

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-152

[REDACTED]

FINAL DECISION

[REDACTED]

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 Chair docketed the case on September 2, 2005, upon receipt of the completed application.

This final decision, dated May 18, 2006, 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 May 2, 2003, he sold 30 days of accrued annual leave. In his application to the BCMR, the applicant alleged that when he reenlisted on May 2, 2003, he was not advised that because he was signing an indefinite reenlistment it was his last opportunity to sell leave until he retired from the Coast Guard. He also stated that when he completed his Career Intentions Worksheet prior to his indefinite reenlistment, he did not indicate on the form that he wanted to sell any leave, because it was his belief that the section of the form where a member indicates that they want to sell leave

only applied to personnel who were being discharged or up for RELAD [release from active duty]. This was because the form is broken into sections and it appeared that the leave section related directly to the one above. As with the policy on lump sale of leave, I received no instruction on the completion of the Career Intentions Worksheet. I was simply instructed to complete the form, sign it and turn it in.

The applicant further alleged that he had never sold any leave during his Coast Guard career and was completely unaware that unused leave could only be sold upon discharge, separation, or just before the effective date of a first extension of enlistment. He also alleged that because he did not sell leave in 2003, he has lost 19 days of leave, and he asked that this leave be restored to his leave balance.

SUMMARY OF THE RECORD

On December 12, 1983, the applicant enlisted in the Coast Guard and after completing recruit training he attended [REDACTED] "A" school.¹ The applicant served in a number of assignments for the next 17 years. On March 6, 2001, the Commandant of the Coast Guard 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 I/01 to instruct personnel officers on the new indefinite reenlistment policy. It states that a member serving on an indefinite contract may request separation from the Coast Guard 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 May 7, 2001, the changes to the indefinite reenlistment policy were entered into the Coast Guard Personnel Manual.

On May 2, 2003, having served more than 19 years of active service and reaching the rank of HS1 (pay grade E-6), the applicant completed a Career Intentions Worksheet and signed an indefinite reenlistment contract. The Career Intentions Worksheet includes a section on the second page marked "Leave Section" wherein members indicate if they wish to sell any leave. A copy of the worksheet is not in the applicant's record.² The indefinite reenlistment contract signed by the applicant includes a section near the bottom of the form containing the statement "[m]ember is not selling leave." Although the applicant signed his initials on the bottom of the contract, there is no evidence in the applicant's record that he received the obligatory counseling regarding the sale of leave under ALPERSRU I/01.

¹ Class "A" School is where Coast Guard members receive training for their specific rate.

² The JAG stated that the Career Intentions Worksheet is not a permanent record document and is not placed in a member's personnel data record.

VIEWS OF THE COAST GUARD

On January 10, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny 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 Article 7.A.20. of the Coast Guard Personnel Manual is clear regarding the sale of leave and that there is no specific requirement to document that a member has been counseled on leave accrual and sale policies. In addition, CGPC opined that the applicant's record does not support his claim that he suffered an administrative error when he signed his May 2, 2003, indefinite reenlistment contract.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 7, 2006, the applicant responded to the views of the Coast Guard. He reiterated that when he signed his Career Intentions Worksheet he was "neither given nor offered any instruction" on filling out the form. He added that he was unfamiliar with this particular document because a Career Intentions Worksheet is only filled-out once or twice in one's career, and "[b]ecause of this unfamiliarity with the form and the fact that the positioning of the items on the form makes it appear as though the leave selling portion is for personnel separating from the service, I did not question the yeoman further after completing the extension/reenlistment section as he directed me to."

The applicant further alleged that the JAG's admission that there is no specific requirement to document counseling on leave accrual and sale policies buoys his argument that he was unaware of the Coast Guard policies regarding the sale of leave. The applicant poignantly noted "I was no more familiar with that manual [the Coast Guard Personnel Manual] than I was with the Color and Coatings Manual, Simplified Acquisitions Manual, or any other general directive that is commonly considered rating specific." He further alleged that because a member only signs an indefinite reenlistment once in their career, the yeoman has a duty to "use his rating specific knowledge and familiarity with administrative manuals, policies and procedures to ensure accurate completion of forms..." and that because "it [indefinite reenlistment] is rarely done by members in their career, I would expect even more attention to be given by the yeoman; and that they would ensure the member knew completely what all the consequences of their choices are."

Moreover, the applicant argued that not holding the yeoman accountable for proper counseling in this case is "the same as saying that a member should have known

he was mistreated [REDACTED] because all of the information was listed in the [REDACTED] and other documentation." He also added that if members are expected to read each and every Coast Guard manual and double-check the advice they are given by another member, then "why do we specialize in ratings?"

Finally, the applicant stated "it is not unreasonable to believe that members should be able to have faith in other ratings and not have to educate themselves on all Coast Guard rules, policies and regulations to ensure they are informed and treated fairly."

BCMR DOCKET No. 2004-016

In BCMR Docket No. 2004-016, the applicant signed an indefinite reenlistment contract on October 29, 2002, and alleged that he was not advised that because he was signing an indefinite reenlistment, it was his last opportunity to sell leave until his retirement.

In that case, the JAG recommended that the Board grant relief because there was 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 in the advisory opinion that "there is no evidence the applicant was properly counseled concerning selling leave at the time he executed his indefinite reenlistment contract," and that "it is in the interest of justice 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."

The Board granted relief, finding that the applicant had a record of twelve years of honorable service and 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.

APPLICABLE LAW

Article 7.A.20.a. of the Coast Guard Personnel Manual states that each member on active duty is entitled to a lump sum leave payment for unused earned leave accrued to his credit on date of discharge, separation from active duty, or the date preceding the effective date of first extension of enlistment regardless of duration, to a maximum career total of 60 days.

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 he was not counseled about the new sale of leave policy when he reenlisted and that this error caused him to miss his last opportunity to sell any unused leave until his retirement from the Coast Guard. He also alleged that the yeoman who assisted him with his reenlistment failed to provide any instruction whatsoever regarding the Career Intentions Worksheet. In the JAG's response to the applicant's request for correction, the JAG argued that the request should be denied because Coast Guard policy is clear regarding the sale of leave and that there is no specific requirement to document that a member has been counseled on leave accrual and sale policies.

3. On March 6, 2001, the Commandant of the Coast Guard 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 or reenlistment contracts for a set term of years. A few weeks later the Commandant issued ALPERSRU I/01, which 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, neither the ALCOAST nor the ALPERSRU require that the counseling be documented with 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 more than twenty 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, the applicant could have sold up to 30 days of leave when he signed the indefinite reenlistment contract. 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. The Coast Guard shall also ensure that the applicant's leave balances are carried forward, as appropriate.

5. In BCMR Docket No. 2004-016, the JAG recommended granting relief, and the Board did so. The facts in the instant case are nearly indistinguishable from the

facts in that case, so the Board does not fathom why the outcome in this case should be any different.

6. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [REDACTED], 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 May 2, 2003, 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 ensure that his leave balances are adjusted, as necessary.

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

