustice to this applicant.

6. The Board finds that if the recruiter had been aware of the enlistment bonus, he would have offered the bonus to the applicant. In this regard, the Board notes the recruiter's statement: "During the recent Reserve Recruiting Conference . . . held in Florida, I learned of the bonus and [the applicant] had already shipped to boot camp. Therefore, I did not request one when making [the applicant's] reservation for A-school and basic training." While the Board prefers more explicit language that the recruiter would have offered the bonus to the applicant, the recruiter's statement is still sufficient to persuade the Board that he would have done so had he known about the bonus.

7. The Coast Guard is encouraged to develop clear standards for offering enlistment bonuses. A case should not be determined based upon the knowledge, training, and experience of an individual recruiter.

8. Accordingly, the applicant is entitled to relief. The Board will direct that his record be corrected to show that when he enlisted in the Reserve on July 14, 2003, and elected to join the MST rating, he was entitled to the enlistment bonus, if any, in effect at that time for that rating.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXX, USCGR, for the correction of his military record is granted. His record shall be corrected to show that when he enlisted in the Reserve on July 14, 2003, and elected to join the MST rating, he was entitled to the enlistment bonus, if any, in effect at that time for that rating. The Coast Guard shall pay the applicant the amount due to him as a result of this correction.

