

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-231

**Xxxxxxxxxxxxxxx
xxxxxxxxxxxxxx**

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 August 10, 2010, 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 June 3, 2011, 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 reenlistment contract dated June 1, 2010, to allow him to sell 60 days of accrued leave. He alleged that he intended to sell 60 days of leave upon his discharge and reenlistment¹ and that his intention to do so was documented in writing and communicated verbally with administrative personnel. However, he was not allowed to sell his leave.

In support of his allegations, the applicant submitted a copy of a short email exchange with a yeoman, second class (YN2) assigned to the Personnel Service Center. In the exchange, dated June 15 and 16, 2010, the applicant wrote to the YN2, "I didn't notice any annexes on my DD-4 [reenlistment contract] concerning my selling 60 days [of] leave or 0.5 SRB for OS. Is there a separate set of forms for that?" In response, the YN2 replied, "There are no SRB's

¹ Whenever a member reenlists, his record automatically shows that he was discharged from his prior enlistment the day before the date of reenlistment. 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." Members may not carry more than 75 days of accrued leave from one fiscal year to the next, and any accrued leave in excess of 75 days is lost at the start of a new fiscal year. Personnel and Pay Procedures Manual, PPCINST M1000.2A, Chapter 5.D.2.1.

authorized according to ALCOAST 621/09. I do see you have requested to sell leave which can be corrected and will be reflected.”

SUMMARY OF THE RECORD

The applicant enlisted for four years on August 29, 2000, through August 28, 2004. He reenlisted for six years on August 29, 2004, and his reenlistment stated that he was not selling leave. On June 1, 2010, near the end of his second enlistment, the applicant reenlisted for another six years. This third active duty contract states in section B, block 8, “Mbr not selling leave.” This block is initialed by the applicant, who also signed section D, block 13, certifying that he understood that only the agreements shown in section B or recorded on an attached annex would be honored.

VIEWS OF THE COAST GUARD

On December 1, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant’s request and adopting the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

The PSC recommended that relief be denied because the applicant’s reenlistment contract dated June 1, 2010, indicates that he did not intend to sell leave when he signed it. In light of the information on the contract, the PSC argued that the email exchange submitted by the applicant, which is dated more than two weeks after he reenlisted, does not prove that his intent on the date he reenlisted was to sell leave. The PSC argued that without evidence of such intent or of faulty administrative processing, miscounseling, or duress, the Board should deny the applicant’s request.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the views of the Coast Guard, the applicant submitted a copy of his Career Intentions Worksheet (CIW), which is a two-page form that a member completes before his enlistment ends to communicate his intentions to the PSC. On the first page of the CIW, the applicant checked boxes showing that he intended to reenlist for six years. He also checked two boxes in block 10, which only applies to members who are extending their enlistments, instead of reenlisting, and in which the member is supposed to indicate the reason for the extension contract by checking one of eleven boxes. The applicant checked two boxes—both “Request of individual” and “Sell Leave (Effective 01SEP2008, members who are serving on an indefinite contract (which began prior to 01SEP2008) are authorized to cancel and immediately reenlist indefinitely for the purpose of selling leave)(Complete block 24 with # days to sell).” The second page of the CIW, which is signed by both the applicant and his supervisor, contains and requests information about selling leave in block 24. The applicant left block 24 of his CIW uncompleted, as shown below:

24. LEAVE SECTION (Complete for Separations, reenlistments, and first extensions of enlistment).

- If your leave plans change after completing this worksheet, immediately notify your SPO. Failure to do so may result in an overpayment for which you will be responsible.
- If you are entering an indefinite reenlistment contract ...
- Regular, Active Duty, members are only authorized to sell a TOTAL of 60 days' leave during their career. The 60-day career limitation does not apply to Reservists and Retirees recalled to AD for a contingency operation ...
- If separating [permanently] you must use or sell all leave.
- If you are reenlisting or extending, unused leave will automatically be carried forward into your new service obligation.

I plan to (select any that apply): sell ____ days of leave
 take terminal leave starting ____
 take leave prior to my separation for periods listed below

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 under 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’s reenlistment contract dated June 1, 2010, was properly completed to show that he did not want to sell leave when he initialed and signed the contract.

3. Although the applicant's CIW is incorrectly completed, his entries in block 10 indicate that on May 10, 2010, prior to his reenlistment, he intended to sell leave. The email that the applicant sent to the YN2 dated June 15, 2010, shows that two weeks after his date of reenlistment, he still thought he was selling leave pursuant to his reenlistment, and the YN2 acknowledged that he had intended to sell leave. Therefore, although the applicant initialed block 8.b. of his reenlistment contract, which included a note that he was not selling leave, the Board finds that the preponderance of the evidence indicates that the applicant intended to sell leave on June 1, 2010, and that his failure to do so was a result of an administrative error.

4. Under 37 U.S.C. § 37(b), the applicant was entitled to sell leave based upon his discharge on May 31, 2010, the day before he reenlisted, as long as he had not previously sold 60 days of leave. Language on his 2004 reenlistment contract strongly suggests that he has never sold leave. However, the applicant did not submit his leave records to prove either that he has never sold leave; that he had 60 days of accrued, unused leave to sell on May 31, 2010; or that correcting his record to show that he had done so would not subsequently give him a negative

leave balance. Although the applicant did not prove that he lost leave at the end of fiscal year 2010, it is possible that he did since members cannot normally carry over more than 75 days of accrued, unused leave from one fiscal year to another. Personnel and Pay Procedures Manual, PPCINST M1000.2A, Chapter 5.D.2.1.

5. Therefore, the Board finds that it is in the interest of justice to correct the applicant's records to show that he sold his accrued, unused leave upon reenlisting on June 1, 2010, provided that the sale of leave does not exceed the 60-day career maximum under 37 U.S.C. § 37(b) and does not leave him with a negative leave balance after his leave records are adjusted to reflect the sale.

6. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

The Coast Guard shall correct his reenlistment contract dated June 1, 2010, and other military records to show that he sold his accrued, unused leave, provided that the sale of leave shall not exceed the 60-day career maximum under 37 U.S.C. § 37(b) and shall not leave him with a negative leave balance after his leave records are adjusted to reflect the sale. The Coast Guard shall pay him any amount due as a result of this correction.

