

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2007-190**

**XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX**

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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 application on August 16, 2007, upon receipt of the applicant's completed application and military records, and subsequently prepared the final decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 30, 2008, 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 asked the Board to correct his record to show that he sold 25 days of annual leave back to the government when he reenlisted on May 10, 2007. He alleged that at the time he reenlisted, he was not informed that he could sell back leave; nor was an administrative remarks entry (page 7) prepared documenting that he had received selective reenlistment bonus counseling. The applicant submitted his reenlistment contract, which did not contain an entry with respect to leave sold, but it did contain an entry that the applicant was entitled to a Zone B SRB with a multiple of 1.5.

**VIEWS OF THE COAST GUARD**

On January 8, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. The JAG adopted the comments provided by Commander, Coast Guard Personnel Command (CGPC), as the Coast Guard's advisory opinion. CGPC stated the following in pertinent part:

The contract signed by the applicant . . . is silent with regards to the applicant's intentions regarding selling leave. The Coast Guard Personnel Manual . . . clearly identifies parameters for sale of leave. The applicant contends that he would have sold 25 days of leave at the time of his reenlistment on May 10, 2007. There is no record of the applicant requesting to sell such leave and the applicant has not

substantiated an error or injustice on the part of the Coast Guard with regards to the sale of leave.

[T]his case does not involve an indefinite reenlistment. Therefore, the applicant has further opportunities to sell leave in conjunction with subsequent reenlistments. Additionally, as noted in Docket No. 2005-152 there is no requirement for documenting counseling regarding selling leave on a CG-3307 entry and 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.”

The applicant further indicates in support of his sale of leave request that his record is lacking the required [page 7] regarding his reenlistment. [The Personnel Manual] requires counseling upon reenlistment with regards to SRB eligibility. The sale of leave is not noted within such counseling and the applicant is not alleging that he was improperly counseled with regards to his SRB eligibility. Therefore, while the Coast Guard erred in not providing him with a [page 7] regarding his SRB eligibility at the time of his reenlistment, the applicant has not stated that he would have executed any other contract beyond the four-year reenlistment contract he signed for which he received a Zone B SRB. The applicant was not disadvantaged by such error.

#### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 23, 2007, the BCMR sent the applicant a copy of the views of the Coast Guard for a response. The Board did not receive a response from the applicant.

#### **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 section 1552 of title 10 of the United States Code. The application was timely.
2. Section 501 of Title 37 of the United States Code and Article 7.A.1. of the Personnel Manual authorize a member of the Coast Guard to sell to a maximum of 60 days of annual leave upon discharge or to sell a portion of leave and carry the remaining balance forward upon discharge and reenlistment. However, the regulation provides no particular procedure or directive for notifying a member about the sale of leave i.e. it does not require the Coast Guard to counsel a member about the opportunity to sell leave upon discharge. Therefore, no error was committed, if as alleged, the Coast Guard failed to counsel the applicant about the opportunity to sell leave.
3. The applicant has also failed to prove that the Coast Guard committed an injustice by not counseling him about the opportunity to sell leave when he reenlisted in 2007. Injustice is defined “as treatment by military authorities that shocks the sense of justice but is not technically

illegal.” *See Reale v. United States*, 208 Ct. Cl. 1010, 1011-12 (1976). Article 7A. of the Personnel Manual contains information about selling leave and was available for review by the applicant. The fact that Coast Guard personnel did not notify or counsel the applicant personally about the sale of leave does not shock the Board’s sense of justice, since such notification is not required. As the Coast Guard noted, the applicant will have another opportunity to sell leave after he completes his current four-year enlistment.

4. The Coast Guard failed to counsel the applicant on a page 7 about his SRB opportunity when he reenlisted as required by the Personnel Manual. However, this failure by the Coast Guard does not prove that it committed an error with respect to not counseling or informing the applicant about the opportunity to sell annual leave, particularly since no duty to counsel is imposed on the Coast Guard by law or regulation. Moreover, there is nothing on the SRB counseling entry about the sale of annual leave.

5. Accordingly, the applicant has failed to prove an error or injustice in his military record and his request for relief should be denied.

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

**ORDER**

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

