

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-074

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This is a proceeding under 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 February 15, 2008, upon receipt of the applicant's completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 6, 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 allow him to sell accrued leave¹ as of the date of his indefinite reenlistment in 2005. He alleged that he has 51.5 days of accrued leave and would have sold leave if he had been counseled about his opportunity to do so. However, he was not counseled about selling leave and was not told that it was his last opportunity to sell leave prior to his retirement.

The applicant stated that he believes he was not properly counseled because his reenlistment was "impromptu/expedited." He explained that in April 2005, he completed a training course in canine handling. Prior to beginning this training, his unit's administrative officer should have required him to obligate an additional three years of service, which was a prerequisite for the training. However, they forgot to have him sign a contract to obligate the additional three years of service before the training course and did not notice the error until after he completed the training and had less than three months of remaining obligated service. Therefore, he

¹ Under 37 U.S.C. 37(b), a member of the armed forces "who has accrued leave to his credit at the time of his discharge, is entitled to be paid in cash or by a check on the Treasurer of the United States for such leave on the basis of the basic pay to which he was entitled on the date of discharge. ... However, the number of days of leave for which payment is made may not exceed sixty, less the number of days for which payment was previously made under this section after February 9, 1976." This statute is reflected in Article 7.A.20.a. of the Personnel Manual, which authorizes upon discharge a lump sum payment of unused leave "to a maximum career total of 60 days."

was asked to reenlist immediately to fulfill the obligated service requirement for the canine-handling training, and he was not counseled about his ability to sell leave.

VIEWS OF THE COAST GUARD

On April 23, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief and adopting the findings and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). The JAG stated that the applicant's record should be corrected to show that he sold 23.5 days of accrued annual leave upon his discharge and indefinite reenlistment.

CGPC stated that the applicant reenlisted indefinitely on May 3, 2005, and so was technically discharged on May 2, 2005. CGPC stated that under ALCOAST 095/01, which was issued on March 6, 2001, any member in pay grade E-5 or above who had at least ten years of active service and whose enlistment was ending was required to sign an indefinite reenlistment contract instead of an extension or reenlistment contract for a set term of years. In addition, on March 29, 2001, the Commandant issued ALPERSRU 1/01 to instruct personnel officers on the new indefinite reenlistment policy. It states that a member serving on an indefinite contract may request separation 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].

CGPC stated that although this counseling is required, "[t]here is no specific requirement for documentation of such counseling and the applicant's record is silent with regards to counseling. There is nothing to dispute the applicant's assertion that he was not counseled as specified in ALPERSRU 1/01."

CGPC noted that the Board has granted relief in two similar cases, BCMR Docket Nos. 2005-152 and 2004-016 and recommended that the Board likewise grant relief in this case in the interest of justice. CGPC noted that the applicant currently (as of March 2008) has 57.5 days of accrued leave and submitted a copy of the applicant's Leave and Earnings Statement for May 2005, which shows that he began that month with 23.5 days of leave; that he took no leave during the month; and that he had not previously sold any leave.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 30, 2008, the applicant responded to the Coast Guard's recommendation and stated that he has no objection to it.

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. Under 33 C.F.R. § 52.24(b), absent evidence to the contrary, the Board presumes that Coast Guard records are correct and that Coast Guard officers have carried out their duties “lawfully, correctly, and in good faith.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). Therefore, absent evidence to the contrary, the Board presumes that the applicant was properly counseled on May 3, 2005, when he signed his indefinite reenlistment contract.

3. ALPERSRU 1/01 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, the ALPERSRU contains no requirement that the counseling be documented by 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 completed almost fifteen years of honorable service—signed a sworn statement declaring under penalty of law that he was not counseled about his opportunity to sell leave when he reenlisted in 2005 or about the effect of his indefinite reenlistment on his chance to sell leave prior to retirement. His Leave and Earnings Statement for May 2005 indicates that, in accordance with Article 7.A.20. of the Personnel Manual, he could have sold up to 23.5 days of leave when he signed the contract on May 3, 2005. The applicant is supported in his request by CGPC and the Judge Advocate General, and the Board has granted relief in two similar cases. Therefore, the Board finds that it is in the interest of justice to allow the applicant to sell the 23.5 days of leave as of his discharge and reenlistment, assuming that he still has sufficient accrued leave to do so at this time.

5. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, 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 3, 2005, he sold 23.5 days of leave, provided that he has at least 23.5 days of accrued leave on the date this order is implemented. His leave record shall be adjusted accordingly, and the Coast Guard shall pay him any amount he may be due as a result of this correction.

