

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-093

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 after receiving the applicant's completed application on February 27, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 24, 2009, 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 the date of his indefinite¹ reenlistment contract from October 4, 2007, to June 25, 2007. The applicant alleged that he actually signed the contract on June 25, 2007, but the date of enlistment shown in block 5 on the first page of the contract is October 4, 2007. The applicant alleged that he sold 60 days of leave upon his discharge and indefinite reenlistment on June 25, 2007.² However, because of the erroneous date in block 5, the sale of leave was not effected until October 4, 2007, which was after the end of the fiscal year. As a result of this delay, he lost 14 days of leave at the end of the fiscal year because on September 30, 2007, he had 74 days of accrued, unused leave and only 60 days of leave may be carried over from one fiscal year to the next.³ The applicant stated that if the sale of leave had been effected on June 25, 2007—the date he signed the reenlistment contract—he would not

¹ Under Article 1.G.2.a.2. of the Personnel Manual, members with more than 10 years of active duty may not reenlist for a definite term of years and must instead reenlist indefinitely.

² Under Article 7.A.11.a. of the Personnel Manual, members earn 2.5 days of leave per month of continuous active duty. Under Chapter 10.A.1. of the Pay Manual, each member may sell a maximum of 60 days of accrued, unused leave during his military career. Leave may be sold on any date the member is being separated from active duty even if the member is immediately reenlisting on active duty.

³ 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.” Paragraphs b. through d. concern situations that might prevent members from using leave, such as national emergencies and long deployments at sea.

have had more than 60 days of unused leave on September 30, 2007, and would not have lost any at the start of the new fiscal year. The applicant further alleged that if he did not use them, he might lose another 8.5 days of leave in fiscal year 2009.

In support of his allegations, the applicant submitted a copy of his indefinite reenlistment contract. The date of enlistment shown in block 5 on the first page of the contract is October 4, 2007. However, the signatures of the applicant and the officer who reenlisted him in blocks 13, 14, 18, and 19 of the contract are all hand-dated June 25, 2007. Block 8 of the contract states, "Member is selling 60 days of leave." The contract also shows that the applicant was serving on the [REDACTED] at the time. The applicant's prior contract was a six-year reenlistment running from October 5, 2001, through October 4, 2007.

The applicant also submitted copies of his Leave and Earnings Statements (LESEs) for July and October 2007. His July 2007 LES shows that he had 93.5 days of accrued, unused leave at the end of the month. The October 2007 LES shows that he was paid \$6,267.00 for leave sold, lost 14.0 days of leave, and began the new fiscal year with 60 days of leave.

VIEWS OF THE COAST GUARD

On July 15, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant the applicant's request. The JAG stated that the applicant's active duty base date is October 6, 1991, so he was eligible to sign an indefinite reenlistment contract on June 25, 2007, because he had more than ten years of active duty on that date. He further stated that the record supports the applicant's allegation that his reenlistment contract was signed on June 25, 2007, rather than October 4, 2007. Therefore, the JAG recommended that the Board grant relief by correcting the date of reenlistment to June 25, 2007, "thereby allowing him to retain the fourteen (14) days leave earned in FY07."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 24, 2009, the applicant responded by agreeing with the JAG's recommendation.

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 has proved by a preponderance of the evidence that he lost 14 days of leave because his reenlistment contract, which he signed on June 25, 2007, was post-dated as being effective as of October 4, 2007. If the contract had been dated in fiscal year 2007, his sale of 60 days of leave would have been effected in that fiscal year, and he would not have had more than 60 days of accrued, unused and unsold leave on September 30, 2007. Therefore, he would have had fewer than the maximum of 60 days of leave that a member may carry over to a new

fiscal year under Article 7.A.15.a. of the Personnel Manual, and he would not have lost 14 days of leave with the start of fiscal year 2008.

3. The end date of the applicant's prior, six-year contract was October 4, 2007. Therefore, it appears to the Board that the indefinite reenlistment contract was intentionally post-dated to begin upon the end of his prior enlistment. However, the applicant was serving on a high-endurance cutter in 2007, and his command may well have asked him to sign the contract early due to operational demands. In this regard, the Board notes that the [REDACTED]

4. Under Article 12.B.7.b.4. of the Personnel Manual, however, a commanding officer does not have authority to discharge a member for immediate reenlistment more than three months prior to the end of an enlistment except under a few, specific circumstances which are inapplicable here. Therefore, under Article 12.B.7.b.4., the applicant could not be reenlisted on June 25, 2007, because that date was not within three months of his end of enlistment on October 4, 2007. In the Board's experience, unauthorized reenlistment contracts dated more than three months before the end of the prior enlistment often cause problems with the Coast Guard's military pay technicians. Therefore, the Board finds that the date of the applicant's indefinite reenlistment contract should be corrected to July 5, 2007, which is within three months of the end of his prior enlistment on October 4, 2007.

5. Accordingly, relief should be granted by correcting the date of the applicant's indefinite reenlistment contract to July 5, 2007, and his sale of leave and leave record should be adjusted accordingly so that he will not have lost leave at the start of fiscal year 2008.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

[REDACTED]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted. The Coast Guard shall correct the date in block 5 of his indefinite reenlistment contract to show that he reenlisted on July 5, 2007, rather than October 4, 2007. The date of his sale of 60 days of leave and his leave balances shall be corrected accordingly so that he shall not have lost leave upon the end of fiscal year 2007 and the start of fiscal year 2008.

