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

Application for the Correction of
the Coast Guard Record of:

**BCMR Docket No. 2005-163**

Xxxxxxxxxxxxxxxx
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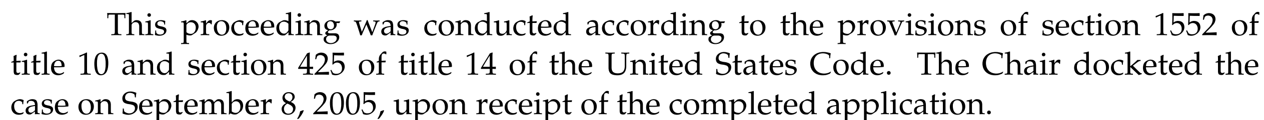
# FINAL DECISION



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 Chair docketed the case on September 8, 2005, upon receipt of the completed application.

This final decision, dated June 20, 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 reenlistment on April 26, 2005, he sold 30 days of leave. The applicant stated that he had planned to take leave from August 25, 2005, to September 21, 2005, but his "leave got canceled … due to operational commitments" of his unit. The applicant stated that at the end of fiscal year 2005, he would lose about 26 days of leave because his leave had been canceled and he is permitted to "carry over" just 60.5 days of leave.

## SUMMARY OF THE RECORD

On June 25, 1996, the applicant enlisted in the Coast Guard. The applicant's record indicates that he works very hard. He has received especially high marks for his stamina and adaptability. The only negative page 7 in the record is dated March 31, 1998, when the applicant was still a third class petty officer. It states that before he could be recommended for advancement, he needed to "improve in leadership and task direction" because "[y]ou have repeatedly taken it upon yourself to accomplish

assigned tasks alone. You have been verbally counseled by your Leading Petty Officer on several occasions to delegate assignments where possible, but have failed to do so."

On April 26, 2005, the applicant was discharged and reenlisted for six years. He did not sell leave at that time. A Coast Guard database indicates that he has never sold leave.

## VIEWS OF THE COAST GUARD

On January 24, 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 there is no indication on the applicant's reenlistment contract that he asked to sell leave. CGPC stated that Article 7.A.20. of the Coast Guard Personnel Manual is clear regarding the sale of leave upon discharge and reenlistment. CGPC also stated the following:

> The Applicant contends that since he was not counseled at the time of reenlistment regarding the sale of leave, he should be allowed to modify his previously executed contract to avoid loss of leave. Coast Guard policy is clear regarding the sale of leave and there is no specific requirement to document counseling on leave accrual and sale policies. A review of the Applicant's record does not support his claim that he suffered an administrative error regarding the execution of [the April 26, 2005, reenlistment contract.

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

On January 25, 2006, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond. No response was received.

## APPLICABLE LAW

Article 7.A.15.a. of the Personnel Manual states that "[e]arned leave may exceed 60 days during a fiscal year, but must be reduced to 60 days on the first day of the next fiscal year except as outlined in paragraphs b. through d. below. The amount so reduced is irrevocably lost without compensation."

Article 7.A.15.b. states that members may carry over 90 days of leave if they have been serving "on active duty for at least 120 days continuously in an area where they are entitled to special pay for duty subject to hostile fire."

Article 7.A.15.c. states that "[p]ersonnel serving aboard any ship or aircraft which deploys and operates away from its homeport or homebase for more than 60 consecutive days may accrue leave in excess of 60 days to a maximum of 90 days. This provision does not apply to units undergoing maintenance or repair at a shipyard or drydock facility. Personnel serving less than 60 consecutive days on an eligible unit are not entitled to carry over leave in excess of 60 days. …"

Article 7.A.15.d. states that "[p]ersonnel serving on other prescribed duty for a continuous period of 60 days or more during a fiscal year may also qualify for accrued leave. The situation preventing the member assigned to this duty from using leave must have been caused by unscheduled operational commitment, national emergency or crisis, or operations in defense of national security. This duty must preclude the member from taking leave to reduce their leave balance to 60 days prior to the end of the fiscal year."

7.A.20.a. states that "[e]ach member on active duty, except those listed in paragraph b. below, is entitled to a lump sum leave payment for unused earned leave accrued to his or her 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. A combination of cash settlement and carryover of unused leave is permissible in addition to any leave accumulated due to service in a hostile fire pay area."

## 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 because of operational commitments, he was unable to take several weeks of scheduled leave at the end of fiscal year 2005. He alleged that he therefore lost the leave unjustly when the new fiscal year began. He asked the Board to correct his record to show that he sold 30 days of leave when he reenlisted in April 2005.

3. In the advisory opinion, CGPC mischaracterized the applicant's complaint as a complaint about a lack of counseling. The gist of the complaint is not that the applicant was not counseled about the opportunity to sell leave when he reenlisted, but

that he was unable to take scheduled leave at the end of the fiscal year due to his unit's operational commitments.

4. Article 7.A.15. of the Personnel Manual acknowledges that members are sometimes unable to use their accrued leave due to circumstances beyond their control. The list of such circumstances includes service in hostile territory, extended sea duty, and, under subparagraph d., "*unscheduled operational commitment*, national emergency or crisis, or operations in defense of national security." (Emphasis added.) Under such circumstances, Article 7.A.15. allows members to carry up to 90 days of accrued leave into the next fiscal year.

5. Absent specific evidence to the contrary, the Board must presume that the applicant's command acted "correctly, lawfully, and in good faith" in not allowing the applicant to carry over more than 60 days of accrued leave at the end of fiscal year 2005 pursuant to the provisions of Article 7.A.15.[1] The applicant submitted no evidence — such as a statement from his commanding officer or executive officer—to show that an "unscheduled operational commitment" prevented him from taking leave or even that he had scheduled leave from August 25 to September 21, 2005, which was involuntarily canceled by his command for whatever reason.

6. Accordingly, relief should be denied because the applicant failed to submit evidence to show that the alleged circumstances that prevented him from using leave at the end of fiscal year 2005 fell within the parameters of Article 7.A.15., subparagraphs b., c., or d., so that he should have been allowed to carry up to 90 days of accrued leave into fiscal year 2006.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

[1] *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979); *see* 33 C.F.R. § 52.24(b).

## ORDER

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