

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-131

FINAL DECISION

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. The BCMR docketed the applicant's request for correction on July 5, 2002.

This final decision, dated March 13, 2003, 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 asked the Board to order the Coast Guard to pay him for 20 days of annual leave. He alleged that during his last six months in the service, he took 20 days of leave, but the days should have been considered as days of administrative absence. He alleged that under Articles 7.A.10.a.4. and 12.C.1.f. of the Personnel Manual and paragraph 4.c. of COMDTINST 1900.2, he should have been counseled about the Transition Assistance Program (TAP), under which he could have taken an administrative absence in lieu of annual leave. However, he alleged, he was not timely counseled about TAP and so took 20 days of annual leave instead of requesting an administrative absence. As a result, he was not able to sell those 20 days back to the government upon his retirement.

The applicant submitted a sworn statement from his supervisor stating that "if [the applicant] had applied for the 20-day period of administrative absence authorized under PERSMAN 7.A.10.a.4., PERSMAN 12.C.1.f., and COMDTINST 1900.2, I know of no reason such a request would not have been granted as a matter of routine."

VIEWS OF THE COAST GUARD

On November 26, 2002, the Chief Counsel of the Coast Guard recommended that the Board grant relief. The advisory opinion of the Chief Counsel, including an attached memorandum on the facts of the case prepared by the Coast Guard Personnel Command, is attached to this final decision below.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 2, 2002, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond. The applicant responded on December 13, 2002, stating that he agreed with the recommendation.

APPLICABLE LAW

Article 12.C.1.f. of the Personnel Manual provides that chief warrant officers (CWOs) may, under the TAP provisions in COMDTINST 1900.2 and with their commands' permission, take up to 20 "permissive temporary duty" days "for activities related to transition or relocation" prior to retiring.

Article 7.A.10. of the Personnel Manual provides that commanding officers may authorize members to take "administrative absences" for a variety of purposes, including to "[a]llow retiring and involuntarily separated members time to participate in pre-separation job search and house hunting activities prior to separation." Art. 7.A.10.a.4.

Commandant Instruction 1900.2 contains the rules for the TAP. Paragraph 5.a. requires that every member receive pre-separation counseling about TAP benefits approximately 180 days before separation and at least 90 days prior to separation. Enclosure (4) to the instruction states that one of the TAP benefits is pending retirees eligibility to take up to 10 days of "permissive temporary duty," which is often called "permissive TAD."

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 Board agrees with the Chief Counsel that the preponderance of the evidence in the record indicates that the applicant was not timely counseled

about his ability to take 20 days of permissive TAD prior to his retirement, in lieu of annual leave, under Article 12.C.1.f. of the Personnel Manual. Since he was retired on June 30, 2002, he should have been counseled about his transition benefits in early January 2002 and no later than March 30, 2002, in accordance with COMDTINST 1900.2. The record indicates, however, that he did not learn about the permissive TAD benefit until June 18, 2002, just 12 days prior to his retirement. Furthermore, the sworn statement from his supervisor indicates that he would have been allowed to go on permissive TAD, instead of using annual leave, if he had applied for it.

3. The Board finds that the applicant has proved by a preponderance of the evidence that the Coast Guard committed an error by failing timely to counsel him about his eligibility for 20 days of permissive TAD. The Coast Guard indicated that the discrepancy could have been handled administratively prior to the applicant's retirement and recommended that the Board grant relief. The Board finds that in light of the delay in the counseling, the applicant's record should be corrected to indicate that any days of annual leave, up to 20 total, that he took from January 1 through June 30, 2002, should be reclassified as days of permissive duty. Moreover, his record should be corrected to show that he sold those days of unused annual leave upon his retirement, as permitted under 37 U.S.C. § 501.

4. Accordingly, relief should be granted.

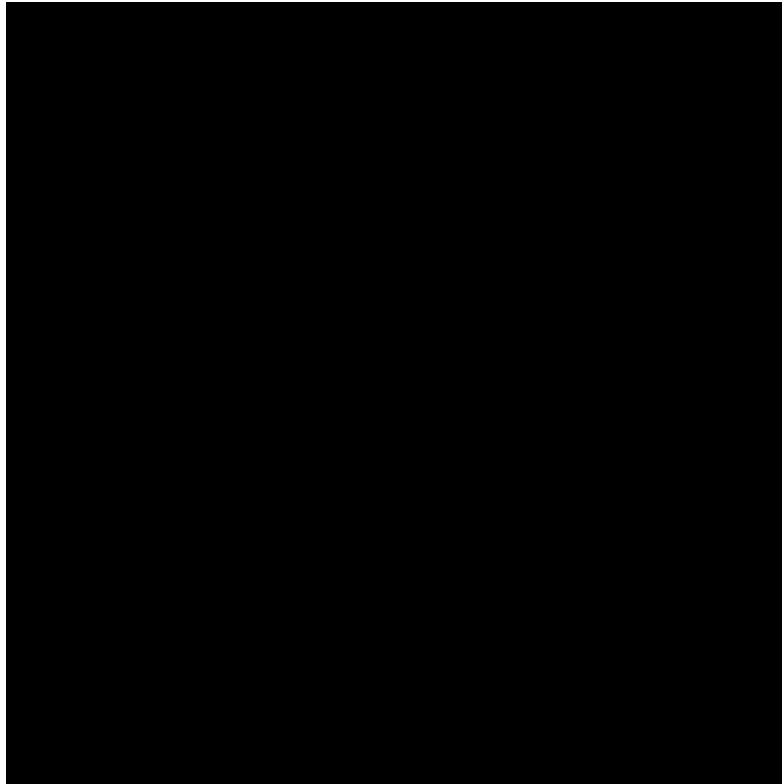
[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of retired xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

His record shall be corrected to show that any days of annual leave—up to a maximum of 20—that he took from January 1 through June 30, 2002, were days of permissive temporary duty instead of days of annual leave. In addition, his record shall be corrected to show that he sold those days of unused annual leave upon his retirement, as permitted under 37 U.S.C. § 501.

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





Memorandum

Subject: ADVISORY OPINION IN CGBCMR
DOCKET NO. 2002-131 (XXXXXX)

Date: 5420/3

From: Chief Counsel, U.S. Coast Guard

Reply to: G-LMJ
Attn. Of: 7-0272

To: Chairman, Board for Correction
of Military Records (C-60)

Ref: (a) Applicant's DD Forms 149 filed 2 July 2002

1. I adopt the analysis and fact-finding provided by Commander, Coast Guard Personnel Command in enclosure (1) and request you accept his comments as the Coast Guard's advisory opinion recommending granting relief in the instant case.

GENELLE T. VACHON
By direction

Encl: (1) CGPC (adm) ltr 5420 of 18 Oct 2002
(2) Applicant's Service Record

U.S. Department
of Transportation

United States
Coast Guard



Command
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CGPC-adm-2
Phone: (202) 267-6969
Fax: (202) 267-4381
Email:

MEMORANDUM

From G.W. PALMER
: CGPC-c

Reply ENS Crespo
to 7-6969
Attn of:

To: Commandant
(G-LMJ)

Subj: PROGRAM INPUT ON CGBCMR APPLICATION (xxxxx)

Ref: (a) CGBCMR Application 2002-131

1. Comments on the application contained in reference (a) are attached as enclosure (1).
2. I recommend relief be granted.

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Enclosure 1 - CGBCMR 2002-131

RELIEF REQUESTED BY APPLICANT:

1. Applicant requests that 20 days leave he was charged be re-credited to him and that he be allowed to sell it back in conjunction with HIS retirement.

APPLICANT'S STATED BASIS FOR RELIEF:

1. Applicant alleges that he was not counseled concerning the 20 days "relocation/transition" permissive TAD that may be granted to retiring members. He states that because he was not counseled, he took 20 unnecessary days of leave prior to his retirement, and that had he known of the permissive absence benefit, he would have used it and sold the 20 days leave back.

MATTERS OF RECORD:

1. The application is timely.
2. Coast Guard Personnel Commander (CGPC-opm) letter 1810 dated August 1, 2001. Applicant issued retirement orders, effective July 1, 2002.
3. Commandant Instruction 1900.2, Transition Assistance Program. This instruction promulgates information and guidance to implement a Transition Assistance Program that includes the formal counseling of all Coast Guard members being separated or retired and lists transition benefits available to these members. Paragraph 5.a. of this instruction establishes the mandatory procedure to counsel all retiring members on transition benefits within 90 days of retirement. Enclosure 4 to this instruction lists 10 days permissive TAD (absence not chargeable as leave) as a transition benefit available to retiring members.
4. Article 7.A.10.b.11 and Article 12.C.1.f of Commandant Instruction M6000.1, Personnel Manual. These articles of the Personnel Manual authorizes the granting of up to 20 days permissive TAD to retiring members to "facilitate relocation."
5. CG HRSIC-2045, Career Intentions Worksheet dated March 12, 2002. Applicant provided information concerning his retirement intentions. In the section marked "For Retirement Only," for the question "Permissive Temp Duty," the Applicant made no election. The Applicant and his division chief signed the form.
6. DD Form 2648, Preseparation Counseling Checklist dated June 18, 2002. This form documents that the Applicant received formal counseling on his transition benefits on June 18, 2002. In block 13a. Relocation Assistance/Permissive TAD, the applicant indicated he desired counseling about this benefit. The Applicant's

transition counseling was conducted by Ms. C.J. Johnson, the Transition Assistance Specialist on the MLC Pacific Work-Life staff.

7. Conversation between LT MacDhubhain, CGPC-adm-2 and CWO Ross Williams, Chief, ISC Alameda PERSRU on September 27, 2002. CGPC-adm-2 contacted the Supervisor of the Applicant's PERSRU, who prepared and submitted his retirement documents to HRSIC. CWO Williams stated that the Applicant visited him on June 18, 2002 and explained that he had just learned about the permissive TAD benefit. The Applicant requested that 20 days leave he had taken in increments over the months preceding his retirement date be re-credited to his leave balance and be converted to permissive TAD. He claimed that he had never been counseled concerning this benefit and that he was sure that his supervisor would have approved a request for this benefit. The Applicant stated to CWO Williams that his intention was to then sell back this re-credited 20 days leave upon retirement. CWO Williams stated that he advised the Applicant that his request to re-credit his leave was too administratively complex to process and that the Human Resources Services and Information Center (HRSIC) would question why so much leave was being re-credited. He advised the Applicant to seek relief via the BCMR.
8. Declaration of Ms. xxxxxxxxxxxxxxxxxxxxxxxxxxxx Branch, MLCPAC dated June 24, 2002. This is a statement from the Applicant's supervisor at the time of these events. Ms. xxxxxx declares that had the Applicant requested the permissive TAD benefit from her prior to his retirement, she knows of no reason why she would not have granted it.
9. July 1, 2002. Applicant retired from the Coast Guard. Applicant sold back 23.5 days of leave. Members are entitled to sell up to 60 days leave during their career – Applicant had never previously sold leave prior to his retirement.

CONCLUSIONS:

1. At the time the Applicant completed his career intentions worksheet, he made no indication of his desire to take permissive TAD, however, at that point he had not yet been counseled concerning his transition benefits.
2. The applicant was not formally counseled concerning his eligibility for transition benefits until 12 days before his retirement, contrary to the requirement to counsel members at least 90 days prior to retirement.
3. Irrespective of why the delay in the Applicant's counseling occurred, it is clear that as soon as the Applicant became consciously aware of the permissive TAD transition benefit, he attempted to remedy his problem by bringing it to the attention of the office processing his retirement. He also went to the trouble of obtaining a statement from his

supervisor that she would have granted the permissive absence if he had asked for it. He immediately went to his PERSRU and requested that they re-credit his leave so he could sell it back. The PERSRU could have properly taken this action – they had the technical capability to delete previously submitted leave documents. Instead, they informed the Applicant that this was too complex and might be questioned by the HRSIC. This is probably true, but the Applicant's situation was unique and could have been explained to HRSIC if questions arose.

RECOMMENDATION:

1. I recommend the requested relief be granted. The Applicant should be paid for 20 days leave he would have sold upon retirement if he had been counseled on the permissive TAD benefit in a proper and timely manner in accordance with current regulations.