

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-048

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XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 December 28, 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 September 11, 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, a [REDACTED] in the Coast Guard Selected Reserve (SELRES), asked the Board to correct his record to show that he is entitled to an \$8,000.00 bonus for signing a six-year enlistment contract on May 25, 2007. He stated that his "decision to enlist in the Selected Reserve component of the USCG included the understanding that an \$8000 bonus would be awarded for my service upon the completion of 'A' School training." However, after he enlisted in the Reserve and completed "A" School, the Coast Guard refused to pay him the bonus.

In support of his allegations, the applicant submitted a copy of a CG-3307 ("Page 7"), which was signed by him and his recruiter on the day he enlisted, May 25, 2007, and which states the following:

I have been advised that I am eligible for a \$ 8000 SELRES enlistment or affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through 5 / 24 / 13. I hereby acknowledge that I have 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 dated September 24, 2007, from a Military Pay Technician for the Personnel Services Center to a yeoman at the applicant's unit. The Military Pay Technician stated that the applicant

is not eligible to receive a SELRES Enlistment Bonus. The member's pg 7 was signed on 2007 May 25 and enlisted into the SELRES on the same day making ALCOAST 064/07 the effective

ALCOAST in determining this member's eligibility to a SELRES Bonus, not ALCOAST 056/06 as is indicated on the member's pg 7. Now, after review of ALCOAST 064/07, you will see that the MST rate is not authorized a SELRES Enlistment Bonus. Only the IV, MK and OS ratings are listed as eligible ratings according to paragraph 3(a) of ALCOAST 064/07. ... If the member does feel that he was miscounseled then I would strongly advise the member to submit a BCMR request for their determination in the matter as it is the only course of action that I am aware of that has the authority to pursue this further.

SUMMARY OF THE RECORD

On May 25, 2007, the applicant enlisted in the Selected Reserve for six years. He had never previously served in the military. The Page 7 dated May 25, 2007, with the promise of the \$8,000.00 enlistment bonus is entered in his official military record. His enlistment contract, however, includes only the following promises and commitments in Block B:

- Annex R, which is incorporated by reference, provides that the applicant will enlist in the RA program, attend Reserve Enlisted Basic Indoctrination (REBI) beginning on June 17, 2007, attend MST "A" School beginning on July 2, 2007, and participate satisfactorily in the SELRES for six years by attending at least 90% of scheduled drills and twelve days of annual training each year.
- Annex U, which is incorporated by reference, concerns the applicant's eligibility for educational benefits under the Montgomery G.I. Bill.
- Attendance at REBI from June 17 to 29, 2007.
- Guaranteed MST "A" School from July 2 to August 30, 2007.

Directly below these entries in Block B of the contract, the applicant initialed the following statement: "The agreements in this section and attached annex(es) are all the promises made to me by the Government. ANYTHING ELSE ANYONE HAS PROMISED ME IS NOT VALID AND WILL NOT BE HONORED." In addition, in Block D of the contract, the applicant signed below the following statement:

"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)

The applicant completed REBI and MST "A" School and began serving in the SELRES as an MST3 on August 30, 2007.

VIEWS OF THE COAST GUARD

On May 20, 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 giving him the option of (a) having his enlistment voided so that he can be discharged or (b) "correct[ing] the errors on the CG-3307 dated 25 May 2007, as follows: to delete \$8000 and reflect \$0."

The JAG admitted that the Page 7 dated May 25, 2007, “does document that counseling took place and therefore aids in supporting Applicant’s allegation of error.” However, the JAG stated, the applicant was not eligible for a bonus under ALCOAST 064/07 because he was joining the MST rating and the Page 7, which references the prior, canceled ALCOAST 056/06, was “invalid, erroneous, and unauthorized.” The JAG argued that the relief requested by the applicant “is an inappropriate remedy, as no authority exists within ALCOAST 064/07 to pay the SELRES enlistment bonus for the MST rating.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 22, 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 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 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, 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 dollars 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. ...

ALCOAST 064/07, which was issued on February 5, 2007, announced new eligibility criteria for SELRES enlistment and affiliation bonuses as follows:

2. The following eligibility criteria and bonus amounts are effective immediately and will remain in effect until further notice. Applicants who were eligible to receive a bonus under the provisions of [ALCOAST 056/06] will remain eligible under those provisions for 45 days after the release date of this ALCOAST. For the purpose of this ALCOAST and the SELRES bonus program, critical units are defined as Port Security Units (PSU) and Naval Coastal Warfare units (NCW)

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 either the IV, MK, or OS ratings for at least six years and must complete initial active duty for training (IADT). Applicants must be assigned to a vacant billet. Applicants assigned to an overbilled or unbudgeted position are not authorized to receive this bonus.

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 [the Reserve Policy Manual] have been met). IADT consists of basic training or Reserve Enlisted Basic Indoctrination (REBI) plus A-School completion if required.

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. Applicants assigned to an overbilled or unbudgeted position are not authorized to receive this bonus.

B. Bonus Amounts:

(1) For a six-year SELRES agreement in a critical rate at a critical unit, a total of 8,000 dollars is authorized to be paid in two equal amounts. ...

5. Affiliation Bonus.

A. Eligibility requirement for RELAD personnel in the FS, MK, or OS ratings ...

PREVIOUS BCMR DECISIONS

In BCMR Docket No. 1999-027, the applicant had been promised a Reserve enlistment bonus by her recruiter. However, she was ineligible for the bonus because she had not yet graduated from high school. The Chief Counsel recommended that the Board grant relief because, although the government is not estopped from repudiating erroneous advice given by its officials, 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 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’s record contained a Page 7 dated the day of enlistment and promising her a Level II \$2000 SELRES enlistment bonus, which was not mentioned on her enlistment contract. She did not receive the bonus because she had not enlisted in a rating designated as “critical” under the ALCOAST in effect. The Chief Counsel made 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’s 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. 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. He received only the \$5,000 bonus because the health services rating was not one of the designated “critical” ratings. 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. 2007-098, the applicant’s record contained a Page 7 promising a \$8,000 SELRES reenlistment bonus, which was not mentioned on his reenlistment contract. He was not eligible for the bonus because he had already received one and regulation prohibits reservists from receiving more than one SELRES reenlistment bonus. The JAG recommended that the Board find the contract voidable, but the Board ordered the Coast Guard to pay the bonus for the reasons cited in BCMR Docket No. 2007-006 and because, even though he was reenlisting, the applicant was not a member at the time he signed the contract and so had to rely on the advice provided by his recruiter.

In BCMR Docket No. 2007-119, the applicant’s record contained a Page 7 promising a \$4,000 SELRES enlistment bonus, which was not mentioned on his enlistment contract. He was not eligible for the bonus because he was not enlisting in a critical rating. The JAG recommended that the Board deny relief, but the Board ordered the Coast Guard to pay the bonus for the same reasons cited in BCMR Docket No. 2007-006.

In BCMR Docket No. 2007-151, the applicant’s record contained a Page 7 promising a \$4,000 SELRES enlistment bonus, which was not mentioned on his enlistment contract. He was not eligible for the bonus because he was not enlisting in a critical rating. The JAG recom-

mended that the Board find the contract voidable, but the Board ordered the Coast Guard to pay the bonus for the same reasons cited in BCMR Docket No. 2007-006.

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. 2007-006.

In BCMR Docket No. 2008-005, the applicant’s record contained a Page 7 promising him a \$6,000 SELRES enlistment bonus for enlisting for six years in the OS rating. The promise of the bonus was also documented on an “Enlistment Package Check-Off List.” The JAG recommended that the Board deny the applicant’s request because he was not eligible for any of the bonuses authorized under ALCOAST 056/06 since he had six years of prior military service and his original military service obligation had expired. The Board granted relief because 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. . . . 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.”

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 an \$8,000.00 SELRES enlistment bonus for enlisting for six years on May 25, 2007. His recruiter documented that promise on a Page 7 dated the day he enlisted. Although the Page 7 was not incorporated into the enlistment contract, the promise of the bonus was made by the recruiter and presumably approved by the Recruiting Command on the day he enlisted since the Page 7 was entered in his official record. Therefore, the Page 7 must be considered part and parcel of the bargain struck between the Coast Guard and the applicant on May 25, 2007, when the applicant committed himself to six years of service in the SELRES.

3. The applicant was not actually eligible for an enlistment bonus on May 25, 2007. Although he was promised an \$8,000.00 bonus under ALCOAST 056/06, that ALCOAST authorized only a \$6,000.00 bonus for new recruits and the eligibility criteria therein expired 45 days after the issuance of ALCOAST 064/07 on February 5, 2007. ALCOAST 064/07 did not authorize any enlistment bonus for reservists joining the MST rating.

4. The JAG argued that the Board should offer the applicant an opportunity to void his enlistment contract because of the erroneous promise of the enlistment bonus. However, 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,¹ 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.”² The applicant’s recruiter promised him the \$8,000.00 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 an \$8,000.00 bonus. Releasing the applicant from the contract by discharging him more than a year later would not correct the error or remove the injustice that has been done.

5. 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. 2008-005, 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. 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 \$8,000.00 bonus he was promised and for which he has given due consideration by enlisting for six years constitutes an injustice³ that must be corrected. The Board notes that the criteria for an enlistment bonus under the ALCOASTs include first completing IADT, which the applicant has already done by successfully finishing REBI and MST “A” School, to receive the first half of the bonus, and then fulfilling the SELRES participation standards under Chapter 4 of the Reserve Policy Manual during his following year to receive the second half. It is not clear in the record before the Board whether the applicant met the SELRES participation standards in his first full year after completing MST “A” School.

7. Accordingly, the applicant’s request should be granted by awarding him \$4000—the first half of the promised \$8,000.00 bonus—since he has already completed REBI and MST “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 MST “A” School.

¹ *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).

² *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959).

³ *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 [REDACTED], USCGR, for correction of his military record is granted as follows:

The Coast Guard shall pay him \$4,000.00—the first half of the \$8,000.00 enlistment bonus he was promised on the CG-3307 dated May 25, 2007—because he has already successfully completed REBI and MST “A” School. In addition, if he meets or has met the SELRES participation standards contained in Chapter 4 of the Reserve Policy Manual during the year following his completion MST “A” School, the Coast Guard shall pay him a second \$4,000.00—the second half of the enlistment bonus he was promised by his recruiter on May 25, 2007—for a total potential enlistment bonus of \$8,000.00.

