

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-03151

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

Seventeen (17) days of leave lost on 1 October 2022 be restored to his current leave account and he be granted an extension to use the 17 days in Fiscal Year (FY) 2023 and 2024.

### APPLICANT'S CONTENTIONS

He received a short-notice of a 365-deployment on 1 March 2021. His Report No Later Than Date (RNLTD) was scheduled for 15 June 2021, and he was required to attend three weeks of pre-command/pre-deployment training prior to the deployment. During the year-long deployment, his Wing Commander allowed Group Commanders to take two weeks of leave (mid-tour).

In support of the applicant's appeal, he provided a letter of concurrence, signed 14 October 2022, from the xxx regarding the applicant's request for SLA.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a currently serving Air Force colonel (O-6).

The applicant was deployed to xxx from 13 June 2021 to 13 June 2022.

According to Special Order xxx, that was provided by the applicant, he was deployed to xxx on 9 May 2021 for a period of 365 days.

According to Request and Authorization for Change of Administrative Orders, that was provided by the applicant, the order was amended to reflect a proceed on or about date of 13 June 2021 rather than 9 May 2021.

According to AF Form 899, *Request and Authorization for Permanent Change of Station (PCS) – Military*, dated 7 April 2022, the applicant was authorized a PCS from xxx to xxxxxx with a RNLTD of 15 July 2022.

According to a Case Management System Report, opened on 17 October 2022, the applicant requested SLA. In November 2022, his case was denied. It was determined that the applicant's justification for lost leave was invalid per paragraph 5.8 of DAFI 36-3003. Also, the denial was due to the applicant not exhausting all means to prevent the loss leave during FY22.

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

### AIR FORCE EVALUATION

AFPC/DPMSSM recommends partially granting the application for 16.5 days lost leave. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. The applicant meets eligibility requirements for SLA; the applicant was on a 365 deployment to xxx and returned in June 2022 of the FY. The applicant used a total of 21 days of leave in FY22; the 365-deployment resulted in the applicant's inability to reduce leave balance to 60 days or less by the end of the FY.

Per DJMS, below is based on how many days of leave the applicant used:

Month	Used	New Balance	Leave Lost	Use/Lose
January 2022	14	72.0		23.5
February 2022		74.5		
March 2022		77.0		
April 2022		79.5		
May 2022		82.0		
June 2022		84.5		
July 2022		87.0		
August 2022		89.5		
September 2022	21	85.0		16.5
October 2022	2.5	71.0	16.5	30.0
November 2022	2	71.5		28.0
December 2022		74.0		
January 2023		76.5		

IAW DAFI 36-3003, dated 24 August 2020

## 5.2. SLA Eligibility.

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

5.8.1. Normal permanent change of station moves and TDY.

5.8.2. Base closures.

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

5.8.4. Details and special working groups.

5.8.5. Research requirements, or attending training exercises, schools, or courses, unless they are required for the deployment that resulted in the loss of leave.

- 5.8.6. Pending separations and retirements.
- 5.8.7. Workload after return from deployment.
- 5.8.8. Post-Deployment recovery time.
- 5.8.9. Post deployment/mobilization respite absence.
- 5.9. Members not eligible for SLA. 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 Board of Correction of Military Records (BCMR). See AFI 36-2603. Applications must clearly establish that an error or injustice by the Air Force 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.

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) but has received no 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 the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPMSSM and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided Special Order xxx, Request and Authorization for Change of Administrative Orders xxx and a letter of concurrence from the Command Surgeon, xxx, signed 14 October 2022, which is sufficient to justify granting the applicant's request to restore 16.5 days of leave to his current leave account rather than 17 days of leave. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant's records as indicated below.

## **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that sixteen and a half (16.5) days of leave be restored to his leave account commencing 2 October 2023.

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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-03151 in Executive Session on 7 March 2023:

- , Panel Chair
- , Panel Member
- , Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 2 December 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.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

**X**

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Board Operations Manager, AFBCMR