

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-005

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 October 5, 2007, upon receipt of the applicant's completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 24, 2008, 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, an [REDACTED] in the Coast Guard Selected Reserve (SELRES), asked the Board to correct his record to show that he is entitled to a \$6,000 bonus for signing a six-year enlistment contract on December 11, 2006. Although the contract does not mention the bonus, the applicant alleged that his Coast Guard recruiter promised him a \$6,000 bonus and documented his entitlement to the bonus in writing. However, after he enlisted in the Reserve, the Coast Guard refused to pay him the bonus.

In support of his allegations, the applicant submitted an "Enlistment Package Check-Off List," which indicates that he was enlisting in the Reserve RQ program as a seaman (no rating) with an approved "ship date" of January 7, 2007, and that a \$6,000 SELRES enlistment bonus had been offered as an enlistment incentive. It also shows that he had prior military service and was guaranteed a place in OS "A" School so that he could become an operations specialist. The applicant also submitted a copy of a CG-3307 ("Page 7"), which was signed by himself and his recruiter on the day he enlisted and which states the following:

I have been advised that I am eligible for a \$6,000 SELRES enlistment or affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through 12/11/12. 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).

In addition, the applicant submitted an email conversation dated August 16, 2007, between his unit's yeoman and a military pay technician at the Personnel Services Center. The

technician stated that although the applicant and his recruiter signed the Page 7 concerning the bonus, the applicant was not eligible for the bonus because he was not enlisting in the Reserve but reenlisting because he had prior military service as he served in the U.S. Army for four years from November 1995 to November 1999 and in the California National Guard from November 1999 to November 2001. In addition, the technician stated, the applicant was not eligible for a prior service bonus because he was reenlisting as a seaman rather than a petty officer, and he was not eligible for an affiliation bonus because he had already completed his original military service obligation.

Finally, the applicant submitted an email dated August 17, 2007, from the applicant's recruiter, who signed the Page 7 and the enlistment contract on December 11, 2006. The recruiter stated the following:

I'm sorry to see the response that you have received regarding your bonus. I do not make decisions regarding bonuses. I can only make requests to Recruiting Command; then they make the decisions. Requests to approve the conditions of enlistment are made via the internet data system for recruiting. The request is called a reservation request. In response to my request for your reservation, Recruiting Command authorized you a \$6,000 bonus. I can fax you a copy of the authorization if you like, along with the Page 7. I object to [the technician's] statement that I mis-counseled you. His statement infers that I made up your bonus decision out of thin air, and he should know better. Whether or not there was an error in their decision making process, Coast Guard Recruiting Command authorized you a bonus, and that bonus was promised to you in writing by the Coast Guard. I don't see how your bonus can in good faith be denied. I recommend that you continue to pursue your bonus via your chain of command.

VIEWS OF THE COAST GUARD

On March 4, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny the applicant's request but grant alternate relief by "correct[ing] the error on the CG-3307 dated 11 December 2006, to delete \$6000 and reflect \$0."

The JAG admitted that the record "does document that Applicant was advised in an Administrative Remarks (CG-3307) dated 11 December 2006, that he was eligible for a \$6,000 SELRES enlistment or affiliation incentive bonus." The JAG noted, however, that no promise of the bonus appears on the enlistment contract that the applicant also signed on December 11, 2006. In addition, the JAG pointed out that ALCOAST 056/06 states that to be eligible for a SELRES enlistment bonus, the recruit must have no prior military service; must enlist in the RP, RK, RX, or RA program; must enlist in the MK, MST, or OS rating for at least six years; and must complete initial active duty for training (IADT). The applicant did enlist in the OS rating for six years, but he had prior military service and enlisted in the RQ program. Therefore, the JAG concluded, the Page 7 signed by the applicant and his recruiter on December 11, 2006 was "invalid, erroneous, and unauthorized" and "it is evident that neither the applicant nor the recruiter understood the contents of COMDTINST M7220.1 Series, ALCOAST 056/06, and the Selected Reserve Bonus Matrix," although they indicated by their signatures that they had read and understood them. The JAG further concluded that "[u]nfortunately for the applicant, the enlistment contract is valid as no agreement for the requested SELRES bonus was contained within that document." The JAG argued that payment of the promised bonus "is an inappropriate remedy as no authority exists to pay him."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 6, 2008, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within thirty days. No response was received.

APPLICABLE REGULATIONS

Article 1.G.1.b. of the Personnel Manual provides the following definitions of enlistment and reenlistment in the Reserve:

The enlistment of any person into the Coast Guard Reserve who has not previously served in the Coast Guard Reserves shall be considered an original enlistment, even though he or she may have previous service in the Regular Coast Guard. This includes those members who are discharged from the Regular Coast Guard and enlist within 24 hours in the Coast Guard Reserve. The enlistment of any person who has previously served in the Coast Guard Reserve shall be considered a reenlistment.

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.3.2. states that enlistment bonuses "are linked to a member's recruitment and affiliation with a critical rating by attending a guaranteed Class "A" school or participating in a guaranteed "Striker" program in that rating or, for prior service personnel who already have the qualifying skill, agreeing to enlist in the designated rating for a minimum of four years. An additional amount may be offered for the member to accept an enlistment of six years."

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, or RX 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). 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 an over billet.

B. Bonus Amounts:

(1) For a six-year SELRES agreement, a total of \$8,000 is authorized to be paid in two equal amounts. ...

(2) For a three-year SELRES agreement, a total of \$4,000 is authorized to be paid in two equal amounts. ...

4. Affiliation Bonus.

A. Eligibility requirement for RELAD personnel in the BM, MK, MST, or OS ratings, E-5 or above, who are obligated to serve the remainder of their initial eight-year military service obligation (MSO) in the Ready Reserve: Member agrees to affiliate with the SELRES for a minimum of three years after RELAD. ...

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 \$2000 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 \$2000 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. 2004-063, the applicant stated that the day after his discharge upon completing more than eight years of active duty, he enlisted in the SELRES and was promised a SELRES enlistment bonus. His contract noted that he was "entitled to SELRES SRB as per ALCOAST 192/03." However, that ALCOAST clearly authorized bonuses only for members being released to the Reserve, not for those being discharged and choosing to enlist in the SELRES. The JAG recommended that the Board deny the requested relief but allow the applicant, at his discretion, to be honorably discharged for "Defective Enlistment Agreement," with a

KDS separation code¹ and an RE-1 reenlistment code. The Board noted that the applicant was an experienced member of the Coast Guard and that even a cursory review of ALCOAST 192/03 showed that he was not eligible for the SELRES bonus. Because the bonus was noted in the enlistment contract, the Board found the contract to be voidable and granted the relief recommended by the JAG.

In BCMR Docket No. 2005-117, the applicant stated that he was promised a \$4000 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 \$4000 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. 2006-182, the applicant alleged that he had been promised an \$8,000 bonus when he enlisted in the SELRES. The promise of the \$8,000 bonus was documented on a Page 7 dated ten days before the date of enlistment and was not mentioned on the enlistment contract. The JAG recommended that the Board deny relief because the applicant was only entitled to a \$4,000 bonus under ALCOAST 268/04 since he had enlisted in a critical rating but was not assigned to a critical duty station. The Board noted that the Page 7 contained many errors, that it was not dated the day of enlistment, and that it was not incorporated into the enlistment contract. The Board also noted that ALCOAST 268/04 did not even mention an \$8,000 bonus as the largest bonus authorized was \$6,000, so that “[e]ven someone who merely scanned the ALCOAST without much comprehension could not reasonably conclude that an \$8,000 bonus was authorized for anyone.” The Board found that “[l]ike the applicant in BCMR Docket No. 2004-063, [this applicant] was clearly not eligible for what he was allegedly promised under the applicable ALCOAST, but unlike that applicant, he was not an experienced member of the Coast Guard who would or should know to read an ALCOAST thoroughly.” Therefore, the Board concluded that the applicant’s enlistment contract was voidable and granted him the option of being expeditiously discharged.

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 \$5,000 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 \$5,000 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.”

¹ Under the Separation Program Designator (SPD) Handbook, a KDS code denotes a “voluntary discharge allowed by established directive resulting from non-fulfillment of service contract.”

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. 2007-214, the applicant alleged that he was promised a \$6,000 SELRES enlistment bonus for enlisting to serve as a PS3 at a vessel inspection unit. The promise of the bonus was documented on an “Enlistment Package Check-Off List,” a “Reservation Request,” and a Page 7 dated the day of his enlistment. The JAG recommended that the Board deny relief because the applicant had not enlisted in one of the critical ratings—MK, MST, and OS—listed in ALCOAST 056/06. The Board granted relief for the same reasons as in BCMR Docket No. 2007-207.

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 on December 11, 2006. His recruiter documented that promise on a Page 7 dated the day he enlisted, as well as on an Enlistment Package Check-Off List. In addition, the recruiter stated in his email that when he submitted the enlistment application package, the Recruiting Command approved the bonus. Although the Page 7 was not incorporated into the enlistment contract, the promise of the bonus was made by the recruiter and approved by the Recruiting Command on the day he enlisted and must be considered part and parcel of the bargain struck between the Coast Guard and the applicant on December 11, 2006, when the applicant committed himself to six years of service in the SELRES.

3. The PSC's military pay technician told the applicant in August 2007 that he was not eligible for the enlistment bonus because he was reenlisting instead of enlisting in the SELRES. This advice was also erroneous because under Article 1.G.1.b. of the Personnel Manual, the applicant's contract was an enlistment contract even though he had prior military service in the Army and National Guard. Nevertheless, the applicant was not actually eligible for any of the bonuses authorized under ALCOAST 056/06: (1) He was not eligible for the “SELRES Enlistment Bonus” described in paragraph 2 of the ALCOAST because he had prior military service and was enlisting in the RQ program; (2) he was not eligible for the “Prior Service Enlist-

ment Bonus” described in paragraph 3 because he had only six years of prior military service and was enlisting as an unrated E-3, rather than as a petty officer in pay grade E-5 or above; and (3) he was not eligible for the “Affiliation Bonus” described in paragraph 4 because his original military service obligation had long since expired.

4. The JAG argued that the Board should deny the requested relief but hold the applicant to his six-year commitment because the Page 7 promising the bonus was not expressly incorporated into his enlistment contract. However, the record indicates that the recruiter offered the applicant the bonus as an enticement to enlist for six years in the SELRES and told him that the bonus was approved. 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,² 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.”³ 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 inform him of his entitlements. There is no evidence that he would have enlisted had he not been promised the \$6,000 bonus.

5. The Board finds that the applicant’s enlistment contract is voidable because of the false promise of the \$6,000 bonus. However, releasing him from the contract by discharging him more than a year later would not correct the error or remove the injustice that has been done. The facts of this case are very similar to the facts in several of the prior cases summarized above. Like the applicants in BCMR Docket Nos. 2007-214, 2007-207, 2007-006, 1999-135, and 1999-027, 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, the promises made by the Coast Guard to new recruits should be kept when the recruits give due consideration for the promised benefit.

6. This case is distinguishable from BCMR Docket No. 2004-063, in which the Board denied the requested bonus, because although this applicant had prior military service, he had never been a member of the Coast Guard and was not discharged from active duty in the Coast Guard the day before he enlisted in the Reserve. Therefore, despite his prior military service, this applicant did not have the same familiarity with the Service or the same sources of information as the applicant in BCMR Docket No. 2004-063, who should have known to read the ALCOAST and realized his ineligibility. This case is also distinguishable from BCMR Docket No. 2006-182 because this applicant was not obviously ineligible for the promised enlistment bonus given the complex eligibility criteria under ALCOAST 056/06—even his recruiter and the Recruiting Command itself mistakenly promised him the bonus.

² *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).

³ *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959).

7. Although the applicant was not eligible for the SELRES enlistment bonus he was erroneously promised by his recruiter and the Recruiting Command, the Board finds 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 injustice⁴ that must be corrected.

8. Accordingly, the applicant's request should be granted assuming he meets or has met the requirements of paragraph E.2.B. of ALCOAST 056/06 for receiving each half of the \$6,000 bonus by completing his initial training and OS "A" School and then by meeting the participation standards under Chapter 4 of the Reserve Policy Manual during his first year.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁴ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (finding that for purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is "treatment by military authorities that shocks the sense of justice, but is not technically illegal").

ORDER

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

If he has met the participation requirement of paragraph E.2.B. of ALCOAST 056/06 by completing his IADT and OS "A" School, his record shall be corrected to show that he is eligible for and entitled to the first \$3,000 payment of the \$6,000 SELRES enlistment bonus he was promised on the Page 7 dated December 11, 2006.

If the applicant meets or has met the participation requirement of paragraph E.2.B. of ALCOAST 056/06 by meeting the participation standards under Chapter 4 of the Reserve Policy Manual during the year following his completion of IADT and OS "A" School, his record shall be corrected to show that he is eligible for and entitled to the second \$3,000 payment of the \$6,000 SELRES enlistment bonus he was promised on the Page 7 dated December 11, 2006.

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

