

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-179

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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. The Chair docketed the case on September 22, 2006, upon receipt of the completed application.

This final decision, dated May 31, 2007, is approved and 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 alleged that when she transferred from the Navy to the Coast Guard on August 14, 2006, thirty-five days of leave that she had accrued in the Navy were not transferred as they should have been. The applicant submitted a copy of her Navy Leave and Earning Statement dated August 31, 2006, which shows that she had thirty-five days of accrued leave.

The applicant alleged that her Coast Guard recruiter told her that if she brought him her Navy DD 214 on the day of her discharge, she could sign an oath of office to become a Coast Guard officer, avoid a break in service, and have her leave balance transferred. Although she did so, he failed to have her sign an extended active duty (EAD) contract as well, so her record showed a break in active duty and her leave was not transferred. When she reported to her permanent unit on August 19, 2006, she was required to sign another oath of office as well as an EAD contract.

VIEWS OF THE COAST GUARD

On January 23, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief. The JAG adopted the facts and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC).

CGPC stated that the “only program in force that specifically authorizes the carry over of leave from Service to Service is under Inter-Service Transfer of Commissioned Officers, DOD Directive 1300.4.¹ Under that directive, the transfer of an officer’s leave depends upon whether there is a break in active duty, not upon whether there is a break in service. However, CGPC stated that the Coast Guard “is bound by the earlier [August 14, 2006] oath [of office] and recommends that the August 19, 2006 oath be removed from her record.” CGPC further stated that the applicant’s Direct Access Orders show that she was supposed to begin EAD “in time to report to DCO [Direct Commission Officer] School and that it shall commence effective August 14, 2006.” CGPC stated that because of this conflicting information, the Board should eliminate the applicant’s break in active duty so that the four days from August 15 through August 18, 2006, will count leave from active duty rather than inactive service.

CGPC submitted a copy of the applicant’s Standard Travel Orders, which state that she “has agreed to a four (4) year extended active duty contract to commence on 14 AUG 06” but also that her EAD contract would be executed when she arrived at the Academy on August 19, 2006. CGPC recommended that the Board grant relief by

- (a) removing the applicant’s August 19, 2006, oath of office as null and void, so that only the oath dated August 14, 2006, remains in her record;
- (b) adjusting the period of her EAD contract to extend from August 14, 2006, to August 13, 2010, instead of August 19, 2006, to August 18, 2010;
- (c) charging the applicant for leave used from August 15 through 18, 2006;
- (d) correcting her record to show continuous active duty so that she can be credited with pay and entitlements; and
- (e) adjusting her leave balance so that she will be credited with any verified leave balance she was authorized to carry over from the Navy under a Department of Defense or other directive.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 13, 2007, the applicant informed the Board that she does not object to the recommendation by CGPC.

FURTHER PROCEEDINGS

Upon inquiry by the BCMR staff, the JAG agreed that because the applicant was discharged from the Navy on August 14, 2006, she was still a member of the Navy through the end of that day and should not have been allowed to take the oath of office to become an ensign in the Coast Guard until August 15, 2006, since no one can simultaneously be a member of both the Navy and the Coast Guard. The JAG recommended that her record be corrected to show that she was appointed a Coast Guard officer and began EAD on August 15, 2006, which would entail no break in service or in active duty.

¹ Because the applicant was an E-5 petty officer in the Navy, DOD Directive 1300.4 is not clearly applicable to the circumstances of her case.

On May 8, 2007, the BCMR staff informed the applicant of the JAG's new recommendation in a telephone conversation. The applicant stated that she had heard from someone else that August 15, 2006, should be her date of entry in the Coast Guard and that she did not object to having the date of her oath of office and EAD contract corrected to August 15, 2006.

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 concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant alleged that her recruiter told her that her leave balance would transfer from the Navy to the Coast Guard if she brought her DD 214 to him on the day of her discharge and signed an oath of office so that she would have no break in service. On the day she was discharged from the Navy, August 14, 2006, the applicant's recruiter had her sign an oath of office, but he did not have her sign an EAD contract. Therefore, she had no break in service, but she did have a break in active duty, which apparently may prevent the Coast Guard from including her Navy leave balance in her Coast Guard leave balance. The Board finds the applicant's allegation credible in light of the fact that the recruiter had her sign an oath of office to become a member of the Coast Guard on a date that she was still a member of the Navy.

3. The applicant's orders are ambiguous because in one place they show that her EAD was to begin on August 14, 2006, while in another place they show that her EAD was to begin on August 19, 2006. This ambiguity might have prevented the applicant from ensuring that she had no break in active duty. The Board notes in this regard that the applicant's Navy DD 214 shows that she began active duty on August 24, 1998. Since military enlistment and extension contracts are executed in terms of whole months and whole years, it is extremely unlikely that her Navy enlistment naturally terminated on August 14, 2006. Had the applicant been properly advised that her leave balance could not transfer unless she had no break in active duty and that her EAD would not start until August 19, 2006, she might have arranged to remain on active duty in the Navy but take leave until the day before she could sign an EAD contract.

4. In light of the recruiter's poor advice, the ambiguity in the applicant's orders, the apparent lack of a Coast Guard instruction or regulation dealing expressly with this issue, and the recommendation of the JAG, the Board finds that relief should be granted by

(a) removing the applicant's August 19, 2006, Acceptance and Oath of Office as null and void, and correcting the date on her remaining Acceptance and Oath of Office from August 14, 2006, to August 15, 2006;

(b) correcting the period of her four-year EAD contract to extend from August 15, 2006, through August 14, 2010, instead of from August 19, 2006, through August 18, 2010;

(c) charging the applicant for leave used from August 15 through 18, 2006;

(d) correcting the applicant's record to show continuous active duty so that she can be credited with pay and entitlements; and

(e) adjusting the applicant's Coast Guard leave balance to reflect that on August 15, 2006, she was credited with any verified unused leave balance she had accrued in the Navy upon her discharge from the Navy on August 14, 2006.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [REDACTED], USCGR, for correction of her military record is granted as follows. The Coast Guard shall

(a) remove her August 19, 2006, Acceptance and Oath of Office as null and void, and correct the date on her remaining Acceptance and Oath of Office from August 14, 2006, to August 15, 2006;

(b) correct the period of her four-year EAD contract to extend from August 15, 2006, through August 14, 2010, instead of from August 19, 2006, through August 18, 2010;

(c) charge her for leave used from August 15, 2006, through August 18, 2006;

(d) correct her record to show continuous active duty so that she can be credited with pay and entitlements; and

(e) adjust her Coast Guard leave balance to reflect that on August 15, 2006, she was credited with any verified unused leave balance she had accrued in the Navy upon her discharge from the Navy on August 14, 2006.

The Coast Guard shall pay her any amount she may be due as a result of these corrections.

