

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-064

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on February 5, 2013, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 22, 2013, 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 asked the Board to correct his record by either restoring the 19.5 days of earned leave that he lost on October 1, 2012, or by paying him for the 30 days of leave that he attempted to sell when he signed a reenlistment contract on September 5, 2012.¹ He stated that he signed a reenlistment contract on September 5, 2012, and sold 30 days of leave, but that the Coast Guard waited until after the end of the 2012 fiscal year to review the contract and the delay caused him to lose 19.5 days of earned leave because it had not been used before the end of the fiscal year. He also stated that he was not paid for the 30 days of leave that he sold when he signed the September 5, 2012, reenlistment contract because the contract was voided by the Coast Guard after it determined that the applicant was more than 90 days away from his end of enlistment and there had been no other authority for him to sign a reenlistment contract.² The

¹ Whenever a member reenlists, his record automatically shows that he was discharged from his prior enlistment the day before the date of reenlistment. Under 37 U.S.C. § 37(b), a member of the armed forces "who has accrued leave to his credit at the time of his discharge, is entitled to be paid in cash or by a check on the Treasurer of the United States for such leave on the basis of the basic pay to which he was entitled on the date of discharge. ... However, the number of days of leave for which payment is made may not exceed sixty, less the number of days for which payment was previously made under this section after February 9, 1976." This statute is reflected in Article 10.A.1.a. of the Pay Manual, which authorizes upon discharge a lump sum payment of unused leave "not to exceed a career total of 60 days."

² Under 1.B.5.e. of the Coast Guard Military Bonus Programs Manual, under no circumstances will an individual be permitted to extend or re-extend their enlistment or reenlist more than 3 months early for SRB purposes alone. However, a member who must obligate service for some other reason (i.e., transfer, training, advancement, tuition

applicant alleged that he was erroneously counseled regarding his eligibility to reenlist and that he would have used more leave before the end of the fiscal year if he had known that he could not reenlist in September.

In support of his application the applicant submitted a copy of his September 5, 2012, four-year reenlistment contract, which shows that he was selling 30 days of leave. "VOID per CG PSC..." is handwritten on the bottom of the page and signed by a YNC.

The applicant submitted copies of his leave and earnings statement for September and October 2012. The September statement shows that he had a leave balance of 94.5 days. His October statement shows that his balance was 77.5 days and that he had lost 19.5 days of accrued leave.

The applicant also submitted a copy of a September 5, 2012, Page 7 which documents counseling about his eligibility to reenlist. Finally, he submitted a string of Coast Guard emails to and from various personnel stating that the applicant should not have been allowed to reenlist on September 5, 2012, because there had been no reason or authority for him to reenlist on that date.

SUMMARY OF THE RECORD

The applicant submitted a Career Intentions Worksheet on August 27, 2012, indicating that he wished to reenlist on September 5, 2012, and sell 30 days of accrued leave. This worksheet was signed by his Officer in Command. He signed a four-year reenlistment contract on September 5, 2012, and sold 30 days of accrued leave in order to prevent losing any days in excess of 75 days.³

The Coast Guard did not review the applicant's September 5, 2012, reenlistment contract until October 25, 2012, and because this was after the end of the 2012 fiscal year, the applicant lost 19.5 days of accrued leave because it had not been used before the end of the fiscal year.

During the process of approving the applicant's reenlistment contract, the Coast Guard determined that there was no authority for him to reenlist because his EOE was in February 2013 and members are not allowed to reenlist or extend their enlistment more than 90 days before their EOE date. *See* 1.B.5.e. of the Coast Guard Military Bonus Programs Manual.

The record also contains an email from a Chief at the applicant's Servicing Personnel Office (SPO), who stated that errors had been made in processing the applicant's reenlistment and that his office should have caught the invalid reenlistment sooner. The Coast Guard Pay and Personnel Center (PPC) also agreed that the applicant's reenlistment was improperly handled and

assistance, or other obligations as required) may extend, re-extend, or reenlist for a period greater than the minimum required for the purpose of gaining entitlement to an SRB.

³ Coast Guard members could accrue up to 75 days of leave until the end of Fiscal Year 2012. Leave balances must be 60 days or less by September 30, 2012, to avoid loss. Article 5.D.2.3. of the Coast Guard Pay & Personnel Procedures Manual.

stated that the member was not properly counseled regarding his eligibility to reenlist on September 5, 2012.

VIEWS OF THE COAST GUARD

On July 24, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant the applicant's request and adopting the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that the applicant "may or may not have been" directly counseled in error on his eligibility to reenlist, but that the loss of leave would have been avoided if his reenlistment contract had been timely reviewed by his SPO. The PSC recommended that the applicant either receive the 19.5 days of leave that he lost or that he be paid for those 19.5 days.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 29, 2013, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Article 1.B.7.b. of the Coast Guard Military Separations Manual states that Commanding officers are authorized to separate a member three or fewer months before the normal separation date without referring to the Coast Guard Personnel Service Center if the member is going to immediately reenlist.

Article 10.A.1.a. of the Coast Guard Pay Manual states that a member who is discharged from active service under honorable conditions may elect payment for unused accrued leave. Effective February 10, 1976, members may be paid for no more than 60 days.

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 over this matter under 10 U.S.C. § 1552. The application was timely.
2. The applicant alleged that he was erroneously counseled that he was eligible to reenlist on September 5, 2012, and that he lost 19.5 days of accrued leave because of the erroneous counseling. He stated that if he had known that he was not allowed to reenlist then he would have taken more leave before September 30, 2012, so he wouldn't lose the 19.5 days at the end of the fiscal year (October 1, 2012).
3. Article 1.B.7.b. of the Coast Guard Military Separations Manual states that Commanding officers are authorized to separate a member three or fewer months before the

normal separation date without referring to the Coast Guard Personnel Service Center if the member is going to immediately reenlist. In this case, the applicant apparently reenlisted for the sole purpose of selling 30 days of leave. However, there was no authority for him to reenlist because his EOE date was more than 90 days away. Accordingly, the Board finds that the applicant was miscounseled regarding his eligibility to reenlist on September 5, 2012.

4. The JAG stated that the applicant was miscounseled about his eligibility to reenlist and that the Coast Guard would have discovered that he was not eligible to reenlist if it had timely reviewed the applicant's reenlistment contract. Instead, the JAG noted, it waited until after the end of October 2012 to review the September 5, 2012, reenlistment contract, and when the contract was subsequently voided it caused the applicant to lose 19.5 days of accrued leave.

5. Under the Board's rules, the applicant bears the burden of showing that his leave record is erroneous or that he has been unjustly deprived of the opportunity to use leave, and the applicant has met that burden. He alleged that he was erroneously allowed to reenlist on September 5, 2012, and to sell leave, and that the Coast Guard's delay in processing the contract and eventually voiding that contract resulted in him losing 19.5 days of leave. The JAG agreed and the Board agrees. If the applicant had been properly counseled, he would have been told that he was not eligible to reenlist in September 2012 and he would have had the opportunity to use any excess annual leave before the end of the fiscal year.

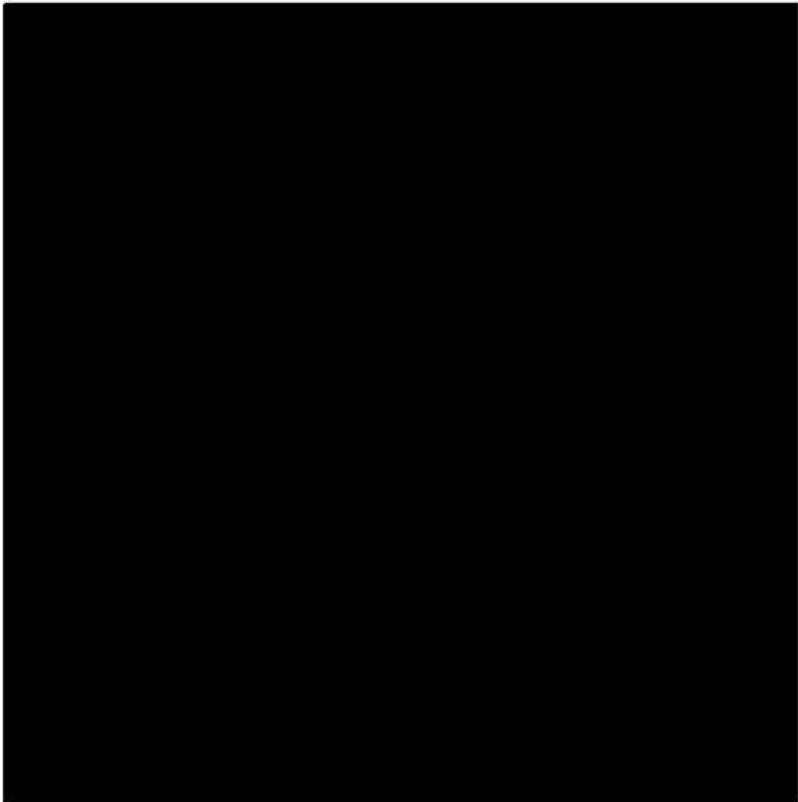
6. Accordingly, relief should be granted by ordering the Coast Guard to restore the 19.5 days of annual leave to the applicant's current leave balance.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [REDACTED] USCG, for correction of his military record is granted. His record shall be corrected by adding 19.5 days of annual leave to his existing leave balance.

November 22, 2013
Date



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* The third member of the Board was unavailable. However, pursuant to 33 C.F.R. § 52.11(b), two designated members constitute a quorum of the Board.