

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-046


LT (Retired)

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 February 21, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated December 19, 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 Lieutenant (LT/O-3), who was medically retired on December 14, 2023, asked the Board to correct his record by reinstating 45 days of accrued leave to his record and showing that leave was sold upon his retirement. The applicant claimed that upon his retirement, he was only paid for 15 days of sold leave instead of the planned 60 days due to incorrect pre-separation counseling he received from his servicing office. According to the applicant, at the time of filing his pre-separation paperwork on August 28, 2023, he had 111 days of leave accrued. In his separation paperwork, he indicated that he planned on taking 51 days of terminal leave and selling 60 of accrued leave as instructed by his servicing Yeoman, YN1 M. The applicant stated that at that time he did and YN1 M did not realize that leave accruals would be rolling back to 60 days as of October 1, 2023.¹ The applicant claimed that he was not aware of the changes in the leave policy while disconnected from the Coast Guard systems while assigned to the Navy from June 2022 through February 2023 and then from February 2023 through his retirement in December 2023 while he was placed on emergency permanent telework due to visual blindness leading to his medical retirement.

¹ After COVID the Coast Guard allowed service members to roll over more days above and beyond the 60 previously permitted by policy.

The applicant contended that the error that caused him to lose the 45 days of leave was the result of incorrect pre-separation counseling and improper oversight by the Servicing Personnel Officer who also reviewed and approved the separation package without raising any concerns of a potential problem. The applicant submitted emails from YN1 M wherein YN1 M acknowledged the error in his counseling and his oversight, as well as the hardships his errors placed on the applicant and his family. The applicant claimed that had he been given the correct information during his pre-separation counseling, he would have elected not to take any leave in order to sell the full 60 days, knowing that he was retiring and would be experiencing a drastic change in his personal finances. The applicant contended that this correction should be made due to the Coast Guard administrative error and was no fault of his own.

To support his application, the applicant submitted emails from YN1 M, the servicing personnel individual who provided him with erroneous retirement counseling, wherein YN1 M admitted to his errors and requested that the applicant's leave be reinstated.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 9, 2009, and was then commissioned an Ensign on December 7, 2011.

On June 30, 2023, the applicant was evaluated by an Informal Physical Evaluation Board (IPEB) and found to have a combined disability rating of 50% due to partial blindness and migraine headaches. The IPEB found the applicant unfit for continued duty by reason of physical disability because his condition continued to prevent him from performing the duties required of a service member of his rank. Finally, the IPEB recommended that the applicant be placed on the permanent disability retirement list.

On July 17, 2023, the applicant was notified of the board's findings and accepted the findings as presented as well as the boards recommended disposition. The applicant waived his right to a formal hearing.

VIEWS OF THE COAST GUARD

On September 27, 2024, a Judge Advocate (JA) for 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).

PSC argued that pursuant to Article 2.A.1.b. of the Military Assignments and Authorized Absences Manual, COMDTINST M1000.8A, which is the authority on military leave, service members are allowed to carry over only 60 days of leave into a new fiscal year, unless embarked away from homeport on a vessel or aircraft for more than 60 consecutive days. PSC further argued that pursuant to Article 2.A.3.a. of COMDTINST M1000.8A, all personnel will be "afforded the opportunity and encouraged to take leave annually." According to PSC, personnel not taking leave when afforded should be cautioned that such refusal may result in the loss of earned leave. PSC explained that Article 2.A.15. of COMDTINST M1000.8A, requires that leave be reduced to 60

days on the first day of the next fiscal year except as outlined in Article 2.A.15.b. PSC claimed that one of the authorized exceptions is when a national emergency is declared.

PSC further explained that ALCOAST 187/20, issued on May 21, 2020, established the COVID-19 pandemic as a national emergency pursuant to Article 2.A.15.b. of COMDTINST M1000.8A, and authorized a special leave accrual of 90 days for the 2020 Fiscal Year, 80 days for the 2021 Fiscal Year, 70 days for the 2022 Fiscal Year, and returning to 60 days for the 2023 Fiscal Year. PSC noted that Article 4 of ALCOAST 187/20 warned Coast Guard members that, “Members should manage their accrued leave balances to avoid loss of leave.” PSC stated that ALCOAST 055/21, issued on June 1, 2021, cancelled ALCOAST 187/20 and updated the special leave accrual allowances provided for in ALCOAST 187/20, with the main difference being an increase in special leave allowed for the 2021 Fiscal Year from 80 to 90 days, and an increase from 70 to 75 days for the 2022 Fiscal Year, with the return to 60 days at the end of the 2023 Fiscal Year. ALCOAST 055/21 reiterated that members should manage their accrued leave balances to avoid loss of leave. On August 4, 2022, the Coast Guard issued ALCOAST 289/22 wherein Coast Guard members were reminded of the changing leave carryover limits and wherein members were again cautioned to manage their accrued leave balances to avoid loss of leave.

PSC noted that for the 2019 Fiscal Year, the applicant lost 45 days of leave, for the 2021 Fiscal Year the applicant lost 30 days of accrued leave, for the 2022 Fiscal Year the applicant lost 26 days of accrued leave and lost 45 days for the 2023 Fiscal Years. PSC explained that a review of the applicant’s leave and earnings statements the applicant only took 15 days of earned leave during the last five years of his career. In total, in the years prior to his medical retirement, PSC stated that the applicant lost a total of 101 days on a total of three occasions between the 2018 and 2022 Fiscal Years.

Pursuant to the policies outlined above, PSC argued that the applicant’s claim of lack of knowledge of leave carryover policies is unpersuasive for a 14-year veteran who experienced lost leave several times throughout his career. PSC argued that due notice was given to all Coast Guard members that the special leave allowances were expiring at the end of 2023. According to PSC, the applicant’s argument that he was unable to take leave during his last year in the Coast Guard because he was in a permanent telework status is unpersuasive because members on telework are afforded the same opportunities to take earned leave. PSC contended that the yeoman’s admitted lack of knowledge of the special leave accrual’s expiration is outweighed by the applicant’s responsibility to manage his leave balance or be familiar with Coast Guard leave policies.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 18, 2024, the Chair sent the applicant a copy of the Coast Guard’s advisory opinion and invited him to respond within thirty days. The Chair received the applicant’s response on November 17, 2024.

In response to PSC’s argument, the applicant contended that the leave he lost in previous years has no relevance to the final disposition of leave at the end of his career. According to the applicant, the circumstances surrounding leave at the end of one’s service career versus the middle of one’s career are profoundly different when compared to how PSC described the process in its

advisory opinion. The applicant further contended that his length in service has no bearing on the execution and disposition of his final leave balances because he followed the Coast Guard's recommended protocol of asking the administrative subject matter experts for clarification of policy and retirement processing that they are specifically trained in. The applicant alleged that his loss of leave in previous years was a choice he made in order to put his career and ability to compete above additional days off in conjunction with stand-down and holidays. That choice, however, had no bearing on how he planned and tried to use earned leave during his unplanned medical departure from the Coast Guard. The applicant claimed that PSC's response provided inadequate context for the circumstances of his case.

The applicant explained that his last duty assignment was on detached duty with the United States Navy, and prior to receiving medical retirement order, he was placed on permanent remote work after going blind in one eye and beginning to have medical issues with the other eye, limiting his ability to drive to and from work during normal working hours. The applicant claimed that all administrative support was provided remotely by his area servicing office after he was administratively assigned for retirement processing. The applicant argued that pursuant to Coast Guard policy, he was only afforded 120 days from notification of medical retirement to his actual retirement date to prepare and process all necessary paperwork and accompanying requirements for a military retirement.

The applicant claimed that during every conversation he had with YN1 M, he clearly and adamantly stated that it was his intention to sell 60 days of leave at retirement. He further claimed that his initial Career Intention Worksheet and retirement paperwork he submitted to YN1 M prior to his first and only career intentions counseling, which was held via Microsoft Teams, clearly indicated his intention to sell 60 days of leave and not taking any personal or terminal leave to do so. It was then, at the good-intentioned advisement of YN1 M, that based on his loss of leave in previous years, that he sell 60 days and take the remaining leave as terminal leave. The applicant alleged that YN1 M advised him that if the retirement paperwork was submitted and processed prior to the new fiscal year, that the sell of his leave would be honored.

The applicant stated that his intended retirement course was approved by the regional servicing personnel office, who had the authority and responsibility for reviewing and approving the retirement paperwork and providing him with retirement orders. The applicant contended that at no point during the routing process by his sector or the servicing personnel office was the error identified, nor was anyone made aware that YN1 M was incorrect in his assumption regarding the timing of the paperwork being processed and the leave intentions being honored. The applicant further contended that this oversight at multiple levels stripped him of the opportunity to return to his original career intentions of selling 60 days with no terminal leave leading up to his retirement. The applicant stated that he applauded and appreciated YN1 M for immediately accepting responsibility for his mistake and for misadvising him during their counseling session after he leaned on YN1 M's expertise in preparing and processing his retirement paperwork.

APPLICABLE LAW AND POLICY

10 U.S.C. § 701(b) provides that “Except as provided in subsections (e) and (f), a member [of an armed force] may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.”

The Military Separations Manual, COMDTINST M1000.4A, provides the following guidance on disability retirements and leave in conjunction with retirements:

Article 3.A.4. Leave in Conjunction with Retirement.

a. At their discretion, leave-granting authorities may grant earned or advance leave accompanying retirement orders under Chapter 2 of Reference (q); however, the member's effective retirement date will not be delayed for the specific purpose of allowing them to use earned leave. Relief for the retired member normally coincides with the scheduled retirement date, not the date the member departs on leave.

b. If authorities grant leave in connection with retirement, complete the Service member's records before the Service member departs on leave, except for the final date entries, and endorse retirement orders to show the amount of leave granted. The retirement processing station subsequently completes all documents in the service member's official record on the effective retirement date and transmits the member's copies of these documents to the Service member.

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Article 3.A.6. Administrative Absence in Connection with Retirement.

a. Under the provisions of Reference (q) retiring members are eligible for an administrative absence not to exceed 20 days (if separated INCONUS), or 30 days (if separated OCONUS), to facilitate relocation. This administrative absence in conjunction with retirement is not an entitlement; however, it may be granted at the discretion of the member's command provided it does not adversely affect mission performance. This duty is intended for activities related to transition or relocation, e.g., job interviews, and not to extend leave periods.

b. The following conditions and restrictions apply to permissive temporary duty in conjunction with retirement.

(1) It may be authorized for consecutive days, including weekends and holidays.

(2) It may be taken in increments, not to exceed the totals dictated in Section 3.A.6.a. of this Instruction.

(3) Liberty or a period of combined leave and liberty is not authorized between consecutive periods of administrative absence in conjunction with retirement.

(4) It may be used in conjunction with leave en route to home, with no intent to return to the last permanent duty station, including leave en route to a retirement processing point as defined in Section 3.A.4. of this Instruction.

Note: When administrative absence is used in conjunction with retirement processing point and terminal leave, the absence will be accounted for in this order: administrative absence, time at retirement processing point, and leave.

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Article 5.B. Final Action on Physical Evaluation Boards.

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6. Date of Separation or Retirement.

a. Disability. When temporary or permanent disability retirement or disability separation is directed, the effective date of such retirement or separation normally is 20 working days following the date of Commander (CG PSC)'s action. If every effort has been made to meet the separation date within the 20 working day period, but it proves impossible to complete the separation processing (shipment of household goods, OCONUS to CONUS transfer, etc.) within that timeframe, then retention of the member beyond the mandatory date for a period which is absolutely necessary to complete the separation processing may be authorized by Commander (CG PSC- EPM) for enlisted or Commander (CG PSC-OPM) for officers. Commanding officers must submit a request, via email, for an extension of the separation date and must outline the additional time needed and the reason(s) for the extension.

...

c. Retaining Commissioned Officers. In the case of commissioned officers, the Coast Guard must make every effort to evaluate a member's physical disability prior to a mandatory retirement or discharge date. However, except as provided in Section 3.F.2. of this Instruction for chief warrant officers, if every effort has been made to meet the mandatory date, but it proves impossible to complete physical disability processing then retention of the member beyond the mandatory date for a period which is absolutely necessary to complete the physical disability determination may be authorized by Commandant (CG 1).

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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 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 requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

4. The applicant alleged that the Coast Guard erroneously advised him that he could sell 60 days of leave after the end of the fiscal year so long as his retirement paperwork was submitted prior to the end of the fiscal year, but that was inaccurate, and he end up losing 51 days of leave. 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.² 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."³

5. The applicant claimed that had he known that he would lose his leave at the end of the fiscal year and that the Coast Guard would not honor his intentions worksheet, he would have elected not to take any leave in order to sell a full 60 days of his accrued leave. The record shows that the applicant was notified on July 17, 2023, that the Informal Physical Evaluation Board notified him that he was unfit for duty due to blindness and that he should be placed on the permanent disability retirement list. The applicant acknowledged and accepted the board's findings and waived his right to a formal hearing. A month later, on August 28, 2023, the applicant submitted his Career Intentions Worksheet wherein he declared that he planned on taking 60 days of leave in connection with taking terminal leave beginning on October 4, 2023. At the time of completing this paperwork, the applicant had accrued 111 days of leave. However, pursuant to Coast Guard policy, the applicant could only carry forward 60 days at the end of the fiscal year, which for federal employees ends on September 30 of each year.

The yeoman advising the applicant erroneously believed that so long as the applicant submitted his retirement paperwork prior to September 30, 2023, the Coast Guard would honor the applicant's intent to sell 60 days of leave. In reliance of the yeoman's counseling, the applicant used his 20 days of administrative leave permitted under Article 3.A.6.a. of the Military Separations Manual, COMDTINST M1000.4A, from October 4, 2023, through October 23, 2023, and from October 24, 2023, through December 14, 2023, the applicant used some of his remaining leave balance on terminal leave. Upon his medical retirement on December 14, 2023, the applicant expected to be paid for 60 days of leave, the maximum amount authorized to be sold back. However, because the applicant's retirement took place after September 30, 2023, 51 of the days he had intended to sell back had been lost and therefore were not paid out to the applicant. Instead, the applicant was only paid for 15 days of leave sold. This consisted of his remaining unused leave, as well the leave he earned between October 1, 2023 and his discharge on December 14, 2023. The records in this case are clear that the applicant was provided erroneous information by the yeoman who provided him with his retirement counseling. However, as discussed in the following findings, the Board finds that the Coast Guard's error did not harm the applicant.

6. Article 5.B.6.a. of COMDTINST M1000.4A, states:

When temporary or permanent disability retirement or disability separation is directed, the effective date of such retirement or separation normally is 20 working days following the date of Commander (CG PSC)'s

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

action. If every effort has been made to meet the separation date within the 20 working day period, but it proves impossible to complete the separation processing (shipment of household goods, OCONUS to CONUS transfer, etc.) within that timeframe, then retention of the member beyond the mandatory date for a period which is absolutely necessary to complete the separation processing may be authorized by Commander (CG PSC- EPM) for enlisted or Commander (CG PSC-OPM) for officers. Commanding officers must submit a request, via email, for an extension of the separation date and must outline the additional time needed and the reason(s) for the extension.

Pursuant to this policy, the applicant's retirement date should have occurred on or around September 15, 2023, which would have been when Commander PSC was notified of the applicant's disability retirement on August 16, 2023, the date the "Final Reviewing Authority" approved and signed the applicant's IPEB report. The Board's position that Commander PSC ordered the applicant's retirement not long after August 16, 2023, is supported by the fact that the applicant submitted his Career Intention Worksheet on August 28, 2023, indicating that he was being processed for retirement. Finally, the applicant's Career Intention Worksheet reflected a retirement date of December 14, 2023. Why the applicant's disability retirement was delayed beyond the 20 days required by policy is not clear, but policy does not permit disability retirement being delayed or pushed back simply to allow the service member to use accrued leave. Article 3.A.4.a. states that the member's effective retirement date will not be delayed for the specific purpose of allowing them to use earned leave. In addition, the Board's review of the record shows that the applicant was remaining within the same state as his final duty station and did not require any significant logistics that would have justified delaying his medical retirement as required by Coast Guard policy.

The applicant claimed that he was entitled to 120 days to complete his retirement process, but the 120 days allotted for retirement processing is for normal retirements, not medical retirements like the applicant's. Medical retirement processing requires a more expeditious process because the member has been deemed by a medical board to be unfit for continued service. In the applicant's case, the IPEB found that the applicant's blindness prevented him from being able to carry out his duties, which required that the applicant be immediately separated from the Coast Guard. The Coast Guard's failure to timely and properly separate a service member incapable of performing his duties meant that the applicant received an additional 3 months—approximately September 15, 2023, through December 14, 2023—of his full salary, in addition to all applicable allowances, instead of half his salary that he would have received upon his retirement.⁴

7. The applicant asks to be paid for a full 60 days of leave sold, and contends that – had he known the consequences of his decision to retire after October 1 – he would have instead retired on September 30 and sold the full 60 days of leave he was authorized. This is a remedy the board has the ability to grant, but it appears the applicant misperceives the effects this would have. The applicant's base pay at the time of his discharge was \$7,890.60, making 60 days of his leave worth approximately \$15,780.⁵ As the Applicant has already received payment for 15 days leave at approximately \$3,945, the relief he is asking for would at most be \$12,135 (45 days). However,

⁴ Because the applicant did not complete 20 years of creditable service, his retirement pay was based on his highest 36 months of earnings multiplied by his disability rating. In the applicant's case, that would entitle him to approximately 50% of his salary at the time of his retirement. The applicant presumably also received normal allowances paid to active-duty Coast Guardsmen while he remained on active duty, which are not factored into retired pay.

⁵ These numbers are used for illustrative purposes only, and may not reflect payments exactly.

adjusting his date of discharge to September 30 would result in a loss of entitlement to basic pay and allowances for approximately 75 days. As is clear in the chart below, adjusting applicant’s discharge date would result in a substantial debt. Although he now claims that he would have preferred an earlier discharge and a maximum sell-back of leave, the remedy the applicant asks for would render him worse off. That is an outcome that this Board cannot and will not create.

	9/30/2023 Retirement	12/14/2023 Retirement
Basic Pay*	\$0	\$19,730
Housing Allowance*	\$0	\$5,775
Subsistence Allowance*	\$0	\$780
Leave Sold	\$15,780	\$3,945
TOTAL	\$15,780	\$30,230

*All amounts are cumulative of approximate entitlements from Oct 1 – Dec 14, 2023.

The Board in no way condones or overlooks the processing and counseling errors committed by the Coast Guard, and sympathizes with the applicant that, had he been better advised, he would have made different choices about his retirement timeline. But had he chosen to retire on or before September 30, 2023, the pay and allowances he would have collected from the Coast Guard would unquestionably have been less. The applicant’s disappointment and frustration in not being able to sell 60 days of leave as he had hoped simply do not reflect an error or injustice for which this Board can grant relief.

8. The Board notes that the applicant has not presented evidence to consider whether other payments to which he may have been entitled, such as military retirement and VA disability, were substantial enough that an adjustment to an earlier retirement date would leave him in a better financial position. If the retirement and disability payments to which he may have been entitled as a retiree between October 1 and December 14, 2023 would have, with a full 60 days of leave sold, exceeded the value of the pay and allowances he actually received, than the relief the applicant asks for may be appropriate. But the applicant has not presented any evidence upon which to make that determination, and has not alleged this to be the case in his application. If such evidence exists, the applicant may make an application for reconsideration of this decision to this Board.

9. Accordingly, although the Board finds that the Coast Guard provided the applicant with erroneous information about his ability to sell 60 days of leave after September 30, 2023, the Board also finds that the Coast Guard made other errors, such as delaying the applicant’s medical retirement, that were to the applicant’s benefit not to his detriment. Therefore, the applicant’s request for relief should be denied.

ORDER

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

December 19, 2024

