

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2016-02539

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request to amend his leave balance to restore lost days of leave.

RESUME OF THE CASE

The applicant is a currently serving XXXXXX.

On 14 Sep 17, the Board considered and denied his request to amend his leave balance to reflect 120 days, restoring lost leave under the Special Leave Accrual (SLA) authority, finding the applicant had provided insufficient evidence of an error or injustice to justify relief.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the Air Force Board for Correction of Military Records (AFBCMR) Letter and Record of Proceedings at Exhibit E.

On 1 Apr 25, the applicant requested reconsideration of his request to amend his leave balance to restore lost days of leave. At the time of application, lost leave totaled 103.5 days between Oct 14 and Oct 19. The applicant contends after serving in Afghanistan during Operation ENDURING FREEDOM, followed by a short-turn Permanent Change of Station (PCS) at Central Command during Operation INHERENT RESOLVE, combat operations and leadership responsibilities precluded him from taking adequate leave during the 2013 to 2016 timeframe. This was detrimental to his ability to effectively manage a very large leave balance. The applicant further contended he was able to carryover excess leave due to his combat deployment, leading to a 73.5-day "use or lose" leave balance by Oct 15. Following these assignments, the applicant was selected for successive commands. Per the applicant, he took as much leave as feasible but ultimately lost 103.5 days of leave between Oct 14 and Oct 19 due to the significant amount of leave accrued between 2013 and 2016.

The applicant requested his leave balance be restored as he approached retirement, and he contended as an active-duty service member, with nearly 40 years of service, this is the proper course of action. According to the applicant, like many of his fellow service members, combat operations inhibited his ability to take legally prescribed leave for years, leading to a cascading "use or lose" leave situation for an extended period of time. The applicant contended he attempted to recoup lost leave but was denied at the time because he was a general officer. At that time, the applicant spoke to the Secretary of the Air Force, who verbally supported his request; however, her lawyers never let her see his official package. In support of his reconsideration request, the applicant submitted the following new evidence: (1) Leave and Earnings Statements (LES); (2) Lost Leave Summary; (3) Officer Performance Reports for periods Jul 12 through Mar 16; and (4) Military Personnel Data System personnel summary report.

The applicant's complete submission is at Exhibit F.

APPLICABLE AUTHORITY/GUIDANCE

Department of Defense Instruction (DoDI) 1327.06, *Military Leave, Liberty, and Administrative Absence*, dated 16 Jun 09 (Incorporating Change 5, dated 25 Aug 23), Enclosure 2 - *Procedures*:

1. LEAVE

h. Special Leave Accrual for Service Members Assigned to Hostile Fire or Imminent Danger Areas, Certain Deployable Ships, Mobile Units, or Other Duty. In accordance with section 701 of Reference (e) as amended by Reference (s), effective January 1, 2023, Service members assigned under certain conditions are eligible to accumulate and retain leave in excess of normal limits established under paragraph 1.f. of this enclosure. Because SLA often occurs under conditions that qualify the Service member for combat zone tax exclusion (CZTE) or combat zone tax relief under the provisions of DoD 7000.14-R, Volume 7A, Chapter 44 (Reference (j)), the Services must be able to differentiate between tax-excluded leave and taxable leave earned under SLA conditions. Chapter 35 of Reference (j) provides guidance on tax-excluded and taxable leave earned under SLA conditions.

(1) Service members who serve on active duty for a continuous period of at least 120 days in an area in which they are entitled to special pay for duty subject to hostile fire or imminent danger under the provisions of Chapter 10 of Reference (j) may accumulate up to 90 days leave at the end of the fiscal year. Service members not serving in a hostile fire or imminent danger area, but who are assigned to a designated deployable ship, mobile unit, or other similar prescribed duty as determined by the Secretary concerned, or are performing duties designated by the Secretary concerned as a qualifying duty, may accumulate up to 90 days of leave at the end of the fiscal year. Service members described in this paragraph may retain such leave if they receive written authorization from the first officer in the grade above O-6 in their chain of command.

(a) Leave that exceeds 60 days will be lost unless used before the end of the second fiscal year following the fiscal year in which Service members qualified to accumulate up to 90 days leave at the end of the fiscal year.

(b) The situation preventing Service members assigned to such activities from using leave must have been caused by a catastrophe, national emergency and/or crisis or operations in defense of national security. Furthermore, it should be a result of the members' inability to take leave or to reduce their leave balance to 60 days before the end of the fiscal year while being assigned to said activities.

Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs) memorandum, Subject: *Clarification of Policy on Special Leave Accrual*, dated 5 Sep 23 (Excerpt):

The FY23 NDAA and DoDI 1327.06 includes a period of transition from the previous SLA cap of 60 days (above the normal 60-day carryover limit for a maximum total of 120 days) to the new 30-day cap on SLA leave for Service members whose total leave balance exceeded 90 days on December 31, 2022. The maximum transition period authorized by the NDAA expires on September 30, 2026; however, this expiration date represents the maximum transition period authorized.

Department of the Air Force Instruction (DAFI) 36-3003, *Military Leave Program*, dated 7 Aug 24 (Incorporating DAF Guidance Memorandum (DAFGM) 2025-01, dated 5 May 25), Chapter 6 – *Special Leave Accrual*:

6.1. *Overview.* This chapter describes the SLA provisions when deployments or assignments to a hostile-fire or imminent-danger pay area prohibit members from using leave. SLA also applies

when deployments or assignments to designated operational missions at the national level prohibit members from using leave. It provides information on restoring leave lost at the end of the fiscal year, when permitted by Congress.

6.2. *SLA Eligibility.*

6.2.1. Leave in Excess of 60 Days at the End of the Fiscal Year. SLA allows members assigned to hostile fire/imminent danger pay areas for 120 consecutive days or who are otherwise assigned to qualifying duties in an operational mission, as designated by Assistant Secretary of the Air Force for Manpower and Reserve Affairs (SAF/MR), to accumulate leave in excess of 60 days. Furthermore, it should be a result of the member's inability to take leave or to reduce their leave balance to 60 days before the end of the fiscal year while being assigned to said activities.

6.2.2. Members assigned to a non-hostile fire pay and/or non-imminent danger pay area in support of an operational mission who are on Contingency, Exercise, and Deployment orders (and in rare cases, Department of Defense Form (DD Form) 1610, *Request and Authorization for TDY Travel of DoD Personnel* orders) are authorized to retain such leave up to 90 days until the end of the second fiscal year following the fiscal year in which the leave was lost.

6.2.3. Members eligible for (or approved for) SLA are authorized to retain such leave (not to exceed 90 days) until the end of the second fiscal year following the fiscal year in which SLA was lost.

6.2.4. SLA must not be used as a means to authorize the accumulation of leave in excess of 60 days that is a result of members' failure to properly manage their leave balance.

6.2.5. The situation preventing members from using leave must have been caused by a catastrophe, national emergency and/or crisis, or operations in defense of national security.

6.2.6. The member's support of an operational mission in defense of national security for 120 or more consecutive days, whether in a hostile fire or imminent danger area or not, will not automatically qualify a member for SLA.

6.2.7. SLA Transition. A service member with a total leave balance of 90.5 or greater on 31 December 2022, may carry forward into FY24 no more than 60 days of ordinary leave and no more than the number of days of SLA leave the service member had on 31 December 2022. The original date of expiration of the SLA leave will remain unchanged except the portion of SLA leave days that exceed 30 days which will expire no later than 30 September 2026, if not used on or before that date.

6.3. *SLA Not Authorized.* Members are ineligible for SLA when the following precludes using leave (this list is not all-inclusive):

6.3.1. Normal permanent change of station moves and TDY.

6.3.2. Base closures.

6.3.3. Hospitalizations, aeromedical evacuations, quarters, and convalescent leaves.

6.3.4. Details and special working groups.

6.3.5. Attending training exercises, schools or courses, unless they are required for the deployment that resulted in the loss of leave.

6.3.6. Pending separations and retirements.

6.3.7. Workload after return from deployment.

6.3.8. Post-deployment recovery time.

6.3.9. Post deployment/mobilization respite absence.

6.3.10. On alert status.

6.4. *Calculating SLA Lost on 1 October.*

6.4.1. The maximum amount of SLA leave that may be carried forward is the leave balance at the end of the fiscal year following the end of the SLA qualifying period, not to exceed 90 days.

6.4.2. The maximum amount will be reduced to a new level whenever the leave balance drops below the previously set level. If, at any time, the leave balance drops to or goes below 60 days, then there is no longer any SLA protected leave. Therefore, the actual maximum leave that

can be carried forward into succeeding fiscal years is the lowest leave balance achieved following the completion of the SLA duty or the usual 60 days, whichever is greater.

6.4.3. If the SLA qualifying period crosses a fiscal year, then the entire leave balance (not to exceed 90 days) will be carried forward and the leave accrued from the beginning of the new fiscal year through the end of the SLA qualifying period will be added to establish the maximum. Only that portion of a leave balance in excess of 60 days that could not have been taken before the end of the fiscal year because the member was assigned to SLA-qualifying duty will be included in the carryover amount.

6.7. *Exceptions To Policy (ETP)*. Members who believe they are eligible but do not meet the criteria in paragraphs 6.2.1 – 6.2.2 may submit an ETP. Reasons for lost leave should have DAF- or DoD-wide significance. These exceptions will be considered on a case-by case basis and the approval authority resides at AF/A1 or SF/A1 (for USSF personnel).

6.8. *Members not eligible for SLA*. Members not eligible for SLA, for the reasons listed in paragraph 6.3 can request recovery of days lost by submitting a DD Form 149 to the Board for Correction of Military Records (BCMR). See DAFI 36-2603, *Air Force Board for Correction of Military Records*. Applications must clearly establish that an error or injustice by the Air Force or Space Force (for USSF personnel) caused the member's lost leave. If the Board restores leave to current leave account, members must use these days before the end of the current FY.

6.10. *Last In, First Out Leave Accounting*. Leave will be accounted for by crediting it sequentially in the chronological order in which it is accrued. Generally, when used, leave will be charged with the most recently accrued leave charged first. This method is known as Last In, First Out. As an exception, Combat Zone Tax Exclusion (CZTE) leave will be charged first, regardless of when it was earned.

AIR FORCE EVALUATION

AFPC/DPPP recommends granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice.

Case Management System (CMS) processing errors impacted the applicant's SLA since 2015. Protected leave earned in 2020-2021 erroneously expired on 30 Sep 24, so all SLA was lost. SLA in the amount of 26 days should have been carried over from FY24 to FY25; all SLA restored to the record will expire on 30 Sep 26.

AFPC/DPPP recommends restoring 26.0 leave days to the applicant's record – this is the most that can be restored without an exception to policy. At the end of the COVID leave accrual period (FY21), the applicant had 131.0 SLA days. These days exceeded the 120-day cap, so he lost 11.0 days. There were 120.0 protected days that were carried into FY22 and that will expire at the end of FY26 in accordance with the Office of the Assistant Secretary of Defense memorandum, Subject: *Clarification of Policy on Special Leave Accrual*, dated 5 Sep 23, paragraph 3.

No leave has been previously sold. The applicant will be eligible to sell 60 days of leave when he retires.

The complete advisory opinion is at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 Jun 25 for comment (Exhibit I) but received no response.

AMENDED AIR FORCE EVALUATION

In an amended advisory opinion, AFPC/DPPP recommends partially granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. The applicant is requesting restoration of 103 leave days, and AFPC/DPPP recommends restoration of 27 leave days. No leave has been previously sold. The applicant will be eligible to sell 60 days of leave when he retires.

CMS case processing errors impacted the applicant's SLA since 2015. Protected leave earned in 2020-2021 erroneously expired on 30 Sep 24, so all SLA was lost. SLA in the amount of 27.0 days should have carried over from FY24 to FY25; all SLA restored to the record will expire on 30 Sep 26. The applicant lost 91.0 days between 2013 and 2025. His LESs indicate the applicant lost 107.0 days; however, 16.0 days were reported after the end of the fiscal year, so those 16 days were not actually lost.

There are 20.0 days non-restorable leave, primarily due to the 120-day SLA carryover limit per DAFI 36-3003, paragraph 6.4.1. Eleven (11) days were lost due to 120-day SLA cap in 2021. In accordance with DAFI 36-3003 6.4.1: The maximum amount of SLA leave that may be carried forward is the leave balance at the end of the fiscal year following the end of the SLA qualifying period, not to exceed 90 days (120 days as of 2021). Seven and one half (7.5) days were restored in 2015, lost at the start of FY16, and restored later in 2016. The 7.5 days were restored twice; the second restoration corrected the original loss of 7.5 days on 1 Oct 16. One half day (0.5) was restored in 2021 for FY19. This exceeded the 120-day cap per DAFI 36-3003 6.4.1. One (1) day was lost that cannot be accounted for because the record overwrote information due to processing that occurred at the beginning of the fiscal year. Mathematically, this day exists but it is impossible to tell exactly where this day can be counted.

There are 27 days of leave which can be restored. For 2019, 10.0 days can be restored. The applicant's SLA balance at the end of FY19 should have been 93.0 days but the system did not carry forward 33 days. Twenty-three and one half (23.5) days from 2019 were restored in 2021, leaving 10.0 days to restore in 2019. One half day (0.5) was restored in excess. From 2021, 11.0 days can be restored. The applicant's SLA balance at the end of FY21 would have been 131.0 days but the 120-day cap prevented 131 days from carrying over ($131 - 120 = 11.0$) per DAFI 36-3003, paragraph 6.4.1. In 2023, 1.0 leave day can be restored. This day was not reported until FY22. Leave restoration has not been completed since 2021; therefore, this discrepancy has not been resolved. Five (5.0) days can be restored for 2024. The applicant's SLA balance at the end of FY24 should have been 65.0 days but 5.0 days were lost. A total of 91.0 days have been lost from 2013-2025. Forty-four (44.0) have been restored. Twenty-seven (27) additional days can be restored for a total of 71.0 days.

Regarding leave expiration, 27.0 days can be restored as of 1 Oct 24. This is because, on 31 Dec 22, the applicant's leave balance was 115.5 days, over the 90-day cap ($115.5 - 90.0 = 25.5$). See DAFI 36-3003, paragraph 6.2.7. SLA Transition below. Note: 1.5 days would have expired as of 1 Oct 25; however, those days were used prior to 30 Sep 25, so are not lost. A maximum of 25.5 leave days can be carried into FY26, but 10 SLA days were used in FY25. As of 1 Oct 25, 17.0 SLA days can be carried forward into FY26 per DAFI 36-3003, effective 7 Aug 24, paragraph 6.2.7. SLA Transition: A service member with a total leave balance of 90.5 or greater on 31 Dec 22, may carry forward into FY24 no more than 60 days of ordinary leave and no more than the number of days of SLA leave the service member had on 31 Dec 22. The original date of expiration of the SLA leave will remain unchanged except the portion of SLA leave days that exceed 30 days which will expire no later than 30 Sep 26, if not used on or before that date.

The analysis found reporting discrepancies. The analysis found 16.0 days of "Late Leave" (leave taken in one FY but reported in the next). These days were used but initially recorded as lost, creating a discrepancy in what was seen on the applicant's Oct LES. After further review, one additional day, originally counted as used was found, resulting in 287 leave days, not 288, used between 2013 and 2025.

The complete amended advisory opinion is at Exhibit J.

APPLICANT'S REVIEW OF AMENDED AIR FORCE EVALUATION

The Board sent a copy of the amended advisory opinion to the applicant on 12 Dec 25 for comment (Exhibit K) but received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of the amended AFPC/DPPP advisory opinion and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the in-depth audit conducted by AFPC/DPPP provides a detailed accounting of the applicant's regular leave and SLA earned and used, as well as restoration of lost leave via CMS processing, which is sufficient to justify granting a portion of the applicant's request. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board finds no basis to recommend granting that portion of the applicant's request. Further restoration of lost leave is prohibited by DoD policy, which is outside AFBCMR authority. Therefore, the Board recommends correcting the applicant's records as indicated below.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show twenty-seven (27) days of leave to be restored to his current leave balance.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2016-02539 in Executive Session on 26 Jan 26:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 14 Sep 17.
- Exhibit F: Application, DD Form 149, w/atchs, dated 1 Apr 25.
- Exhibit G: Documentary evidence, including relevant excerpts from official records.
- Exhibit H: Advisory Opinion, AFPC/DPPP, w/atchs, dated 17 Jun 25.
- Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Jun 25.
- Exhibit J: Amended Advisory Opinion, AFPC/DPPP, w/atchs, dated 12 Dec 25.
- Exhibit K: Notification of Amended Advisory, SAF/MRBC to Applicant, dated 25 Dec 25.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR