

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00349

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Nine (9) days of leave be restored to his leave account.

APPLICANT'S CONTENTIONS

Prior to submitting his terminal and permissive leave paperwork on 27 Jul 22, he discussed his use/lose leave situation with finance on at least three occasions. Each time he was told those 9 days of use/lose would carry over into the new Fiscal Year (FY) due to the COVID Special Leave Accrual (SLA) and his deployment. Finance instructed him on what days to put for his leave. His permissive leave was approved on 29 Jul 22 and his terminal leave was approved by finance on 18 Aug 22. After realizing he lost nine days of leave, he reached out to finance on numerous occasions to find out what happened. After over three weeks of not getting any information, he finally received an email on 19 Jan 23 stating this was an "oversight" with finance. He did what finance told him to do with regards to his leave, verifying it numerous times due to the confusing SLA guidance. The fact he lost this leave was due to finance giving him bad information with regards to the appropriate time frame for his terminal leave. This leave restoration will ensure he is not charged excess leave without pay due to bad information provided to him by his local finance office.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force master sergeant (E-7).

According to DD Forms 988, *Leave Request/Authorization*, dated 29 Jul 22 and 1 Aug 22, provided by the applicant, he took leave during the following periods in FY 22:

<u>Dates</u>	<u>Number of Days</u>
18 Sep 22 – 7 Oct 22 (Permissive)	20
8 Oct 22 – 31 Jan 23 (Terminal)	116

The remaining relevant facts pertaining to this application are described in the memorandum prepared by the Air Force Office of Primary Responsibility.

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

AIR FORCE EVALUATION

AFBCMR Docket Number BC-2023-00349

AFPC/DPMSSM, 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. The applicant was instructed on how to submit their correct amount of leave for retirement but unfortunately lost nine days of use/lose leave.

IAW DAFI 36-3003, *Military Leave Program*, dated 23 Feb 23:

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, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552*, to the Board of Correction of Military Records. See AFI 36-2603, *Air Force Board for Correction of Military Records*. 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. (T-1).

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

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The Board sent a copy of the advisory opinion to the applicant on 9 Aug 23 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. 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 nine (9) days of lost leave be restored to his leave account commencing 1 Oct 22.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-00349 in Executive Session on 27 Sep 23:

- Work-Product Panel Chair
- Work-Product Panel Member
- Work-Product Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 22 Jan 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPMSSM, dated 9 Aug 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 9 Aug 23.

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.

3/25/2024

X Work-Product

Work-Product
 Board Operations Manager, AFBCMR
 Signed by: Work-Product