


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-016

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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. On November 3, 2003, the BCMR docketed the applicant's request for correction.

This final decision, dated June 30, 2004, 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 correct his record to show that, upon his indefinite reenlistment on October 29, 2002, he sold 30 days of accrued annual leave. The applicant alleged that at the time of his discharge and reenlistment, he was not advised that because of his indefinite reenlistment, it was his last opportunity to sell leave until his retirement.

In support of his allegations, the applicant submitted a statement from a chief yeoman, the Assistant Personnel Officer at his station, who stated that the applicant's record lacks documentation of the required counseling on the indefinite reenlistment policy and that such counseling would have informed the applicant that the indefinite reenlistment was his last opportunity to sell leave.

SUMMARY OF THE RECORD

On June 23, 1992, the applicant enlisted in the Coast Guard for four years. On January 29, 1996, he extended his enlistment contract for four years, through June 22,

2000. On March 23, 2000, he was discharged and immediately reenlisted for three years. This reenlistment contract indicates that he sold 30 days of accrued annual leave.

On March 6, 2001, the Commandant issued ALCOAST 095/01, requiring active duty members in pay grades E-5 and above who have at least 10 years of active service and whose enlistments are ending to sign indefinite reenlistment contracts instead of extension contracts or reenlistment contracts for a set term of years. On March 29, 2001, the Commandant issued ALPERSRU 1/01 to instruct personnel officers on the new indefinite reenlistment policy. It states that a member serving on an indefinite contract may request separation but must do so at least six months in advance of the requested separation date. The ALPERSRU further provides the following:

Members subject to the new indefinite reenlistment policy should be counseled concerning lump sum leave entitlements. The date the member executes an indefinite reenlistment will be the last opportunity for the member to sell leave until such time as the member retires/separates, pursuant to article 7.A.20 of [the Personnel Manual].

On October 29, 2002, having performed more than ten years of active service, the applicant signed an indefinite reenlistment contract. The contract states that the "[m]ember is not selling leave." There is no evidence in the applicant's record that he received the counseling required under ALPERSRU 1/01.

VIEWS OF THE COAST GUARD

On March 30, 2004, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant the applicant's request. He based his recommendation on a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC stated that there is no evidence in the applicant's record that he was counseled about the lump sum leave policy when he signed the indefinite reenlistment contract. CGPC stated that under Article 7.A.20.a. of the Personnel Manual, members being discharged may sell leave and that members may sell a maximum of 60 days of unused annual leave during their careers.¹

CGPC stated that the applicant sold 30 days of leave when he reenlisted on March 23, 2000, and that this is the only time he has sold leave during his career. CGPC further stated that, when the applicant reenlisted on October 29, 2002, he had 76.5 days

¹ 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." This statute is reflected in Article 7.A.20.a. of the Personnel Manual, which authorizes upon discharge a lump sum payment of unused leave "to a maximum career total of 60 days."

of accrued annual leave and could have sold 30 of them. CGPC submitted copies of the applicant's Leave and Earnings Statements reflecting these numbers.

CGPC stated that because there is no evidence that the applicant was properly counseled when he signed his indefinite reenlistment contract, it is in the interest of justice for the Board to correct his record "to afford him the option at this time to sell leave in any amount up to his unused earned leave balance, not to exceed 30 days, at the time he reenlisted in October 20, 2002, ... with the understanding that the payment amount would be based on his paygrade and rate of pay at that time."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 31, 2004, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. On April 9, 2004, the applicant responded, stating that he agreed with the Coast Guard's recommendation.

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. Absent evidence to the contrary, the Board presumes that Coast Guard records are correct and that Coast Guard officers have acted "lawfully, correctly, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979); 33 C.F.R. § 52.24(b). Therefore, absent evidence to the contrary, the Board presumes that the applicant was properly counseled at the time he signed his indefinite reenlistment contract.
3. ALPERSRU 1/01 required personnel officers to counsel members who were reenlisting indefinitely about the reenlistment being their last opportunity to sell leave prior to their retirement. However, the ALPERSRU contains no requirement that the counseling be documented by an administrative entry in the member's record, and the Board knows of no such requirement in the Personnel Manual or elsewhere. Therefore, the lack of documentation of counseling about the sale of leave in the applicant's record is not probative of whether such counseling actually occurred.
4. In applying to the Board, the applicant—who has an excellent record of twelve years of honorable service—signed a sworn statement under penalty of law that he was not counseled about the effect of his indefinite reenlistment on his chance to sell

leave prior to retirement. The record indicates that in accordance with Article 7.A.20. of the Personnel Manual, he could have sold up to 30 days of leave when he signed the contract. The applicant is supported in his request by his command, CGPC, and the Judge Advocate General. Therefore, the Board finds that it is in the interest of justice to allow the applicant to sell up to 30 days of leave, assuming that he still has sufficient accrued leave at this time.

5. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

The Coast Guard shall correct his record to show that, upon his discharge and indefinite reenlistment on October 29, 2002, he sold a number of days of annual leave that is to be determined at his discretion, provided that it shall be no more than 30 days or the amount of his accrued leave at the time this order is implemented, whichever is less.

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

