

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-023



FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application after receiving the applicant's completed application on November 16, 2012, and subsequently assigned it to staff members [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 23, 2013, 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, a Boatswain's Mate First Class (BM1) currently serving in the Coast Guard Reserve, asked the Board to correct his record to show that he is eligible to receive a Selected Reserve (SELRES)¹ bonus for affiliating with the SELRES on July 23, 2005. He stated that he was released from active duty (RELAD) on July 22, 2005, affiliated with the SELRES on July 23, 2005, performed a "multiple" drill in September 2005 at Port Security Unit (PSU) 311, but never received the SELRES bonus that was available under ALCOAST 293/05.

He alleged that when he reported to PSU 311 in mid-September 2005 to perform his drill, he was told by YN2 E that his drill would be recorded for him since he "was new to the Reserves and did not know how." He also stated that he received permission from the unit to miss the October 2005 drills so he could move his household goods.

In support of his application, the applicant submitted an October 18, 2012, email from CDR C, PSU 311, who stated that the applicant is entitled to the SELRES bonus because he reported to PSU 311 in September 2005 and "performed a multiple drill." The applicant also

¹ SELRES is that portion of Ready Reserve units and individual reservists the Secretary has designated as having the highest priority for mobilization. SELRES members participate in inactive duty training periods and annual training in a pay status. The term also includes persons performing initial active duty for training. Coast Guard Recruiting Manual, Article 3.C.6.j.

submitted copies of several emails regarding his bonus, including one dated December 12, 2005, from YNC H to LT G, a CG Bonus Coordinator, in which she requested approval to pay the applicant an affiliation bonus in accordance with ALCOAST 293/05. The applicant submitted the email response from LT G, who stated "Proceed with bonus authorization as requested." The applicant also submitted a copy of an email dated January 17, 2006, from YN1 V, Bonus Team Leader, who stated that the applicant is not eligible for the bonus because he was not a drilling reservist until November 17, 2005.

The applicant stated that he discovered the error in his record on August 1, 2012, and that it is in the interest of justice for the Board to waive the statute of limitations and consider his application because he only recently was told that he could apply to the BCMR. He stated that "in all [of] my previous inquiries I was never informed I could request a military board to correct the error."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard for four years on January 23, 2001, through January 22, 2005, and his eight-year military service obligation (MSO) ended on January 22, 2009. On December 14, 2004, he signed a six-month extension contract, obligating service through July 22, 2005. His DD Form 214 shows that he was RELAD from active duty in the regular Coast Guard on July 22, 2005, having completed his required active service. The Coast Guard's personnel database, Direct Access, shows that he was placed in the Individual Ready Reserve (IRR) on July 22, 2005, and was placed in the SELRES on July 23, 2005. There is no Page 7 to document the promise of a SELRES affiliation bonus. The record also shows that the applicant was assigned to Port Security Unit (PSU) 311 on October 19, 2005, and completed his first drill on November 18, 2005. The applicant is currently a drilling reservist assigned to PSU 311.

VIEWS OF THE COAST GUARD

On May 1, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. The JAG argued that relief should be denied because the application is untimely and the applicant failed to establish that he was eligible to receive a SELRES affiliation bonus. The JAG asserted that the application is untimely because the applicant alleged that he did not receive his bonus in 2005 but did not submit his application to the Board until 2012. If the Board considers the merits of the case, the JAG stated that it should be denied because the applicant failed to establish that he affiliated with an eligible Reserve unit within the time frame authorized by ALCOAST 293/05.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 8, 2013, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The applicant responded on July 3, 2013, and stated that he disagreed with several things proffered by the JAG.

First, the applicant disagreed with the JAG's assertion that he (the applicant) was placed in the inactive reserves from July 22, 2005, to October 18, 2005. The applicant stated that he was placed in the IRR on July 22, 2005, but was moved to the SELRES and was attached to

Reserve Personnel Management on July 23, 2005, until “the servicing Personnel Unit at PSU 311 executed the reporting transaction in JUMPS.”²

Second, the applicant disagreed with the JAG’s assertion that his application was untimely. He argued that he followed up several times with several different yeoman about his bonus and submitted his application to the Board as soon as he learned that he could do so.

Third, the applicant disagreed with the JAG’s assertion that his record does not support the idea that he affiliated with an eligible reserve unit within the authorized timeframe. He noted that his affiliation with PSU 311 is reflected in his change of duty status in Direct Access.³

Fourth, the applicant disagreed with the JAG’s assertion that his record does not contain the necessary documentation required to establish his intent to affiliate with the SELRES. The applicant argued that pursuant to Section 4.e.(3) of COMDTINST 7220.1A, his servicing Personnel Reporting Unit (PERSRU) should have ensured that he completed a written agreement for the SELRES affiliation bonus, and that it is unjust to penalize him for the PERSRU’s failure to do so. Moreover, he argued that his intent to affiliate with the SELRES was implied by his Statement of Intent transaction that he executed on July 23, 2005.

Finally, the applicant noted that although the JAG stated that the Coast Guard acted properly when it did not pay him the SELRES bonus, the Coast Guard bonus coordinator approved payment of the bonus on December 12, 2005.⁴

APPLICABLE LAW AND REGULATIONS

Paragraph 1. of Enclosure 3 to COMDTINST 7220.1A, SELRES Enlisted Bonus Programs, states that the SELRES affiliation bonus program provides a bonus for eligible personnel who affiliate with the SELRES for the remainder of their MSO in ratings, billets, or units designated to be most critical.

Paragraph 4.a.3. of Enclosure 3 to COMDTINST 7220.1A states that PERSRUs will ensure members complete written agreement for SELRES affiliation bonuses.

Paragraph 2.c. of Enclosure 3 to COMDTINST 7220.1A states that to be eligible for the affiliation bonus, the member must hold a bonus-eligible rating or be assigned to a bonus-eligible billet or unit listed in the current ALDIST bonus message at the time of affiliation or the date mandatory obligation is complete.

Paragraph 4.a. of Enclosure 3 to COMDTINST 7220.1A states that when processing a SELRES affiliation bonus, the servicing PERSRU shall ensure that members complete a written

² Joint Uniform Military Pay System.

³ The applicant did not submit a page from Direct Access showing the date on which he affiliated with PSU 311, but the records submitted by the Coast Guard show that he affiliated with that unit on October 19, 2005.

⁴ Payment of the bonus was authorized by LT G on December 12, 2005, but it was never paid because emails submitted by the applicant show that there was some disagreement within the Coast Guard regarding his eligibility for the bonus.

agreement for a SELRES affiliation bonus and fax a copy of the signed Page 7 to Human Resources Service & Information Center (HRSIC).

ALCOAST 293/05 was issued on June 2, 2005, and was in effect until September 30, 2005. The ALCOAST authorized a SELRES affiliation bonus of \$2,500 for each full year of remaining military service, and stated that the bonus was authorized for RELAD personnel who obligated themselves to serve the remainder of their initial eight-year MSO in the Ready Reserve. It authorized a SELRES affiliation bonus for petty officers in a critical rating (BM, MK, OS) assigned to a critical unit (PSU or NCW unit). It also states, "It is preferred that the SELRES affiliation agreement for bonus payment be executed before the member leaves active duty, and it must be executed not later than 90 days after RELAD date." Paragraph 4 of the ALCOAST states that bonus eligibility shall be documented on an administrative remarks entry (Page 7) and that members must adhere to the participation requirements outlined in Chapter 4 of the Reserve Policy Manual.

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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. The applicant discovered the error in his record in 2006 when the Coast Guard told him that he was not eligible for the bonus. Therefore, his application is untimely.
3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." *Id.* at 164, 165.
4. The applicant argued that the Board should waive the three-year statute of limitations because he only recently learned from a YN that he could apply to the BCMR. However, the applicant knew that he was not going to get the bonus in 2006, and he should not have waited six years to complain about it and submit his application. The reason for not filing his application sooner is not persuasive to the Board.
5. The applicant alleged that he is eligible to receive a SELRES affiliation bonus because he affiliated with the SELRES the day after his discharge from active duty and drilled at a qualifying unit in September 2005. Although a commander at his unit wrote a statement supporting these claims, the JAG argued that relief should be denied because the application is untimely and because the Coast Guard's records show that he was not assigned to and did not complete any paid drills at the PSU until after the bonus authorized in ALCOAST 293/05 expired on September 30, 2005.

6. The Board's cursory examination of the merits of this case indicates that the applicant is not likely to prevail because he has not offered sufficient evidence to prove that the Coast Guard committed an error or injustice by not paying him an affiliation bonus. He has not rebutted the evidence of record that he was not assigned to PSU 311 until October 2006 and was thus ineligible for the affiliation bonus that was no longer available as of October 1, 2005.

7. Accordingly, the Board finds that it is not in the interest of justice to excuse the untimeliness of the application. The applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [REDACTED] USCGR, for correction of his military record is denied.

