

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS


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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 1999-107

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**FINAL DECISION**

 Chairman:

This is the second proceeding by this applicant under the provisions of section 1552 of title 10, and section 425 of title 14, United States Code. The proceeding was commenced on April 28, 1999, upon the Board's receipt of the applicant's request for correction.

This final decision, dated March 9, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**RELIEF AWARDED IN FIRST PROCEEDING**

The first proceeding by this applicant was docketed as BCMR No. 35-97. The majority opinion of the Board in this proceeding was approved by the Deputy General Counsel on March 4, 1998. The Board (1) directed the special OER removed for January 1, 1995 to April 14, 1995 and replaced with a continuity report, (2) ordered the applicant returned to active duty at a reasonable date and time, and (3) directed that the applicant receive back pay and allowances. The applicant was restored to active duty with no break in service on October 1, 1998.

**RELIEF REQUESTED IN SECOND PROCEEDING**

On February 26, 1999, the applicant asked the Board to recalculate the leave that should have been credited to his account. He believed he was entitled to the 56.5 days sold prior to his retirement on July 1, 1997, and 37.5 days from that date until his return to active duty on October 2, 1998, for a combined total of 94 days of leave. On April 5, 1999, he was advised by the BCMR that he must file a new application for relief for these changes.

On April 28, 1999, the Board received such an application. The applicant asked to have his leave account increased by 34 days, and he asked to be allowed to liquidate that amount over three years. He alleged that after he returned to active duty on October 2, 1998, his leave balance was reduced to 60 days, in alleged violation of section 7-A-15 of the Personnel Manual which authorizes a member to carry "in excess of 60 days leave."

### VIEWS OF THE COAST GUARD

On December 27, 1999, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that relief be denied in this case.

The Chief Counsel said that the applicant was entitled to a lump sum leave payment for unused accrued leave of 56.5 days, when he retired from active duty on July 1, 1997. After his retirement was voided as a result of the Board's order in the first proceeding, he returned to active duty on October 1, 1998. The Chief Counsel stated that the Coast Guard Human Services & Information Center (HRSIC) notified the applicant that his leave payment would be recouped and his leave account recalculated.

The Chief Counsel said that HRSIC recouped the 56.5-day leave payment and credited the applicant with an additional 3.5 days accrued leave for a total of 60 days of leave. He said that the applicant, by contrast, calculated that he was entitled to a credit of 37.5 days, based on 15 months of separation from the Coast Guard times 2.5 days of leave per month, for a total of 94 days of leave.

The Chief Counsel declared that HRSIC's calculation was the correct one because it was based on "the proper application of Article 7.A.15." of the Personnel Manual. Article 7.A.15.a. states that

[e]arned leave may exceed 60 days during a fiscal year, but must be reduced to 60 days on the first day of the next fiscal year except as outlined in paragraphs b. through d. below. The amount so reduced is irrevocably lost without compensation. (Emphasis added.)

According to the Chief Counsel, the exceptions apply to certain members serving in an area subject to hostile fire; certain members serving aboard a ship or aircraft; and other duty that prevents a member from using leave, such as a national emergency. The Chief Counsel declared that the applicant's "factual situation is not contemplated" in any of the three paragraphs of exception.

The Chief Counsel stated that "34 days of leave were not credited to Applicant because of the proper application of Article 7.A.15."

The Coast Guard provisions, he said, reflect federal law. Title 10, section 701(b), United States Code, provides that "[e]xcept as provided in subsection (f) and subsection (g), a member may not accumulate more than 60 days' leave." None of these exceptions apply to this case, so the Chief Counsel said that the Board should find that the applicant's treatment correctly reflects federal law and Coast Guard policy. (Subsections (f) and (g) contain the Coast Guard exceptions plus duty in support of a contingency operation and for members in a missing status.)

The Chief Counsel concluded his advisory opinion by saying that the applicant "is not entitled to have 34 days of 'lost leave' credited to his leave account based on either a finding of legal error or injustice."

### RESPONSE OF APPLICANT TO COAST GUARD VIEWS

On January 4, 2000, the Board sent a copy of the views of the Coast Guard to the applicant and notified the applicant that he could submit a response to the Coast Guard's views within 15 days of the notification. On January 11, 2000, the Board granted the applicant a 30-day extension, until February 18, 2000, of the deadline for responding to the Coast Guard views.

The applicant's response was received on February 10, 2000. He repeated his plea for relief, taking issue with the Coast Guard's assertion that others have lost leave "for reasons more deserving than the facts of this case."

### FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and of the Coast Guard, the military record of the applicant, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant requested an oral hearing on this matter. The Chairman considered the request under section 52.31 of the Board's rules and recommended disposition without a hearing. The Board concurred in this recommendation.

3. The applicant asked the Board to recalculate the leave that should have been credited to his leave account. He alleged that he was entitled to recoup the 56.5 days credited to his account before his 1997 retirement plus 37.5 days for his 15 months of retirement, for a total of 94 days of leave. He believed that he was entitled to 34 days of leave, the difference between 94 days and the 60 days he was credited by the Coast Guard.

4. The applicant is not entitled to the additional 34 days. Article 7-A-15 of the Personnel Manual limits, subject to a few exceptions that are not applicable in this case, earned leave to 60 days during a fiscal year, which means that the amount that can be carried over is limited to 60 days. "Earned leave," according to the Manual, "may exceed 60 days during a fiscal year, but must be reduced to 60 days on the first day of the ensuing fiscal year. . . The amount so reduced is irrevocably lost without compensation. . . . Monetary compensation of accrued leave in excess of 60 days is not authorized."

5. The applicant has also not established that the Coast Guard committed an injustice in denying him the additional 34 days leave.

6. The Coast Guard regulation reflects federal law. A provision of 10 U.S.C. § 701(b) provides that, with limited exceptions, "a member may not accumulate more than 60 days' leave."

7. Accordingly, the application to correct the applicant's record should be denied.

[ORDER AND SIGNATURE ON FOLLOWING PAGE]

**ORDER**

The application to correct the military record of  
JSCG, is denied.

