

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2001-086**

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**FINAL DECISION**

**[REDACTED] Deputy Chair:**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. On May 22, 2001, the BCMR received and docketed the applicant's request for correction.

This final decision, dated March 21, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a former [REDACTED] in the Coast Guard Reserve, asked the Board to order the Coast Guard to pay him for 6.5 days of accrued annual leave that he was unable to use or sell prior to his discharge because of an administrative error and erroneous counseling by the Coast Guard.

The applicant alleged that on March 12, 2001—58 days before the end of his three-year active duty contract on May 7, 2001—he met with his Personnel Reporting Unit (PERSRU) and completed a Career Intentions Worksheet. On the worksheet, he indicated that he wanted to sell 42.5 days of accrued annual leave. The applicant alleged that the PERSRU examined his records and told him that he could sell the leave. Therefore, the applicant did not take terminal leave and continued to serve on duty.

The applicant alleged that 14 days before the end of his contract, his PERSRU informed him that he would not be allowed to sell more than 22 days of leave. He could not sell all 42.5 days of his accrued leave because the law does not permit a member to sell more than 60 days of leave, and the applicant had sold 38 days of leave when he left the Army at the end of a two-year stint in 1989.

The applicant alleged that his command permitted him to go on terminal leave at that point, but he still went to work to finish necessary tasks and ease the transition for his relief. He sold 22 days of leave, but was unable to sell or use 6.5 days of leave prior to his discharge. The applicant alleged that if his PERSRU had properly evaluated his entitlement to sell leave or had timely processed the paperwork through the Coast Guard Personnel Command (CGPC), he would have been able to use those 6.5 days of leave to ease his transition to civilian life.

In support of his allegations, the applicant submitted a copy of his Career Intentions Worksheet, dated March 12, 2001, which shows that he asked to sell 42.5 days of leave. He also submitted a copy of his Army discharge form, DD 214, which shows that he sold 38 days of leave upon his separation in 1989.

### **VIEWS OF THE COAST GUARD**

On September 14, 2001, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternative relief.

The Chief Counsel argued that the law does not permit the Coast Guard to reimburse the applicant for another 6.5 days of leave because he has already sold the maximum number of days of leave (60) permitted by law. 37 U.S.C. § 501; Personnel Manual, Article 7.A.1. However, the Chief Counsel stated, Coast Guard regulations permitted the applicant's command, when it discovered the PERSRU's error, to extend the applicant's contract for another 6 days, so that he would receive an extra 6 days of active duty pay and allowances. He stated that the applicant's command probably was unaware of this administrative solution to the problem. He recommended that the Board correct the applicant's record by changing the final day of his active duty contract from May 7, 2001, to May 13, 2001. He stated that the 6 days' extra pay and allowances the applicant would receive as a result of this correction are actually a bit more than what he would have received if he had been allowed to sell the 6.5 days of leave.

The Chief Counsel attached to his advisory opinion a memorandum on the case prepared by CGPC, which confirmed the applicant's allegations and also recommended that the Board grant the proposed alternative relief.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On September 18, 2001, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. No response was received.

### **APPLICABLE LAW**

Under 37 U.S.C. 37(b), a member of the armed forces "who has accrued leave to his credit at the time of his discharge, is entitled to be paid in cash or by a check on the Treasurer of the United States for such leave on the basis of the basic pay to which he was entitled on the date of discharge. ... However, the number of days of leave for which payment is made may not exceed sixty, less

the number of days for which payment was previously made under this section after February 9, 1976."

### FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction over this matter pursuant to the provisions of 10 U.S.C. § 1552. The application was timely.
2. The Chief Counsel admitted that the Coast Guard erred in advising the applicant that he could sell 42.5 days of accrued annual leave when, under 37 U.S.C. § 501, he was legally entitled to sell no more than 22 days of leave because he had previously sold 38 days of leave upon his separation from the Army.
3. The applicant asked to be paid for 6.5 days of leave. However, this is not permissible under 37 U.S.C. § 501.
4. The Chief Counsel indicated that upon discovery of the PERSRU's error, the applicant's command could have and should have extended his contract by another 6 days. He recommended that the Board grant relief by extending the applicant's contract for 6 days.
5. The applicant must bear some of the blame for the administrative mistake at issue in this case because he did not mention to his PERSRU that he had previously sold 38 days of leave upon his discharge from the Army. However, the PERSRU also erred by not asking the applicant if he had previously sold leave, and the Coast Guard erred by not processing the applicant's request to sell leave in a timely manner. In light of these errors and the Chief Counsel's recommendation, the Board finds that it would be in the interest of justice to extend the applicant's contract by 6 days so that he will receive back pay and allowances.
6. Accordingly, the alternative relief proposed by the Chief Counsel should be granted.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

**ORDER**

The application of former \_\_\_\_\_, USCGR, for correction of his military record is granted as follows:

The Coast Guard shall amend his Extended Active Duty contract and DD 214 to show that he was separated from the service on May 13, 2001, instead of May 7, 2001.

The Coast Guard shall pay him any back pay and allowances he may be due as a result of this correction.

