


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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2023-023**

  
BMCS (E-8) (Retired)

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**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 March 10, 2023 and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated September 5, 2024, 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 retired Master Chief Boatswain's Mate (BMCS/E-8), asked the Board to correct his record by restoring to him nine days of leave that was sold without his knowledge or consent. According to the applicant, the leave sold is worth \$1,921.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard Reserve on September 13, 1999, before transferring to the Regular Coast Guard on May 1, 2001.

On November 5, 1999 the applicant sold 4.5 days of regular and saved leave.

On September 1, 2000 the applicant sold 4.5 days of regular and saved leave.

The applicant retired on August 1, 2023 after 23 years of service.

**VIEWS OF THE COAST GUARD**

On September 19, 2023, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he 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).

The JAG argued that there is no evidence of error in the processing of the applicant's accrued leave. The JAG explained that federal law found at 37 U.S.C. § 501 and Coast Guard regulations limit to 60 the maximum number of days that a member may sell Lump Sum Leave (LSL). The JAG stated that as reflected on the applicant's November 1999 and September 2000 pay slips, the applicant sold nine days of leave early in his career. Upon retirement, the applicant was permitted to sell 51 days of leave, thus allowing him to sell the maximum number of days of leave permitted by law.

Additionally, the JAG noted that previously sold leave is reflected on all of the applicant's monthly pay slips throughout his career, contradicting the applicant's claim that he was unaware the leave was sold. The JAG explained that the applicant sold his remaining 51 days of LSM when he retired on August 1, 2023, a sale that is reflected on his July 31, 2023, pay slip.

The JAG argued that there is no evidence that an injustice has occurred. The JAG stated that the applicant was permitted to sell the maximum lump sum leave allowed by law. The fact that the sale of leave would have financially benefitted the applicant more later in his career—at retirement—does not render the decision he made to sell leave in 1999 and 2000 as invalid or without consent. All enlisted members are permitted to sell leave under the requirements established in law and regulation. The JAG contended that it is the service member's responsibility to consider their financial needs at the time of sale against the possible value of selling leave later in their career.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On September 28, 2023, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. As of the date of this decision, no response was received.

### **APPLICABLE LAW AND POLICY**

Title 37 U.S.C. § 501 provides the following guidance on service members receiving payments for their accrued leave:

**(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.

## FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application was timely 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 the Coast Guard erroneously sold nine days of leave without his consent. 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.<sup>1</sup> 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."<sup>2</sup>

4. The applicant alleged that the Coast Guard erroneously sold nine days of his accrued leave without his knowledge and consent in November 1999 and September 2000. However, other than the applicant's statement, he provided no additional evidence to support his claims that the nine days of leave were sold without his knowledge. Moreover, the applicant remained in the service for another twenty-three years and during this time his paycheck stubs outlined the accrued leave the applicant sold during previous periods. This is supported by the paycheck stubs the applicant submitted with his application for relief. Without more, the Board cannot establish that the contested leave was erroneously sold by the Coast Guard without the applicant's knowledge or consent. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard erroneously or unjustly sold nine days of his accrued leave.

5. For the reasons outlined above, the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.<sup>3</sup> He has not proven, by a preponderance of the evidence, that the Coast Guard erroneously and unjustly sold nine days of his accrued leave without his knowledge or consent. Accordingly, the applicant's primary requests should be denied.

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<sup>1</sup> 33 C.F.R. § 52.24(b).

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

<sup>3</sup> *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

**ORDER**

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

September 5, 2024

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