

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-116

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 April 25, 2014, 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 December 19, 2014, 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 by either paying him for the 30 days of leave that he attempted to sell when he signed a four-year reenlistment contract on February 28, 2014,¹ or correcting his record to show that he did not sell 30 days of leave. He stated that while serving on an extension contract, he received transfer orders to a cutter that required him to obligate additional service, so he reenlisted on February 28, 2014, and was told by YN2 P that he could sell 30 days of leave. However, the applicant stated, he received an email from YN2 P a few months later stating that the Coast Guard Pay and Personnel Center (PPC) had disapproved his sale of leave. The applicant stated that according to PPC, he was not eligible to sell any leave upon his February 28, 2014, reenlistment because Rule 6 of Figure 10-4 of the Coast Guard Pay Manual prohibits the sale of leave when a member cancels an extension contract after service under it begins and is immediately discharged for the sole purpose of reenlisting.

¹ Whenever a member on active duty 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. § 501(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 10.A.1.a. of the Pay Manual, which authorizes upon discharge a lump sum payment of unused leave "not to exceed a career total of 60 days."

In support of his application the applicant submitted a copy of his February 28, 2014, four-year reenlistment contract, which states that he was selling 30 days of leave.

The applicant also submitted a copy of an April 3, 2014, letter from YN2 P, who assisted him with his reenlistment and who told him that he could sell leave upon his reenlistment. In the letter, YN2 P states that approximately a month after the applicant signed the reenlistment contract, PPC told him (YN2 P) that the applicant was not eligible to sell any leave upon his February 28, 2014, reenlistment because the Coast Guard Pay Manual states that “if an extension is cancelled after service under it begins for the purpose of reenlisting, sold leave is not payable.”

SUMMARY OF THE RECORD

The applicant received permanent change of station (PCS) orders on February 24, 2014, to transfer from a boat station to a cutter. The orders required him to obligate enough service to have at least one year remaining on his enlistment upon reporting to the cutter on July 1, 2014. At the time the orders were issued he was serving on an eight-month extension contract, which ran from January 28, 2014, through September 27, 2014. Therefore, he was required to obligate at least another nine months of service to accept the orders to the cutter. The applicant was counseled on February 25, 2014, by YN2 P that he needed to obligate service for the transfer and was also told that he was eligible to sell 30 days of leave. The applicant completed a Career Intentions Worksheet² and requested to sell 30 days of leave. On February 28, 2014, he ended his January 28, 2014, eight-month extension contract by reenlisting for four years, and the contract states that he was selling 30 days of leave. The applicant’s sale of leave (SOL) request was never processed by PPC, but his record apparently continues to indicate that he did, in fact, sell 30 days of leave on February 28, 2014.

VIEWS OF THE COAST GUARD

On September 18, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Service Center (PSC) in a memorandum on the case and recommended that the Board grant the applicant’s request to have his record corrected to show that he did not sell 30 days of leave on February 28, 2014.

PSC stated that the applicant received inaccurate advice regarding the sale of leave from his yeoman and that the applicant’s record incorrectly shows that he sold 30 days of leave on February 28, 2014. PSC argued that the applicant was not authorized to sell leave upon his reenlistment because of COMDTINST 7220.29B, Rule 6, Figure 10-4, prohibits the sale of leave when a member cancels an extension contract after service under it begins and the member is discharged for the purpose of reenlisting. Accordingly, PSC recommended that the applicant’s record be corrected to show that he did not sell leave on February 28, 2014.

² The purpose of the CIW is for the member to convey career intentions to the servicing personnel office.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 23, 2014, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. He responded on December 1, 2014, and agreed that his record should be corrected to show that he did not sell leave on February 28, 2014. Upon further inquiry by the BCMR staff, the applicant confirmed his request to have his record corrected to show that he did not sell leave on February 28, 2014, instead of being paid for 30 days of leave.

LAWS AND REGULATIONS

Title 37 U.S.C. § 501(b), states that 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.” Paragraph (a) of § 501 defines “discharge” to include “in the case of an enlisted member, separation or release from active duty under honorable conditions, termination of an enlistment in conjunction with the commencement of a successive enlistment (without regard to the date of the expiration of the term of the enlistment being terminated), or appointment as an officer.” Paragraph (f) states that the number of days of leave for which a member may be paid during his career “may not exceed sixty”

Article 10.A.1.a. of the Coast Guard Pay Manual states that a member who is discharged from active service under honorable conditions may elect payment for unused accrued leave. Effective February 10, 1976, members may be paid for no more than 60 days.

Rule 6 in Figure 10-4 of the Pay Manual states that accrued leave is not payable when an enlisted member cancels a voluntary extension after service under it begins and the member is discharged under honorable conditions for the purpose of reenlisting.

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 he was erroneously counseled regarding his eligibility to sell 30 days of leave when he signed a four-year reenlistment contract on February 28, 2014, and stated that his record currently shows that he sold 30 days of leave when in fact he did not. 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. 33 C.F.R. § 52.24(b). 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.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The Board finds that the applicant was entitled to sell leave when he was discharged before reenlisting for four years on February 28, 2014. Under 37 U.S.C. § 501(b), he was entitled to sell leave upon “discharge,” and § 501(a) defines “discharge” to include being discharged from one enlistment to reenlist “without regard to the date of the expiration of the term of the enlistment being terminated.” When the applicant reenlisted on February 28, 2014, he was automatically discharged from his prior, extended enlistment as of February 27, 2014. Therefore, he was legally entitled to sell leave under the statute. The Coast Guard’s policy under Rule 6 of Figure 10-4 of the Coast Guard Pay Manual, however, directly contradicts the statute by claiming that accrued leave is “not payable” when an “extension is cancelled after service under it begins and member is discharged under honorable conditions, for purpose of reenlisting.” This policy is clearly inconsistent with the statute, which entitles a member to sell leave upon discharge—regardless of the termination date of his enlistment contract and regardless of whether the enlistment that the member has been serving under has been extended. Nothing in the statute gives the Coast Guard the discretion to limit a member’s right to sell leave to discharges from enlistments that have not been extended. The Board recommends that the Coast Guard review this policy and amend it to be consistent with the unambiguous entitlement in 37 U.S.C. § 501.

4. The applicant’s record is incorrect in showing that he sold 30 days of leave when he reenlisted on February 28, 2014, because the Coast Guard has refused to pay him. Although the applicant was legally entitled to sell the leave and tried to sell it, he has asked the Board to correct his record by removing the erroneous record of the failed sale of leave, instead of ordering the Coast Guard to pay him. Circumstances have apparently developed while his BCMR case was pending that make the alternative relief, which was recommended by the Coast Guard, preferable to him.

5. Accordingly, relief should be granted by correcting the applicant’s reenlistment contract and other military records to show that he did not sell any leave when he reenlisted on February 28, 2014.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED] USCG, for correction of his military record is granted in that his February 28, 2014, reenlistment contract and other military records shall be corrected to show that he did not sell any leave pursuant to his discharge and reenlistment.

December 19, 2014

