

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 2000-046

FINAL DECISION

Chairman:

This is a proceeding under section 1552 of title 10 and section 425 of title 14 of the United States Code. The proceeding was docketed on January 7, 2000, upon the BCMR's receipt of the applicant's request for correction and upon the receipt of his military records.

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

REQUESTED RELIEF

The applicant, a retired [REDACTED] pay grade E-6), asked the Board to direct the Coast Guard to pay him for 24.5 days of leave that were "lost due to misinformation" from his unit yeoman.

The alleged misinformation was the statement that he would be paid for all the leave he had earned upon his date of retirement (December 1, 1999). The applicant alleged specifically that the yeoman erroneously failed to tell him that leave in excess of 60 days (24.5 days) would be lost prior to his retirement at the beginning of the new fiscal year.

On September 30, 1999, the applicant had an end-of-the-fiscal year balance of 86.5 days.¹

APPLICABLE LAW

Public Law 93-344

Service members are allowed to carry over only 60 days of leave into a new fiscal year, subject to an exemption for special duty.

¹ The calculations are drawn from the applicant's December 15, 1999 leave and earnings statement.

Coast Guard Personnel Manual, Article 7.A.15.a.

"Earned 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 paragraph b. through d. below.² The amount so reduced is irrevocably lost without compensation."

VIEWS OF THE COAST GUARD

On July 28, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the requested relief be denied, on the ground that there was no error or injustice.

The Chief Counsel stated that the Board lacks the authority to supercede Public Law 93-344, the Congressional Budget and Impoundment Control Act, which limited to 60 the number of days of leave that Coast Guard members could carry over to the next fiscal year. He said that on October 1, 1999, fiscal year 2000 began, and applicant's October Leave and Earnings Statement (LES) accurately reflected that the applicant had lost 24.5 days of leave.

The Chief Counsel also argued that the Board lacked jurisdiction over this case. "Applicant," he said, "makes a monetary claim against the government that does not implicate the authority of the BCMR."

RESPONSE OF THE APPLICANT

On July 31, 2000, the Board sent a copy of the advisory opinion to the applicant. He was invited to submit a response to the views of the Coast Guard within 15 days of their receipt. No response was received from the applicant.

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 over this matter pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The Chief Counsel's argument that the Board lacks jurisdiction because the applicant's allegation "is in the nature of a claim, not a record correction" is without merit. The applicant alleged an error or injustice and asked for a change in his leave record.

² Paragraphs (b), (c) and (d) are inapplicable to this case.

3. According to an Act of Congress and a Coast Guard regulation (see citations above), the earned leave of a Coast Guard member may exceed 60 days during a fiscal year, but must be reduced to 60 days on the first day of the next fiscal year.

4. In a limited number of cases, the maximum leave limit is larger (90 days), but the applicant did not qualify for any of these exemptions.

5. Accordingly, the applicant did not establish that the Coast Guard committed any error or injustice in reducing the earned leave that he could carry over from FY 1999 to FY 2000 by 24.5 days.

6. Therefore, the application should be denied.

[ORDER AND SIGNATURES ON SUCCEEDING PAGE]

ORDER

The application of
denied.

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