


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-145


 BM3

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 June 7, 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 February 12, 2015, 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, third class (BM3/E-4) currently serving in the Coast Guard Selected Reserve (SELRES), asked the Board to correct his record to show that he is eligible to receive the \$4,000 enlistment bonus that he was promised when he enlisted in the Reserve on February 8, 2005. He stated that he never received the bonus and noted that when he inquired about it he was told that he would receive only \$400 instead of \$4,000. In support of his application he submitted a copy of the Page 7 that he signed on February 8, 2005, which states the following:

I have been advised that I am eligible for a \$4,000 SELRES enlistment or affiliation incentive bonus. Receipt of this bonus commits me to SELRES participation through [February 7, 2011]. I hereby acknowledge that I have read and fully understand the contents of COMDTINST 7220.1 (series) and ALCOAST 268/04.^[1]

The applicant alleged that he discovered this error on May 19, 2014, when he was reviewing his record and found the Page 7 and "pursued my bonus after nine years of never receiving it."

¹ ALCOAST 268/04 authorizes a SELRES affiliation bonus of \$50 for each month of remaining military service obligation (MSO) on a member's original 8-year military contract.

SUMMARY OF THE RECORD

On October 27, 1997, the applicant enlisted in the Army Reserve for a term of eight years, through October 26, 2005. His first military duty was his attendance at basic training from May 21 through July 24, 1998, and he later performed active duty training to earn a military specialty rating from May 26 through August 20, 1999. Between and after these active duty periods, he drilled and performed annual training regularly.

On July 22, 2004, a Coast Guard recruiting office assisted the applicant in requesting a conditional release from the Army Reserve so he could enlist in the Coast Guard Reserve. On February 7, 2005, he was released from the Army Reserve just eight months shy of completing his eight-year Military Service Obligation (MSO). On February 8, 2005, he enlisted in the Coast Guard Reserve² for a term of eight years and the Coast Guard agreed to send him to Class “A” School³ for the BM rating. He completed BM “A” School on August 5, 2005, and was assigned to a boat station.

The applicant’s record contains the above-quoted Page 7 dated February 8, 2005, stating that he was eligible to receive a \$4,000 SELRES enlistment or affiliation incentive bonus in accordance ALCOAST 268/04. The applicant did not receive a \$4,000 bonus.

In February 2007, the Coast Guard Pay and Personnel Center (PPC) reviewed the Page 7 and determined that the applicant might be eligible for a \$2,400 bonus but that it would depend on his Date of Initial Entry into Military Service (DIEMS). Therefore, PPC recommended that a Statement of Creditable Service (SOCS) be prepared to determine the applicant’s DIEMS so that his bonus eligibility could be properly assessed. PPC suspended the pending bonus payment until the SOCS was completed.

In July 2008, the Coast Guard adjusted the applicant’s DIEMS date to October 27, 1997 (his initial Army Reserve enlistment date), but after the SOCS was completed on January 15, 2009, the applicant’s DIEMS date was readjusted to May 21, 1998, which was the date the applicant began his active Army service.

The applicant requested the bonus payment again in May 2014 and PPC informed him that based on the January DIEMS date adjustment to May 21, 1998, his bonus payment would be \$400 and PPC was going to authorize the payment.

APPLICABLE REGULATION

ALCOAST 268/04, issued on June 1, 2004, announced “eligibility and amounts paid for ... SELRES prior-service enlistment, and SELRES affiliation bonuses for release from active

² Reservists are divided into Reserve Classifications, which identify their accession source and Military Service Obligation (MSO). Reserve Classifications usually appear as two-character alpha codes; the first character is the member’s Reserve Component Category (RCC) and the second character describes the accession source. A reservist with remaining MSO, not in another class (mostly prior-enlisted from other services), receives an RN classification. A reservist without a remaining statutory MSO receives an RQ classification. Chapter 1.E.1 of the Reserve Policy Manual.

³ “A” School is where Coast Guard members receive training for their specific rating.

duty (RELAD) personnel.” The ALCOAST authorized SELRES prior-service enlistment bonuses for members with between 7 years, 9 months and 14 years of prior military service who met certain criteria. To be eligible for a “Level I” \$6,000 bonus, the member had to agree to serve in the SELRES for six years in a critical rating (including BM) at a critical unit. The designated critical units were port security units (PSUs) and harbor defense commands (HDCs). To be eligible for a “Level II” \$4,000 bonus, the member had to agree to serve in the SELRES for six years in a critical rating but any unit or at a critical unit but in any rating.

ALCOAST 268/04 also authorized SELRES affiliation bonuses for members who had been released from active duty in any military service but had time remaining on their original eight-year MSO and agreed to serve in the SELRES for the remaining period. The bonus amount was “to equal 50 dollars per month of remaining service obligation.”

COMDTINST 7220.1A, Encl. 7, authorizes termination and recoupment of bonus payments if members fail to drill and perform annual training satisfactorily, leave the SELRES, accept an officer’s commission, stop serving in their bonus-eligible rating, or voluntarily transfer from their bonus-eligible unit.

VIEWS OF THE COAST GUARD

On October 16, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief. The JAG conceded that the applicant was miscounseled several times regarding his eligibility for a SELRES bonus because the Coast Guard had failed to accurately determine the applicant’s Date of Initial Entry into Military Service (DIEMS) and his correct Military Service Obligation (MSO) date. The JAG noted that after the Coast Guard prepared an accurate Statement of Creditable Service (SOCS) and properly calculated the applicant’s DIEMS and MSO date, it determined that the applicant was, in fact, ineligible for any SELRES bonus under the ALCOAST in effect when he enlisted in the Coast Guard Reserve.

The JAG stated that if the applicant had been properly counseled, then he would have been told that he was not eligible for any SELRES bonus and he “could have made an enlistment decision based upon accurate information.” Although the JAG argued that the applicant was not eligible for any SELRES bonus when he enlisted in the Coast Guard Reserve on February 8, 2005, the JAG nonetheless recommended that the Board grant relief because the applicant sought early release from the Army Reserve to join the Coast Guard Reserve and the Coast Guard repeatedly miscounseled him and made numerous errors with respect to his bonus eligibility. The JAG stated that “there is a preponderance of the evidence that an injustice has occurred.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 30, 2014, the BCMR sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. In his response, the applicant agreed with the JAG’s recommendation.

PREVIOUS BCMR DECISIONS

In BCMR Docket Nos. 2012-232, 2012-050, and 2011-221, the Board granted relief to applicants who enlisted in the SELRES and were erroneously counseled by Coast Guard recruiters that they were eligible to receive a SELRES bonus. The BCMR found that the applicants had reasonably relied on the erroneous promises of their Coast Guard recruiter.

In BCMR Docket Nos. 2004-063, 2006-182, 2009-020, although the applicants had been erroneously promised SELRES bonuses in writing, the Board denied the requested relief (payment of the bonuses) but made their Reserve contracts voidable because at the time they signed the Page 7s and reviewed the applicable ALCOASTs, the members had several years of experience in the Coast Guard and presumably knew to read the ALCOAST and bonus regulations.

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 over this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record.⁴ Although the applicant alleged that he discovered the error in 2014, he clearly knew that he had been promised a \$4,000 bonus but was not paid the bonus back in 2005. Therefore, his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁵ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”⁶ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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.”⁷ Although the applicant in this case delayed filing his application for several years, the Coast Guard has admitted that the applicant suffered an injustice during his recruitment into the Reserve. Therefore, the Board finds that it is in the interest of justice to excuse the untimeliness of the application and consider the application on the merits.
4. The applicant asked the Board to correct his record to show that he is eligible to receive the \$4,000 bonus that he was promised when he enlisted in the SELRES. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and

⁴ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

⁵ 10 U.S.C. § 1552(b).

⁶ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁷ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (D.C. Cir. 1995).

the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁸ 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.”⁹

5. The applicant has proven by a preponderance of the evidence that when he left the Army Reserve to enlist in the Coast Guard Reserve in February 2005, he was promised a \$4,000 bonus for agreeing to serve in the SELRES for six years. This promise was made in writing on a Page 7 signed by the applicant and his recruiter. Under ALCOAST 268/04, however, the applicant was ineligible for the authorized \$4,000 prior-service bonus because he had less than 7 years, 9 months of military service when he enlisted on February 8, 2005. The applicant served in the Army Reserve from October 27, 1997, to February 7, 2005, which is 7 years, 3 months, and 12 days of service.

6. It is not clear whether the applicant simply miscalculated his time in the Army Reserve or failed to read and understand the ALCOAST, which his signature on the Page 7 indicates he did. His Coast Guard recruiter, however, who was presumably trained to understand the rules of enlistment bonuses, clearly misunderstood the ALCOAST because he promised a bonus to the applicant for which he was not eligible. The Board will not hold the applicant, who had no experience in the Coast Guard, accountable for understanding the eligibility criteria in the ALCOAST when the Coast Guard’s own recruiter failed to understand or apply them correctly.

7. The JAG argued that relief should be granted because the Coast Guard has made numerous counseling and calculation errors and because the applicant specifically sought a release from the Army Reserve so he could enlist in the Coast Guard Reserve instead. The Board finds that when reasonable, promises of bonuses made by Coast Guard recruiters to inexperienced recruits should be kept, especially when a recruit relies on the erroneous advice of a recruiter and gives due consideration for the promised benefit by enlisting in the Reserve, completing training, and participating satisfactorily in accordance with Chapter 4 of the Reserve Policy Manual. There is no evidence that the applicant would have chosen to enlist in the Coast Guard Reserve and serve in the BM rating had he not been promised the \$4,000 bonus.

8. Accordingly, the applicant should receive the promised \$4,000 bonus if he has participated satisfactorily in accordance with Chapter 4 of the Reserve Policy Manual.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁸ 33 C.F.R. § 52.24(b).

⁹ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of BM3 [REDACTED] USCGR, for correction of his military record is granted. The Coast Guard shall correct his record to show that he is eligible to receive a \$4,000 SELRES prior-service enlistment bonus for his Reserve enlistment contract dated February 8, 2005, assuming he met the participation standards set forth in Chapter 4 of the Reserve Policy Manual. The Coast Guard shall pay him any amount due as a result of this correction.

February 12, 2015

