

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


Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-097

XXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

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 April 15, 2004, the BCMR docketed the applicant's request for correction.

This final decision, dated November 17, 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 11.5 days of leave that he sold at the end of his enlistment with the Army National Guard should not be deducted from the 60 days of leave that he is allowed to sell during his military career. The applicant alleged that he accrued 11.5 days of leave while on active duty training with the Army National Guard and sold the leave upon his discharge in 1984. The applicant enlisted in the Coast Guard in 1992, and in March 2004 learned that the Coast Guard had deducted the 11.5 days of previously sold leave from the 60 days of leave he is entitled to sell during his military career. The applicant alleged that the Coast Guard Pay Manual states that the 60-day career maximum should not be reduced by the 11.5 days of previously sold leave because he accrued the leave while on active duty training with the Army National Guard.

SUMMARY OF THE RECORD

On September 24, 1984, the applicant was discharged from the Army National Guard after completing 4 months and 14 days of active duty service. His DD214

indicates that upon his discharge, he sold 11.5 days of annual leave that he had accrued while on active duty. On April 14, 1992, the applicant enlisted in the Coast Guard and he continues to serve on active duty with the Coast Guard.

Chapter 10.A.1.a. of the Coast Guard Pay Manual, under the authority set forth in 37 U.S.C. § 501, states that effective February 10, 1976, members may be paid for no more than 60 days of accrued leave during their military careers. Payments for accrued leave made before this date are excluded from the 60-day limitation.

On December 28, 2001, Congress passed Public Law 107-107, section 651 of which amended 37 U.S.C. § 501(b)(5) by adding subparagraph (D) to provide that the 60-day limitation shall not apply to "leave accrued ... by a member of a reserve component while serving on active duty, full-time National Guard duty, or active duty for training for a period of more than 30 days but not in excess of 365 days." Paragraph (b) of the section 651 states the following: "Application of Amendment—Subparagraph (D) of section 501(b)(5) of title 37, United States Code, as added by subsection (a)(3), shall apply with respect to periods of active duty beginning on or after October 1, 2001."

VIEWS OF THE COAST GUARD

On March 30, 2004, the Judge Advocate General of the Coast Guard (TJAG) submitted an advisory opinion in which he recommended that the Board deny the applicant's request. He based his recommendation on a June 21, 2004, memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC stated that the applicant was not entitled to relief because the law that governed the selling of accumulated annual leave applied to members of the Reserves or National Guard who sold leave *after* October 1, 2001. The applicant sold leave at the time of his release from active duty in 1984. CGPC concluded by noting that there is no retroactive provision in the law that would allow the applicant to avoid the alleged injustice.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 18, 2004, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

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 applicant alleged that the applicable Coast Guard regulations provide that his 60-day career total should not be diminished by the 11.5 days of leave he sold upon his release from active duty from the National Guard in 1984. However, the Board notes that the Coast Guard regulation governing the sale of accumulated leave is plainly defined. Chapter 10.A.1.a.1. of the Coast Guard Pay Manual states that effective February 10, 1976, members may be paid for no more than 60 days of accrued leave during the member's military career. The regulation also provides that leave sold by a reservist serving on active duty after October 1, 2001, shall not apply to the member's career total. The regulation is consistent with Section 651(b) of Public Law 107-107, which clearly stated that the exception for reserve and National Guard service *only* applies to periods of active duty "*beginning on or after October 1, 2001.*"

3. The record indicates that the applicant does not meet the eligibility criteria set forth in the Coast Guard Personnel Manual and Public Law 107-107. The applicant served on active duty with the Army National Guard in 1984, and therefore his military service was more than 15 years prior to the effective date of the exception provided for the sale of leave by reservists and National Guard members.

4. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXXX, USCG, for correction of his military record is denied.

