

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-020

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 November 14, 2008, 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 July 16, 2009, 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, [REDACTED] in the Coast Guard Selected Reserve (SELRES), asked the Board to correct his record to show that he is entitled to a \$3,000 SELRES Affiliation Bonus. He alleged that he was promised the bonus and that it was "a big reason why [he] did SELRES." However, after signing the paperwork to get the bonus, he was informed on October 22, 2008, that he would not receive it. He alleged that he was never told that there was even a possibility that he would not receive the bonus.

In support of his allegations, the applicant submitted a CG-3307 ("Page 7") dated September 27, 2008, and signed by the applicant and a chief boatswain's mate (BMC) in the station's Servicing Personnel Office (SPO), which states the following:

I have been advised that I am eligible for an \$3,000 dollar [sic] SELRES Enlistment or Affiliation Bonus. Receipt of this bonus commits me to SELRES participation through 03 July 2010. I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7220.1 (series) and ALCOAST 093/05.

SUMMARY OF THE RECORD

On April 29, 2003, the applicant enlisted in the Coast Guard Reserve for eight years—through April 28, 2011—under the Delayed Entry Program (DEP). On October 7, 2003, he

enlisted on active duty in the regular Coast Guard. The applicant advanced to BM2 and later extended his active duty enlistment through July 6, 2008.

On July 3, 2008, the applicant was released from active duty (RELAD) into the Ready Reserve. Because of his original eight-year Reserve enlistment, he had a remaining military service obligation (MSO) through April 28, 2011. The Coast Guard's Direct Access database shows that he affiliated with the SELRES as of July 4, 2008, the day after his RELAD, and that he was assigned to a "contingency coxswain" position at the Coast Guard's small boat station in Yankeetown, Florida, on July 8, 2008.

The Page 7 dated September 27, 2008, which was submitted by the applicant, does not appear among the Page 7s entered in the applicant's military record, which the JAG forwarded to the Board.

APPLICABLE REGULATIONS

When the applicant was released from active duty and affiliated with the SELRES in July 2008, ALCOAST 060/08 was in effect. It stated that "[f]or 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)." ALCOAST 060/08 provided for the following types of SELRES bonuses for people with prior military service:

5. Affiliation Bonus.

A. Eligibility requirement for RELAD personnel in the MK rating, who are E-4 or above and obligated to serve the remainder of their initial eight-year MSO in the Ready Reserve: Member agrees to affiliate with the SELRES for a minimum of three years. The SELRES affiliation agreement for bonus payment should be executed before the member is released from active duty. However, if necessary, the agreement may be executed up to three months after the RELAD date.

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D. Bonus Amount: The amount of the bonus paid will be determined by multiplying 200 dollars times the number of months, up to 48, of Reserve obligation the member has remaining or, if member is on active duty, will have remaining at the time of discharge. For example, if a member has a remaining [MSO] of one year and nine months and agrees to affiliate with the SELRES for a minimum of three years, the member is eligible to receive only one year and nine months of bonus entitlements.

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7. Reenlistment/Extension Bonus: Due to the current high rate of retention, the reenlistment/extension bonus is not offered at this time.

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9. ... Bonus eligibility shall be documented on an Administrative Remarks (CG-3307) entry reading as follows: "I have been advised that I am eligible for a XXX dollar SELRES Enlistment of Affiliation Incentive Bonus. Receipt of this bonus commits me to SELRES participation through MM/DD/YYYY. I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7220.1 (series) and ALCOAST XXX/08."

ALCOAST 093/05 was issued on February 22, 2005, and canceled on February 1, 2006. Under ALCOAST 093/05, members in the BM rating who were not assigned to a PSU or NCW

unit were eligible for an Affiliation Bonus of \$1,500 for each full year remaining to run on their MSO if they affiliated with the SELRES within 90 days of being RELAD. No SELRES bonuses have been authorized for members in the BM rating since February 5, 2007.

VIEWS OF THE COAST GUARD

On April 9, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the requested relief and grant alternative relief.

The JAG stated the applicant affiliated with the SELRES when he was released from active duty in July 2008. However, on September 27, 2008, his SPO improperly advised him that he was eligible for a SELRES Affiliation Bonus and documented that counseling on a Page 7. The JAG stated that ALCOAST 060/08 was in effect in 2008 and did not authorize any bonuses for the BM rating. Therefore, the Page 7 was erroneous.

The JAG recommended that the Board offer the applicant the option of transferring to the active status pool of the Reserve for the remainder of his MSO or of remaining in the SELRES without an Affiliation Bonus.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 11, 2009, the applicant responded to the JAG's advisory opinion. The applicant stated that several members told him he could receive an Affiliation Bonus and he was counting on the money. He alleged that merely offering him the option of leaving the SELRES is not in his best interest or in the Coast Guard's best interest because he is "a highly valued member at my reserve unit as a prospective 25 foot UTB coxswain." He said he has been wronged and that is not being greedy or spiteful in requesting the bonus.

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 alleged that he affiliated with the SELRES in large part because he was promised a \$3,000 Affiliation Bonus. The record shows that he was not entitled to a SELRES Affiliation Bonus in 2008 because he was not in the MK rating, which was the only critical rating authorized SELRES bonuses in 2008 under ALCOAST 060/08. In addition, the applicant did not sign a contract that would guarantee his affiliation with the SELRES for at least three years, which was another requirement for an Affiliation Bonus under that ALCOAST.

3. The Coast Guard's Direct Access database shows that the applicant affiliated with the SELRES immediately upon his release from active duty on July 3, 2008, and was assigned to a contingency coxswain position at a small boat station on July 8, 2008. He did not sign the Page

7 stating that he was eligible for an Affiliation Bonus until September 27, 2008. Therefore, the applicant's military record does not support his claim that a promise of an Affiliation Bonus induced him to affiliate with the SELRES because he affiliated with the SELRES almost three months before he and the BMC signed the Page 7 concerning his eligibility for a bonus.

4. When the applicant signed the Page 7 on September 27, 2008, he was a BM2 in the SELRES with more than 5 years of active duty experience, and he had access to Coast Guard ALCOASTs, which are published on the Coast Guard's website. Yet he and the BMC signed the Page 7 referencing an ALCOAST that had not been in effect for more than two and one-half years. ALCOAST 093/05 had been canceled on February 1, 2006, and was superseded annually by ALCOASTs 056/06, 064/07, and 060/08. In fact, members in the BM rating had not been authorized any type of SELRES bonus since February 5, 2007.

5. The applicant stated that he learned he was not entitled to any SELRES bonus on October 22, 2008. Therefore, assuming the applicant was misled by the BMC into believing that he was eligible for a bonus for having affiliated with the SELRES more than two months previously, based on a two and one-half year old ALCOAST, he was disabused of that notion less than four weeks later.

6. Given the circumstances of this case, the Board finds that the applicant's non-receipt of a \$3,000 SELRES bonus is neither error nor injustice.¹ The JAG recommended that the Board give the applicant the option of transferring to the active status pool of the Reserve for the remainder of his MSO because of the BMC's erroneous advice about the bonus on September 27, 2008. Therefore, the Board will give the applicant this option.

7. Accordingly, the applicant's request for a \$3,000 bonus should be denied, but he should have the option of transferring to the active status pool of the Reserve.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹ For the purposes of the BCMRs, "[i]njustice', when not also 'error', is treatment by the military authorities, that shocks the sense of justice, but is not technically illegal." *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976).

ORDER

The application of [REDACTED], USCGR, for correction of his military record is denied, except that within 60 days of the date of this decision he shall be given the option of transferring from the SELRES to the active status pool of the Reserve at his discretion.

