

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03007

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Ten and one half (10.5) days of leave lost on 1 October 2022 be restored to his current leave account.

APPLICANT'S CONTENTIONS

He was deployed for 192 days in Fiscal Year 2022 (6 October 2021 to 15 April 2022). His deployment was shortly followed by a permanent change of station (PCS). He believes denying his request for special leave accrual (SLA) in November 2022, was an error that created an injustice to his record. The request was made in advance of the fiscal year closeout (24 August 2022 [sic]), with no indication that his documentation was insufficient other than a request for additional signatures.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force lieutenant colonel (O-5).

According to Special Order XXX and a Defense Travel System *Per Diem and Reimbursable Expenses report*, provided by the applicant, he was deployed from 6 October 2021 to 15 April 2022.

According to AF Form 899, *Request and Authorization for Permanent Change of Station (PCS) – Military*, the applicant was authorized a PCS from XXX to XXX with a report no later than date of 31 July 2022.

On 25 August 2022, a Case Management System (CMS) request was opened. The applicant requested SLA for 10.5 days of leave. On 8 November 2022, his CMS request was denied. It was determined the applicant's justification for lost leave was invalid according to Department of the Air Force Instruction (DAFI) 36-3003, *Military Leave Program*, paragraph 5.8. In addition, it was noted the applicant did not exhaust all means to prevent the loss of 10.5 leave days during fiscal year 2022.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibits C and F.

AIR FORCE EVALUATION

AFPC/DPMSSM (Special Programs) recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. Although the applicant meets some eligibility requirements for SLA, he annotated the following reasons as justification for not being able to take leave: PCS; workload after return from deployment; and post deployment/mobilization respite absence (PDMRA). These reasons are ineligible reasons for SLA in accordance with DAFI 36-3003, paragraph 5.

In accordance with DAFI 36-3003, SLA eligibility is 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 more or members not serving in a hostile fire or imminent danger area, but who are assigned to qualifying duties, as designated by SAF/MR, to accumulate leave in excess of 60 days. 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. In assessing whether or not a member has exhausted all means to reduce their leave balance to 60 days before the end of the fiscal year, commanders should assess the entire fiscal year, including the time prior to and after the deployment. (T-1).

5.2.2. Members who serve on active duty while entitled to hostile fire/imminent danger pay for a continuous period of at least 120 days and members serving in a "qualifying duty" as designated by SAF/MR are authorized to retain such leave (not to exceed 120 days) until the end of the third fiscal year following the fiscal year in which SLA was lost. (T- 1).

5.2.3. Members assigned to a non-hostile fire pay and/or non-imminent danger pay area in support of a contingency operation who are on Contingency, Exercise, and Deployment (CED) orders (and in rare cases, DD Form 1610, *Request and Authorization for TDY Travel of DoD Personnel*, orders) are authorized to retain such leave up to 120 days until the end of the second fiscal year following the fiscal year in which SLA was lost. (T-1).

5.8. Members are ineligible for SLA when the following precludes using leave (this list is not all-inclusive): normal permanent change of station moves and TDY; base closures; hospitalizations, aeromedical evacuations, quarters, and convalescent leaves; details and special working group; research requirements or attending training exercises, schools, or courses, unless they are required for the deployment that resulted in the loss of leave; pending separations and retirements; workload after return from deployment; post-deployment recovery time; PDMRA.

5.9. Members not eligible for SLA, for the reasons listed in paragraph 5.8, can request recovery of days lost by submitting a DD Form 149 to the Air Force Board of Correction of Military Records. Applications must clearly establish that an error or injustice by the Air Force caused the member's lost leave.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 26 January 2023 for comment (Exhibit D), and the applicant replied by letter dated 26 January 2023. In his response, the applicant contended the advisory opinion accurately cites AFI 36-3003, paragraph 5.8., listing some reasons that would not ordinarily justify SLA. However, the opinion gives no consideration or analysis to the situation when several of these factors aggregate to interfere with normal leave usage. Overall, in fiscal year 2022 he was deployed for 192 days. If the board is willing to give any credit or understanding the PDRMA for his PCS from XXX, then 58.36 percent of the year, leave was not an option. The fundamental error lies in reading paragraph 5.8

as a limitation on paragraph 5.2.3. Paragraph 5.2.3 is clear: as a deployer to a contingency operation on CED orders, he is authorized to retain the leave for two additional fiscal years. By citing the limitations in paragraph 5.8., the organization overlooked the obvious. The primary reason he was unable to take leave was not for any of the reasons listed in paragraph 5.8. He was unable to take leave due to being deployed for 192 days of the fiscal year. Denying his SLA request (which was approved by his commander) under the limitations listed in paragraph 5.8. was an error, because paragraph 5.8 does not apply as a limitation to paragraph 5.2.3. Only a T-1 level authority can override SLA for a member with a qualifying deployment. If the board finds that paragraph 5.8 limits SLA for deployers under 5.2.3, it was still an injustice to deny SLA because the combination of multiple factors was not considered. This is an injustice to a deployer who was faced with a combination of circumstances making it difficult to use his entitlement in a very compressed timeline. Even if the board finds full SLA authority is not appropriate, please also consider restoration until the end of the current fiscal year under paragraph 5.9.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

AFPC/DPMSSM (Special Programs) reviewed the applicant's response to their initial advisory and maintains their original recommendation to deny relief. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. Although the applicant meets some eligibility requirements for SLA, AFPC/DPMSSM annotated the following reasons as justification for not being able to take leave: PCS; workload after return from deployment; and PDMRA. These are ineligible reasons for SLA in accordance with paragraph 5.8.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 17 May 2023 for comment Exhibit D) and on 22 May 2023, the applicant indicated he would not submit a response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice and finds a preponderance of the evidence does not substantiate the applicant's contentions. The evidence indicates the applicant did not qualify for SLA. However, according to DAFI 36-3003, paragraph 5.9., members not eligible for SLA may request restoration of lost days by submitting an application to the Board. Following a review of the applicant's submission, the Board determined the applicant did not clearly establish an error or injustice by the Air Force caused his lost leave. In this respect the Board notes the applicant did not exhaust all means to reduce his leave balance to 60 days before the end of the fiscal year. When he initially requested SLA on 12 August 2022, he had until 30 September 2022 to use the 10.5 days of leave. Accordingly, the Board recommends against correcting the applicant's records.
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 Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

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-2022-03007 in Executive Session on 17 August 2023:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 16 November 2022.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPMSSM, dated 25 January 2023.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 January 2023.
Exhibit E: Applicant's Response, w/atchs, dated 26 January 2023.
Exhibit F: Advisory Opinion, AFPC/DPMSSM, dated 27 April 2023.
Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 17 May 2023.
Exhibit H: Applicant's Response, dated 22 May 2023.

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.

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Board Operations Manager, AFBCMR