

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-039

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 December 8, 2011, 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 August 3, 2012, 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 has signed a second indefinite reenlistment contract and sold 60 days of leave.¹ The applicant stated that when he signed his indefinite reenlistment contract in March 2009, he "decided not to sell any leave since my balance was 73.5 days," and he hoped to be able to use leave sufficiently frequently not to lose leave at the end of each fiscal year.² However, as the officer in charge (OIC) of a cutter during two successive tours of duty, he was unable to take much leave because of operational commitments. When he transferred from one cutter, stationed in xxxxxxxxx, to the second cutter, stationed in xxxxxxxxx, in April 2011, he was authorized only ten days to make the transfer and could not take leave. The applicant stated that since that transfer, he has taken leave at every

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."

opportunity, “but the high operational tempo of the unit will not permit me to take the 65 days of leave needed to get below the 75 days of leave that I will be allowed to carry over on October 1, 2012, in accordance with ALCOAST 519/11.”

The applicant stated that under ALCOAST 307/08, members serving on indefinite reenlistment contracts were allowed a one-time opportunity to reenlist to sell leave,³ and he asked to receive the same opportunity because he was “in danger of losing over 30 days of leave on October 1, 2012.” In support of his allegations, the applicant submitted a personnel database print-out titled “View Paycheck,” which shows that he accrues 2.5 days of leave per month and, as of November 1, 2011, he had 116.5 days of accrued leave.

VIEWS OF THE COAST GUARD

On February 16, 2012, 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).

PSC stated that the record shows that the applicant knew he could sell leave when he reenlisted in 2009 but chose not to do so. PSC stated that ALCOAST 307/08 allowed a member to sign a second indefinite reenlistment contracts in order to sell leave only if the first one was signed before September 1, 2008. PSC noted that the limitation in ALCOAST 307/08 now appears in Article 2.A.20.a. of COMDTINST M1000.8, which states that “[m]embers who

² 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.

³ ALCOAST 307/08, which became effective on September 1, 2008, states the following in pertinent part:

1. In order to afford our members serving on indefinite reenlistment contracts the opportunity to sell leave prior to separation or retirement, the following change is effective immediately and will be reflected in a future change to [the Personnel Manual].
2. Effective 1 September 2008, members who are currently serving on an indefinite reenlistment contract are authorized to enter into a new indefinite reenlistment, one time, during a career for the purpose of selling leave. Those members who desire to enter into a new indefinite contract should contact their unit YN and submit a Career Intentions Worksheet (CG-PSC-2045) indicating their desire to reenlist and the number of days of leave they desire to sell.
• • •
5. It is important for members to understand that if they were already in an indefinite reenlistment, and cancel that contract to sell leave, they will return to an indefinite reenlistment. CGPC (epm-2) remains the cancellation authority for all other issues related to enlistment contracts.
6. Effective 1 SEP 2008, members who have 10 or more years of active service will be allowed to reenlist for periods of three years, four years, five years, six years or for an indefinite period up to their 30-year active duty anniversary date. Members reenlisting for an indefinite period on or after 1 SEP 2008 cannot reenlist again later in their career for the purpose of selling leave. Paragraph 2 (above) applies to members who entered into indefinite reenlistment contracts prior to 1 SEP 2008.
7. Guidance to servicing personnel offices processing new indefinite reenlistment transactions will be provided by PSC via e-mail ALSPO.

entered into an indefinite reenlistment contract before 1 September 2008 may enter into a new indefinite reenlistment contract one time for the purpose of selling leave.”

PSC concluded that because the applicant chose not to sell leave when he reenlisted for an indefinite period, he may now only sell leave when he is separated or retired and that the applicant has “failed to substantiate any error or injustice with regards to his record.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 23, 2012, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

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. The applicant alleged that his operational commitments as the OIC of two cutters on successive tours of duty have prevented him from using leave with sufficient frequency to avoid unjustly losing a significant amount of leave at the start of the new fiscal year on October 1, 2012. The Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁵

3. In ALCOAST 307/08, the Coast Guard provided a one-time opportunity for members who had signed indefinite reenlistment contracts before September 2008 (without being expressly advised that it would be their last opportunity to sell leave before they retired) to sign a new indefinite reenlistment contract to sell leave. Members who have reenlisted indefinitely since September 2008 do not have this opportunity because the Career Intentions Worksheet they complete when reenlisting informs them that it will be their last opportunity to sell leave before retirement.⁶ The applicant has acknowledged that he was advised about the opportunity to sell leave in 2009 but chose not to do so based upon the hope that he would be able to use ample leave in the future.

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁶ CG-2045 (Rev. 06/08), Career Intentions Worksheet (“If you are entering into an indefinite reenlistment this will be the last opportunity to sell leave before you retire or are discharged.”).

4. The applicant accumulates 2.5 days of leave per month, or 30 days per year, and so must use approximately that much to avoid losing leave since he apparently had already accumulated 73.5 days of leave when he reenlisted indefinitely in March 2009. The applicant alleged that as the OIC of two cutters since 2009 he has had insufficient opportunity to use enough leave not to lose leave at the end of this fiscal year pursuant to Chapter 5.D.2.1. of the Personnel and Pay Procedures Manual. However, the applicant submitted insufficient evidence or information to show that his decision not to sell leave in 2009 was sound based on operational commitments and his accumulation of leave during prior assignments or to show that he could not reasonably have taken approximately 30 days of leave in fiscal years 2010 and 2011. Under the Board's rules, the applicant bears the burden of showing that his leave record is erroneous or that he has been unjustly deprived of the opportunity to use leave, and he has not carried this burden.

5. Accordingly, relief should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

