

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-220

██████████
██████████ ME2

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 August 22, 2015, 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 June 5, 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, currently a Maritime Enforcement Specialist second class (ME2) in the Coast Guard Selected Reserve (SELRES)¹, asked the Board to correct her record to show that she is eligible to receive the entire \$5,000 enlistment bonus that she was promised when she enlisted in the SELRES on December 14, 2010. She stated that she previously submitted an application to the Board wherein she requested payment of the bonus, but despite the Board's order that the Coast Guard pay her the bonus, she received only \$1,263.25 of the bonus. She alleged that she is entitled to the remaining \$3,736.75.

The applicant argued that she is entitled to the entire \$5,000 bonus because the Board ordered the Coast Guard to pay her the \$5,000 bonus that she was promised. She stated that although the Coast Guard Pay and Personnel Center (PPC) stated that she is eligible to receive a bonus only for the time she spent at her former Port Security Unit (PSU), she argued that the Board's decision clearly states that she is eligible to receive the full \$5,000 as long as she is in compliance with Chapter 4 of the Reserve Policy Manual.

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.

SUMMARY OF THE RECORD

The applicant served on active duty in the Regular Coast Guard for two years, from July 28, 2008, until she was honorably discharged as a seaman, E-3, on July 29, 2010, under the voluntary separation (VOLSEP) program. On December 13, 2010, she signed two documents:

- A Page 7 states that she was eligible to receive a \$5,000 SELRES enlistment or affiliation bonus for agreeing to commit to SELRES participation through December 14, 2016, and that she had read and understood the applicable ALCOAST authorizing the bonus and the Reserve bonus instruction, COMDTINST 7220.1.
- A “Statement of Understanding: Coast Guard Reserve Prior Service Enlistment Program (RQ)” states that she was guaranteed assignment to ME “A” School and that she would be assigned to a particular billet at a PSU and required her to participate satisfactorily for six years.

On December 14, 2010, the applicant enlisted in the Reserve. The Coast Guard refused to pay the applicant the bonus, however, because she was ineligible under the applicable ALCOAST (ALCOAST 119/10). When the Coast Guard refused to pay her the bonus, the applicant submitted her first application to the Board, asking it to correct her record to show that she is eligible to receive the \$5,000 bonus.

On July 12, 2013, the Board issued a final decision (Docket Number 2013-003) regarding her original request for the \$5,000 bonus. The Board’s decision does not mention the fact that the applicant was no longer serving at a PSU. The Board concluded the following:

Although the applicant did not meet all of the requirements for the bonus listed in ALCOAST 119/10 for the bonus, the preponderance of the evidence shows that the Coast Guard promised the applicant a \$5,000 SELRES bonus for enlisting in the Reserve and agreeing to affiliate with the SELRES and serve in the ME rate at a PSU for six years, and documented that promise on a Page 7. The Board finds that when reasonable, such promises should be kept, especially when the member relies on the erroneous advice and give due consideration for the promised benefit by enlisting in the Reserve, completing training, and participating 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, serve in the ME rating, or agree to serve at a PSU had she not been promised the \$5,000 bonus.

The Board’s order directed the Coast Guard to “correct her record to show that she is eligible to receive a \$5,000 SELRES prior service enlistment bonus for her enlistment contract dated December 14, 2010, assuming she has met the participation standards set forth in Chapter 4 of the Reserve Policy Manual. The Coast Guard shall pay her any amount due as a result of these corrections.”

In October 2013, the Coast Guard paid the applicant \$1,263.25, a prorated amount of the \$5,000 bonus, because the applicant had elected to transfer from her assigned PSU on August 1, 2012, and so had not completed six years at the PSU.

VIEWS OF THE COAST GUARD

On February 3, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief. The JAG argued that the applicant is not entitled to the entire \$5,000 bonus and was paid a prorated amount because she failed to serve six years at a critical unit. The JAG also stated that the Board's order in the applicant's previous case reflects an intent that the applicant satisfactorily serve at a PSU for six years to receive the \$5,000 bonus.

The JAG stated that the applicant served at PSU 313 (a critical unit) in Tacoma, Washington, for 19 months and 19 days until she voluntarily transferred to Marine Safety Unit (MSU) Port Arthur (not a critical unit) in Port Arthur, Texas, on August 1, 2012. The JAG stated that her eligibility for the bonus was terminated when she did this, arguing that it was the Board's intent that she fulfill her part of the bargain by serving six years at the PSU to earn the entire \$5,000 bonus. The JAG argued that the applicant is incorrect in her belief that she is entitled to the entire \$5,000 bonus without regard to her unit of assignment as long as she complied with drilling requirements.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 27, 2013, the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within 30 days. The BCMR did not receive a response.

APPLICABLE REGULATIONS

ALCOAST 119/10 was issued on March 17, 2010, and authorized various SELRES bonuses. The applicant, as an E-3 with just two years of prior service, did not meet the criteria for any of the bonuses. However, a prior service enlistment bonus of \$10,000 was offered to members in pay grades E-4 and above and more than seven years, nine months of prior military service who agreed to serve in the SELRES for six years in a critical rate at a critical unit. The list of "critical rates" did not include the applicant's rate, ME, however. The designated "critical units" were PSUs and Maritime Expeditionary Security Squadrons (MSRONS). The same commitment for three years would earn a bonus of \$5,000. The ALCOAST provides that half of the bonus is to be paid upon completion of the first drill and the second half is paid a year later, but entitlement to any bonus payments depends upon the member completing initial training and meeting the participation standards in Chapter 4 of the Reserve Policy Manual.

Chapter 4 of the Reserve Policy Manual states that satisfactory participation is the fulfillment of contractual and training requirements and primarily focuses on the completion of scheduled drills, yearly points toward retirement, and administrative requirements.

Paragraph 3 of Enclosure (7) of COMDTINST 7220.1 states that bonus recoupment action will be initiated if the member fails to perform the required drills and training; if the member leaves her bonus-eligible rating or billet; or if the member separates from the SELRES “for any reason other than death, injury, illness, or other impairment not the result of own misconduct. Separation or termination from the SELRES includes active duty enlistment in the active forces” Paragraph 4 provides that bonuses are recouped on a pro-rata basis for each month of the six-year (72-month) enlistment contract that the applicant did not serve as promise. For example, a reservist who serves only one year in the SELRES but who received a \$6,000 bonus for a six-year contract (which amounts to \$83.33 per month of service) will be entitled to just \$1,000, and any amount in excess of \$1,000 that has already been paid to the member will be recouped.

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 application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in her record, as required under 10 U.S.C. § 1552(b).

2. The applicant asked the Board to correct her record to make the Coast Guard pay her the remaining \$3,736.75 of the \$5,000 bonus that she was promised. 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 the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² 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.”³

3. The JAG argued that the applicant is not eligible to receive the remaining portion of the \$5,000 bonus because she did not serve six years at a critical unit, which is a requirement for the bonus under ALCOAST 119/10 that the Board noted in its previous decision. The JAG argued that she voluntarily chose to move to another state and drill at a non-critical unit, and drilling at a critical unit was required to maintain eligibility for the entire \$5,000 bonus. Moreover, the JAG argued that the Board's order in Docket No, 2013-003 reflected an intent that the applicant satisfactorily serve at a critical unit—the PSU—for six years to receive the \$5,000 bonus.

4. The Board's decision in 2013-003 does not mention that the applicant had left the PSU and so it appears that the Board may have issued the decision without knowing that she had left her “critical unit.” The record now clearly shows that although the applicant agreed to serve at the PSU for six years, she did not do so. She drilled at the unit for only 19 months before moving to another state where she began drilling at an MSU, which is not a critical unit.

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

The Page 7 promising the bonus does not state that payment of the \$5,000 bonus is contingent upon her drilling for all six years at a critical unit, but it cites COMDTINST 7220.1, which she acknowledged having read and understood, and which states that bonus payments will be recouped if the reservist leaves his or her bonus-eligible billet or unit. She also acknowledged on the Page 7 having read and understood the applicable ALCOAST, which states that the bonus is available only to members who enlist in the SELRES for six years and agree to serve in a critical rate at a critical unit. In addition, the Statement of Understanding she signed the same day states that she would be assigned to particular billet at a PSU and required to participate satisfactorily for the first six years. Therefore, and because the applicant served at the PSU for only 19 months before she moved to another state and began drilling at a non-critical unit in her non-critical rating, the Board finds that the applicant is not eligible to receive the remainder of the \$5,000 bonus because she did not serve at a critical unit for six years. She is entitled to a prorated amount.

5. The applicant argued that she is eligible for the entire \$5,000 bonus because the Board's order in Docket No. 2013-003 states, "The Coast Guard shall correct her record to show that she is *eligible* to receive a \$5,000 SELRES prior service enlistment bonus for her enlistment contract dated December 14, 2010, assuming she has met the participation standards set forth in Chapter 4 of the Reserve Policy Manual. The Coast Guard shall pay her *any amount due* as a result of these corrections." (Emphasis added.) The Board disagrees. The Board did not direct the Coast Guard to pay her \$5,000 outright. Instead, the Board's order made the applicant *eligible* for the bonus despite the fact that she was legally *ineligible* for the bonus on the day she enlisted in the Reserve because she was an E-3 (not E-4 or above), did not have more than seven years, nine months of prior military service, and did not hold a critical rating.

6. The Board also directed the Coast Guard to "pay her any amount due" after correcting the applicant's record to show that she was eligible for the bonus when she enlisted despite her ineligibility. The Coast Guard clearly followed this order by correcting her record to make her eligible for the bonus despite her ineligibility because they paid her some bonus money. But when the applicant left the PSU, where she had agreed to serve for six years, she made herself ineligible for further bonus payments. Therefore, the "any amount due" became the prorated amount, which the Coast Guard has paid her. The Board's decision in this regard is consistent with several past decisions in which members have received only prorated portions of their bonuses because sometime after enlisting, they changed rates or units or were discharged or enlisted in a different service.⁴

7. The applicant has not proven by a preponderance of the evidence that the Coast Guard failed to comply with the Board's order in 2013-003 or that she is entitled to additional bonus payments. Therefore, her request should be denied.

⁴ See, e.g., BCMR Docket Nos. 2014-079 (in which the Board was aware that the applicant had made himself ineligible for a SELRES enlistment bonus by accepting an appointment as an officer and so made him "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 his order."); 2009-188 (in which the Board refused to reverse the Coast Guard's recoupment of a SELRES enlistment bonus because the applicant stopped serving in the SELRES when she enlisted in the regular Coast Guard); and 2010-246 (in which the Board refused to reverse the Coast Guard's recoupment of a bonus because the applicant had voluntarily separated before completing his enlistment).

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of ME2 [REDACTED] USCGR, for correction of her military record is denied.

June 5, 2015

