

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-175

██████████
██████████; BM1

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on July 11, 2018, and assigned it to staff member ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 26, 2019, 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, a Boatswain's Mate First Class (BM1/E-6) who retired from the Coast Guard on June 1, 2018, asked the Board to correct his record by paying him for 30 days of unused leave that he attempted to sell upon retirement.

The applicant alleged that he was mistakenly informed that he could sell 74 days of leave before he retired. He stated that he knew service members could only sell 60 days of leave over the course of their careers, but relied on this misstatement in his request to sell the leave. The applicant said that the administration office contacted him only 14 days before he was scheduled to retire to tell him that he was unable to sell the 74 days of leave, and the office asked him to go on terminal leave immediately, giving him 14 days of leave. The applicant then stated that he attempted to extend his retirement by 30 days, which the Enlisted Personnel Management (EPM) office denied; however, EPM informed him that he had a balance of 30 days of leave that he could still sell before retiring. He stated that he attempted to sell this remaining leave, but he never received payment on this sold leave.

In his application, the applicant included a letter from his commanding officer (CO) dated May 21, 2018. The CO stated that the applicant planned to sell 30 days of leave before retirement, since he had sold 30 days earlier in his career and knew that he could only sell 60 days in total. The CO said that the applicant received bad information about the leave policy, writing:

[Applicant] was advised, though not in writing, that he was eligible to sell another 60 days of leave when retiring by his servicing yeoman. When approving his paperwork, I questioned him on the validity of his ability to sell all 60 days of leave, but he stated he was re-assured that it was perfectly acceptable.

The CO added that this servicing yeoman departed suddenly, and the replacement advised the applicant that he could not sell all 60 days and that he should immediately start terminal leave. The CO stated that, upon retirement, the applicant had 74 days of accumulated leave, 30 of which he was eligible to sell, and could not.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 6, 1998.

The applicant's leave records show that he sold 30 days of leave on June 20, 2002.

As part of his November 4, 2017,¹ Career Intentions Worksheet, the applicant indicated that he intended to retire and that he intended to sell 73 days² of leave. The Leave Section of the Career Intentions Worksheet states, "Regular, Active Duty, members are only authorized to sell a TOTAL [emphasis included] of 60 days leave during their career."

On January 24, 2018, the Coast Guard approved the applicant's request for retirement as of June 1, 2018.

On his April 10, 2018, Separation Worksheet, the applicant did not request to take terminal leave before retiring.

The applicant's May 31, 2018, Statement of Semi-Monthly Income shows that he received \$3,944.10 in a lump sum leave payout for that period. This form also shows that the applicant sold 60.0 days of regular leave through his career, an increase from the 30.0 days of leave sold shown on his October 31, 2017, Statement of Semi-Monthly Income, which is the only other statement included in his application.

VIEWS OF THE COAST GUARD

On March 19, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

In her memorandum, the JAG wrote that there is no evidence that the applicant was improperly counseled in terms of how many days of leave he could sell. She added that the CO's memorandum does not count as evidence, since it is based on what the applicant told his CO before he retired and not firsthand knowledge. In addition, she noted that the applicant sold 60 days of

¹ The form in question indicates that the applicant submitted the form on November 4, 2018. Since he retired in May 2018, this likely is a mistyped date.

² The applicant requested 73 days off in his paperwork but alleges he had 74 days to sell in his BCMR application. This may be a typographical error as well.

leave over the course of his career – 30 days in 2002 and 30 days upon retirement. Since a service member can only sell 60 days of leave, she wrote, the applicant was not entitled to sell more on top of what he already received. The JAG added that it was the applicant’s choice to accumulate well over the maximum number of days of leave before retirement and that he was given ample warning in the Career Intentions Worksheet that he was only allowed to sell 60 days of leave over the course of his career.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 4, 2018, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Statutes

37 U.S.C. § 501 states:

(b)(1) A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Oceanic and Atmospheric Administration, 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.

• • •

(f) The number of days upon which payment under subsection (b) or (g) is based may not exceed sixty, less the number of days for which payment has been previously made under such subsections after February 9, 1976. For the purposes of this subsection, the number of days upon which payment may be based shall be determined without regard to any break in service or change in status in the uniformed services.

Coast Guard Pay Manual

Chapter 10.A.1.a.(1) of the Coast Guard Pay Manual in force in 2018 (COMDINST M7220.29C) discusses the Coast Guard’s sale of accrued leave policy:

A member who is discharged from active service under honorable conditions unless the member continues on active duty (AD) under conditions which require accrued leave to be carried forward. Also an enlisted member who voluntarily extends an enlistment for the first time may elect payment for unused accrued leave. Effective on 10 Feb 1976, members may be paid for no more than 60 days, see Section 10.A.1.a.(2) and 10.A.1.a.(3) for exceptions, of accrued leave during the member’s military career. Payments for accrued leave made before this date are excluded from the 60-day limitation. Effective 14 Jul 1976, a member eligible for an accrued leave settlement may elect to receive payment for a portion of the accrued leave, not to exceed a career total of 60 days, and carry the remaining accrued leave forward to a new or extended enlistment. Figures 10-1 through 10-4 are rules for determining whether a member may be paid for accrued leave. Payment for leave must be exact; half-days are not rounded. Example: A member entitled to 59-1/2 days must be paid for 59-1/2 days, not 60 days.

Chapter 1.A.3. of the Coast Guard Pay Manual describes member responsibility to track pay, leave, and sold leave:

Coast Guard Member Responsibility. Each service member (active duty, reservist, and retiree) has a responsibility to verify the accuracy and correctness of every pay, allowance, entitlement, and deduction that is processed or appears on their Semi-Monthly Statement of Income, commonly referred to as payslip or (in the case of retirees) Retiree & Annuitant Statement of Monthly Income (RASOMI). These include but are not limited to: Basic Pay for member's pay entry base date and pay grade, correct housing allowance for member's dependency status and their duty station location, type of quarters being assigned, permanent duty station (PDS) zip code, correct meal cost deductions for enlisted members serving on ships with established Coast Guard Dining Facilities (CGDF - galley) or shore stations where CGDF use has been designated as mandatory (CG Class A Schools or certain unaccompanied personnel housing (UPH/barracks) residents), and special/incentive pays. After review and verification of their Semi-Monthly Statement of Income, if any discrepancies are noted or suspected, the service member shall take prompt action to notify (in writing or by email) the unit P&A office or the Servicing Personnel Office (SPO) to have the discrepancies corrected. In the case of a questionable or suspected overpayment, members must set aside those monies that are in question until notified in writing by higher authority (PPC or CGHQ) that the amount in question is correct and the member can retain the funds. If necessary, service members shall seek assistance from their supervisor to ensure discrepancies are properly corrected in a timely manner.

Military Separations Manual

Chapter 1.C.1.d.(1) of the Military Separations Manual (COMDINST M1000.4) discusses retirement and use of leave policies:

At their discretion, leave-granting authorities may grant earned or advance leave accompanying retirement orders under Chapter 2 of reference (p), Military Assignments and Authorized Absences, COMDTINST M1000.8 (series); however, the member's effective retirement date will not be delayed for the specific purpose of allowing him or her to use earned leave. Relief for the retired member normally coincides with the scheduled retirement date, not the date the member departs on leave.

Chapter 1.C.11.e.(1) states the following:

The decision to submit a retirement memorandum is a serious one because the projected separation triggers transfer and advancement actions that, if reversed, cause hardship to other members. Therefore, Commander (CG PSC-EPM-1) normally will not honor a request to cancel or delay an already approved retirement date unless a specific Service need exists and ...

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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).
3. The applicant alleged that he never received payment for 30 days of leave that he tried to sell before retirement and that this lack of payment in his military record is erroneous and

unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³ 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."⁴

4. The applicant's Statements of Semi-Monthly Income show that he sold 60 days of leave during his military career and received payment for this sold leave. Per 37 U.S.C. § 501 and COMDINST M7220.29C, Chapter 10.A.1.a.(1), the maximum amount of leave a service member can sell during his career is 60 days. Therefore, the Coast Guard's refusal to allow the applicant to sell more than 60 days of leave was not an error or injustice.

5. Even if the applicant genuinely relied on an incorrect assertion from a yeoman that he could sell more than 60 days of leave over the course of his career, as he alleged, the government cannot be bound by the mistaken claims of a yeoman.⁵ Moreover, his Career Intentions Worksheet explicitly stated that members cannot sell more than 60 days of leave during their careers. The applicant signed the worksheet, indicating that he had consented to and understood its contents.

6. According to the applicant, a couple of weeks before his scheduled retirement, he tried to delay it so that he could use all of his accrued leave while accruing more active duty time. But Chapter 1.C.1.d.(1) of COMDTINST M1000.4 states that a member's retirement "will not be delayed for the specific purpose of allowing him or her to use earned leave." Therefore, and given that the Coast Guard makes important transfer and advancement decisions for other members based on scheduled retirements,⁶ the Board finds that the Coast Guard committed no error or injustice by refusing to allow the applicant to delay his already scheduled retirement to allow him to use leave he could not sell.

7. Therefore, the applicant's request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁵ *Goldberg v. Weinberger*, 546 F.2d 477, 481 (2d Cir. 1976), *cert. denied sub nom. Goldberg v. Califano*, 431 U.S. 937 (1977); *Montilla v. United States*, 457 F.2d 978, 987 (Ct. Cl. 1972); *Fed. Crop Ins. Corp. v. Merrill*, 322 U.S. 380, 384 (1947) ("Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority.").

⁶ COMDTINST M1000.4, Chapter 1.C.11.e.(1).

ORDER

The application of BM1 [REDACTED], USCG Retired, for correction of his military record is denied.

July 26, 2019

