

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-048

FINAL DECISION

Attorney-Advisor:

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 BCMR docketed this case on January 11, 2000, upon receipt of the applicant's completed application.

This final decision, dated September 21, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a chief [REDACTED] pay grade E-7), asked the Board to correct his record by changing an extension of enlistment contract he signed on August 24, 1999, to a reenlistment contract. The correction would entitle him to payment for leave he intended to sell but instead lost on that date.

APPLICANT'S ALLEGATIONS

The applicant alleged that in the summer of 1999, he needed either to reenlist or to extend his enlistment for a third time because it was due to end on September 23, 1999. He alleged that in July his unit's yeoman (personnel specialist) told him that he could extend his enlistment and sell up to 30 of his 89 days of leave. Therefore, on July 21, 1999, he submitted a Career Intentions Worksheet indicating his intention to extend his enlistment for two years and sell 27.5 days of leave. He submitted a copy of this worksheet, which was signed as approved by his command on August 12, 1999. Therefore, on August 24, 1999, he signed the extension contract.

The applicant alleged that after his new extension went into effect in September 1999, the payment for his leave did not arrive. When he inquired into his leave payment on October 4, 1999, he was told that he had lost both the leave

and the payment because only members who reenlist, rather than extend, may sell leave.

VIEWS OF THE COAST GUARD

On July 28, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case.

The Chief Counsel stated that the record supports the applicant's allegation that he was misadvised by his command that he could sell leave upon extending his enlistment. He stated that under Article 7.A.20.a. of the Personnel Manual, members may only sell leave when they reenlist. Therefore, the applicant was not paid for the leave he intended to sell and lost 25 days of annual leave.

The Chief Counsel recommended that the Board void the applicant's extension contract and "allow Applicant to enter into a reenlistment contract effective August 24, 1999." This correction, he alleged, would effectively recredit the applicant with 25 days of leave he lost in the transaction and permit him to sell 27.5 days of leave, as he originally intended.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 31, 2000, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. On August 18, 2000, the applicant responded, stating that he was "in total agreement" with the Coast Guard.

SUBSEQUENT PROCEEDINGS

On August 18, 2000, the Chief Counsel of the Coast Guard sent an e-mail message to the BCMR amending his recommendation. He recommended that the applicant be reenlisted for three years in accordance with the minimum required under regulations. On August 21, 2000, the Chairman wrote to the applicant, advising him that the Chief Counsel had amended his advisory opinion. The Chairman asked the applicant whether he agreed to being reenlisted for three years as of September 24, 1999. On September 7, 2000, the applicant responded, stating that he agreed with the proposed relief.

APPLICABLE LAWS

Article 1.G.2.a. of the Personnel Manual states that members may reenlist "for periods of three, four, five, or six years."

Article 1.G.14.a. states that, upon their request, members may extend their enlistments for "any number of full years not less than two nor greater than six."

Article 7.A.20.a. states that "[e]ach member on active duty, except those listed in paragraph b. below, is entitled to a lump sum leave payment for unused

earned leave accrued to his or her credit on date of discharge, separation from active duty, or the date preceding the effective date of first extension of enlistment regardless of duration, to a maximum career total of 60 days."

Article 7.A.20.b.1. states that "[m]embers of the Regular Coast Guard or Coast Guard Reserve discharged before their enlistment expires for the purpose of enlisting, reenlisting, or accepting an appointment in any Uniformed Service, if continued on active duty" are "not entitled to lump sum payments for unused earned leave on date of discharge, release to active duty, or extension of enlistment."

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 section 1552 of title 10 of the United States Code. The application was timely.

2. The applicant presented substantial evidence proving that the Coast Guard erred by advising him that he could sell 27.5 days of annual leave upon extending his enlistment on August 24, 1999. However, under Article 7.A.20. of the Personnel Manual, he was not entitled to sell leave because the extension he signed on August 24, 1999, was the third extension of his enlistment. The Coast Guard's error has caused the applicant to lose 25 days of leave, for which he has not been paid.

3. Under Article 7.A.20. of the Personnel Manual, members who extend their enlistments for a second or third time and members who are discharged before their enlistments expire for the purpose of reenlisting are not entitled to sell unused earned leave. Therefore, had the applicant been properly advised, he would not have extended his enlistment or reenlisted before the expiration of his enlistment but would have reenlisted for three years on September 24, 1999, upon the termination of his enlistment.

4. Accordingly, relief should be granted by correcting the applicant's record to show that he reenlisted for three years on September 24, 1999.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of _____, USCG, for correction of his military record is hereby granted. His record shall be corrected to show that he was discharged on September 23, 1999, and reenlisted on September 24, 1999, for three years. His two-year extension contract dated August 24, 1999, shall be null and void. The applicant shall be recredited with the leave he lost due to the Coast Guard's error, and he shall be permitted to sell the leave he could have sold upon his discharge and reenlistment in September 1999.

