

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-079

██████████
██████████

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 March 27, 2014, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 17, 2014, 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, currently a ██████████ ██████████ serving in the Coast Guard Reserve on extended active duty (EAD), asked the Board to correct his record to show that he is eligible to receive a \$11,000 Voluntary Separation (VOLSEP) Affiliation Bonus that he was promised for signing a three-year Selected Reserve (SELRES)¹ enlistment contract on June 25, 2010. He stated that he completed his SELRES commitment but has not received the bonus.

In support of his application, the applicant submitted a copy of his June 25, 2010, three-year SELRES contract, which states the following:

**MBR IS ENTITLED TO VOLSEP RESERVE AFFILIATION BONUS AS PER
ALCOAST 304/10. 11,000 TO BE PAID OUT IN 2 INSTALLMENTS OF 5,500**

He also submitted a copy of a Page 7 dated June 24, 2010, which states the following:

¹ SELRES is that portion of Ready Reserve units and individual reservists that 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.

I have been advised that I am eligible for a \$11,000 dollar SELRES Enlistment or Affiliation Bonus. Receipt of this bonus commits me to SELRES participation through 2013JUN24.

I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7002.1 (series) and ALCOAST 304/10.

SUMMARY OF THE RECORD

The applicant enlisted in the regular Coast Guard for four years on June 25, 2003, through June 24, 2007. He had previously served in the Marine Corps for exactly four years, and so his active duty base date was June 25, 1999, and his eight-year military service obligation (MSO) ended on June 24, 2007.

In the Coast Guard, the applicant earned the storekeeper (SK) rating, advanced to SK1/E-6, and signed two extension contracts totaling 36 months, which gave him an end of enlistment (EOE) date of June 24, 2010. In 2010, however, the applicant chose not to reenlist on active duty. Therefore, he was discharged from active duty on his EOE, June 24, 2010, but before being discharged, he and a YN1 signed a Page 7 dated June 24, 2010, stating that he was eligible for an \$11,000 SELRES Enlistment or Affiliation Bonus. On June 25, 2010, the applicant enlisted in the Reserve for three years. This enlistment contract, which was signed by both the applicant and a lieutenant commander, states that he is entitled to an \$11,000 "VOLSEP Reserve Affiliation Bonus."

The applicant's Leave and Earning Statement for the period August 1 to 31, 2010, included his pay for his first drill weekend in the Reserve, which was July 15 and 16, 2010. On July 29, 2011, the applicant signed an Oath of Office, accepting an appointment as a Reserve officer in the grade of ensign. He never received any portion of the \$11,000 bonus.

VIEWS OF THE COAST GUARD

On June 11, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

The JAG acknowledged that the applicant was erroneously counseled about his eligibility for an \$11,000 bonus for signing a three-year SELRES enlistment contract, but argued that he is not entitled to the bonus that he was promised. The JAG stated that ALCOAST 119/10, issued on March 17, 2010, authorized SELRES Enlistment Bonuses to prior enlisted members in critical ratings with no remaining MSO who signed either a three-year or six-year Reserve contract and SELRES affiliation agreement and authorized Affiliation Bonuses to prior enlisted members in critical ratings who had remaining MSO and who agreed to affiliate with the SELRES for at least three years. The JAG stated that the applicant had already satisfied his MSO in June 2010, and his rating, SK, was not listed as one of the critical ratings for either bonus, so he was ineligible for a bonus under ALCOAST 119/10.

The JAG stated that ALCOAST 304/10, issued on June 11, 2010, "supplemented" ALCOAST 119/10 by including the SK rating as a critical rating for Affiliation Bonuses for members with remaining MSO and by allowing members who agreed to VOLSEP before their

EOEs to affiliate for the bonus. The JAG stated that ALCOAST 304/10 did not add the SK rating as a critical rating for a SELRES Prior Service Enlistment Bonus. Therefore, the JAG argued, the applicant was not eligible for an Affiliation Bonus under ALCOAST 304/10 because he had no remaining MSO and he was not separating early under the VOLSEP program, and he was not eligible for a Prior Service Enlistment Bonus because his rating, SK, was not one of the critical ratings for an Enlistment Bonus. The JAG also noted that the VOLSEP program ended on July 1, 2010, pursuant to ALCOAST 333/10, and that on August 3, 2010, the SK rating became a critical rating for both Prior Service Enlistment Bonuses and Affiliation Bonuses pursuant to ALCOAST 403/10. The JAG stated that the Coast Guard's Pay and Personnel Center advised the applicant on both July 30, 2010, and December 23, 2013, that he was not eligible for the Affiliation Bonus because he had no remaining MSO and he was not eligible for the Enlistment Bonus because his rating was not listed as critical for that bonus.

The JAG stated that the language about a VOLSEP bonus on the applicant's Reserve contract is inexplicable because "[e]veryone involved, including the applicant, should have realized that he didn't VOLSEP early from his active duty commitment" since he was leaving active duty on his EOE. The JAG argued that although the counseling the applicant received was erroneous, the decision not to pay him the bonus was not erroneous because he was not eligible under the ALCOASTs. The JAG also argued that the decision not to pay him the bonus was not unjust because the applicant has not asserted any negative consequence as a result of the miscounseling.

Finally, the JAG noted that if the applicant had been eligible for a bonus, the bonus payments would have been subject to recoupment because he accepted an appointment as a commissioned officer in the Reserve prior to serving the one-year requirement in ALCOAST 304/10. The JAG stated that the first requested bonus payment was July 30, 2010, and the second payment would have been subject to recoupment because the applicant accepted his Reserve commission on July 29, 2011, less than one year after the first bonus payment.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 16, 2014, 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 9, 2014, and agreed with the JAG's recommendation, but asked the Board to consider his request on the merits.

APPLICABLE LAW AND REGULATIONS

Article 3.E.5. of COMDTINST M1000.6A states that pursuant to 37 U.S.C. § 308e, members may be authorized an Affiliation Bonus if (among other, irrelevant criteria) they are in a critical rating and are released from active duty (RELAD) into the Reserve having satisfactorily completed their term of enlistment, affiliate with the SELRES for at least three years, and execute an affiliation agreement on a Page 7. The first half of the bonus is paid when the Page 7 is received and "at such time as the documents are processed by the pay system." The second half is payable one year after the initial payment.

Article 3.E.7. of the manual states that pursuant to 37 U.S.C. § 308i, a Prior Service Enlistment Bonus is authorized for members who enlist in the SELRES in a rating or unit designated as critical for three to five years to qualify for the three-year bonus or six to eight

years to qualify for the six-year bonus. The members must have less than 14 years of total military service on the date of the SELRES enlistment, must have received an honorable discharge at or after the conclusion of an eight-year MSO, and must sign a Page 7 regarding a Prior Service Enlistment Bonus. The first half of the bonus is paid upon receipt of the Page 7 “at such time as the enlistment documents are processed by the pay system,” and the second half is payable one year later upon request.

ALCOAST 119/10 was issued on March 17, 2010, and provided the initial authority for the SELRES Prior Service Enlistment and Affiliation Bonuses for fiscal year (FY) 2010. ALCOAST 119/10 authorized Prior Service Enlistment Bonuses for members in certain ratings (not SK) with no MSO and Affiliation Bonuses for members in certain ratings (not SK) with remaining MSO. If the remaining MSO was not at least three years in duration, the member could extend his Reserve obligation to three years by signing a contract.

ALCGENL 046/10 was issued on April 5, 2010, and announced a “VOLSEP” program under which members could request early separation prior to their current expiration of enlistment.

ALCOAST 304/10 was issued on June 11, 2010, and updated ALCOAST 119/10 and ALCGENL 046/10 while noting that all unchanged provisions of ALCOAST 119/10 would remain the same. ALCOAST 304/10 announced a “SELRES bonus update appli[cable] to VOLSEP members and OBLISERV [obligated service] members.” It stated that VOLSEP and OBLISERV members in critical ratings, including SK, who agreed to affiliate with the SELRES for three years were entitled to a bonus of \$11,000 to be paid in halves, with the first half to be “paid after completion of first drill” and the second half to be paid one year after the first half if the member had met the participation standards. ALCOAST 304/10 stated that for Prior Service Enlistment Bonuses, all the provisions of ALCOAST 119/10 “remain in effect.”

ALCOAST 333/10, issued on June 25, 2010, canceled the VOLSEP program because of the increased need for personnel due to Operation Deepwater Horizon.

ALCOAST 403/10, issued on August 3, 2010, states that it “summarizes and updates bonus programs related to affiliation with the Selected Reserve” and that “[p]er [ALCOAST 119/10], eligibility requirements for prior service members and RELAD personnel have been expanded to include the following ratings: ... SK. All other provisions in [ALCOAST 119/10] remain the same. ... The SELRES bonus rating updates are in effect as of 01 JUL 10 until 31 DEC 10.”

Article 3.E.11.1. of the Personnel Manual in effect on June 25, 2010, states the following:

When entitlement to an incentive is terminated, members shall receive no further bonus payments, except for service performed before the termination date. Unless otherwise noted, the effective date of termination is the date the disqualifying event or action occurs. For the reasons below, the Government will recoup a pro-rated amount of bonus paid, unless granted relief authorized in paragraph 3.E.10. [which is irrelevant]: ... e. Acceptance of appointment as a commissioned officer or commissioned warrant officer in the Coast Guard Reserve if the member has served less than one year since the initial payment date.

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. The applicant is timely.

2. The applicant alleged that he has been erroneously and unjustly denied an \$11,000 SELRES Affiliation Bonus because in June 2010 he signed a three-year SELRES enlistment contract and a Page 7 stating that he is eligible for an \$11,000 bonus, and he has completed his three-year SELRES commitment.² The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. 33 C.F.R. § 52.24(b). Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The applicant's record shows that he was discharged from the regular Coast Guard at the end of his enlistment on June 24, 2010, and signed a Page 7 on June 24, 2010, and a three-year Reserve enlistment contract the next day, June 25, 2010. Both of these documents state that he was eligible to receive an \$11,000 SELRES Enlistment or Affiliation Bonus in accordance with ALCOAST 304/10. Because the applicant was in the SK rating, however, he was not eligible for a Prior Service Enlistment Bonus on that date since ALCOAST 119/10 did not list SK as a critical rating and its provisions for Prior Service Enlistment Bonuses had not been updated. In addition, because the applicant had completed his MSO and his enlistment, he was discharged, instead of RELAD, on June 24, 2010, and had no remaining obligated military service. Therefore, he was not eligible for an Affiliation Bonus, which requires a remaining Reserve obligation.³

4. The Board notes that the applicant's Reserve enlistment contract stated that he was eligible for a VOLSEP affiliation bonus, which was clearly erroneous because the applicant had not requested or been granted an early separation under the VOLSEP program and was being discharged on his EOE. The combination of the Reserve enlistment contract and the Page 7, however, shows that the applicant was erroneously told that under the terms of ALCOAST 304/10 he could receive an \$11,000 bonus for committing himself to serve as an SK in the SELRES for three years. The applicant's signature on the Page 7 acknowledges reading and understanding that ALCOAST, but the YN1, who was presumably trained in such matters and who was responsible for counseling the applicant about the terms of the ALCOAST, apparently misunderstood it, too. Moreover, the YN1's advice appears to have been in line with the Commandant's intent and the Coast Guard's needs because on August 3, 2010, the Coast Guard issued ALCOAST 403/10 "to summarize and update" the rules. ALCOAST 403/10 made the

² The Board notes that the applicant responded to the Coast Guard's advisory opinion by agreeing with it but will address the original request for relief.

³ Personnel Manual, Article 3.E.5.

SK rating a critical rating eligible for both Affiliation Bonuses for RELAD members and Enlistment Bonuses for prior service members retroactive to July 1, 2010—just six days after the applicant enlisted in the Reserve.

5. In light of these circumstances and especially the fact that the applicant was erroneously promised the bonus in writing and relied on the erroneous promise of his unit's yeoman by enlisting in the Reserve for three years, the Board finds that the applicant is entitled to at least partial relief. The applicant could have been eligible for the Affiliation Bonus he was promised pursuant ALCOAST 304/10 if he had previously extended his enlistment contract beyond June 24, 2010, and requested and been approved for VOLSEP on June 24, 2010. Under these circumstances, he could have affiliated with the SELRES and signed a contract to obligate sufficient service to complete three years in the SELRES to become eligible for the VOLSEP Affiliation Bonus offered under ALCOAST 304/10.

6. The JAG argued that if the applicant had received the \$11,000 bonus then a portion of it would have been recouped pursuant to Article 3.E.11. because he accepted a Reserve commission before serving in the SK rate for one year from what would have been the first bonus payment date. Article 3.E.11. of the Personnel Manual states that a prorated amount of a bonus already paid will be recouped if the member accepts an "appointment as a commissioned officer or commissioned warrant officer in the Coast Guard Reserve if the member has served less than one year since the initial payment date." The applicant never received the first half of the promised bonus, but under Article 3.E.5. of the Personnel Manual, the first half of an Affiliation Bonus would have been paid upon receipt of the Page 7 and "and at such time as the documents are processed by the pay system." The record shows that the applicant first drilled as a Coast Guard reservist on July 15 and 16, 2010, and he did not receive his first pay as a reservist until August 31, 2010. Therefore, the preponderance of the evidence shows that his Reserve documentation was not processed through the pay system until August 2010, and he would have received his initial payment of an Affiliation Bonus on August 31, 2010. When the applicant accepted his commission on July 29, 2011, he was thus within a year of the date he would have received the initial payment, and so that initial bonus payment would have been recouped in a prorated amount.

7. Accordingly, the Board finds that the applicant's record should be corrected to show that his active duty extension contract ran through July 24, 2010, instead of June 24, 2010; that he submitted a voluntary separation (VOLSEP) request asking to be discharged on June 24, 2010, which was approved; that he signed a three-year SELRES affiliation agreement prior to being discharged from active duty; and that he is eligible to receive the \$11,000 SELRES Affiliation Bonus offered under ALCOAST 304/10 on a prorated basis in accordance with Article 3.E.11. of the Personnel Manual because he accepted a commission as an ensign in the Reserve on July 29, 2011.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED], USCGR, for correction of his military record is granted in part as follows:

The Coast Guard shall correct his record to show that his active duty extension contract ran through July 24, 2010, instead of June 24, 2010; that in accordance with ALCGENL 046/10, he submitted a voluntary separation (VOLSEP) request asking to be discharged on June 24, 2010, which was approved; and that he signed a three-year SELRES affiliation agreement prior to being discharged from active duty on June 24, 2010, and so is eligible to receive the \$11,000 SELRES Affiliation Bonus offered under ALCOAST 304/10 on a prorated basis because he accepted a commission as an ensign in the Reserve on July 29, 2011. The Coast Guard shall pay him any amount of Affiliation Bonus due as a result of this order. These corrections shall not affect any other entitlements or matters of record.

October 17, 2014

