


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-093


BM1 (E-6)

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 August 22, 2023, 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 March 20, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant is a currently serving Boatswain's Mate 1st Class (BM1). On June 26, 2023, he executed a "Career Intentions Worksheet" (CG-2045) reflecting his intentions to reenlist in the Coast Guard. Relevant to his application, Block 24 of this form indicated that the applicant planned to sell 60 days of leave and carry over 17.5 days of leave. Applicant alleges that he accidentally failed to correct this portion of the form when using a pre-filled form he received from another member. As a result, he sold back 60 days of leave unintentionally and asks that the Board correct his record so he can "reacquire" those days. Applicant acknowledges that this will require him to pay back money he received from the sale of his leave.

SUMMARY OF THE RECORD

The applicant reenlisted in the Coast Guard for five years on July 11, 2023. As a part of his reenlistment, he executed a CG-2045 Career Intentions Worksheet. Among other things, this form (in Block 24) documents the applicant's intention to sell back up to 60 days of leave, as was his right to do.

The block indicating the sale of leave is checked, and the CG-2045 therefore reads: "I plan to sell 60 days of leave and/or carryover 17.5 days leave." This block was incorrect, as the applicant would only have had 10.5 days of leave to carry over at the time he executed this document if he had sold 60 days.

The applicant received payment for the sale of 60 days of leave in August 2023, and immediately made application to the Board for correction.

The CG-2045 was initialed and signed by the applicant on June 26, 2023, and then by a command representative on the same day. He reenlisted effective July 11, 2023.

VIEWS OF THE COAST GUARD

On December 26, 2024, a Judge Advocate (JA) for the Coast Guard submitted an advisory opinion adopting the position of the Coast Guard Personnel Service Center (PSC) in which he recommended that the Board deny relief in this case.

The PSC does not contend that the form was not completed in error, but offers a detailed explanation of how leave accrual rules would have worked in FY23 and FY24 to limit the applicant's leave carryover. The Coast Guard showed that, even if the Board corrected the record, the applicant would subsequently have lost some of the sold-back leave days at the beginning of the last two fiscal years. The PSC recommends denial of relief on several grounds. First, it contends that the applicant should have carefully read the form and that his signature certified that he had done so. Second, it argued that the applicant had not suffered an injustice because he did not "provide evidence proving the sale of 60.0 days of leave prevented him from taking earned leave." Third, the PSC contends that correction of the record would create a "practically unsolvable administrative challenge for the Coast Guard."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The applicant was provided the Coast Guard Advisory Opinion on January 15, 2025, but did not provide a response.

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."

ALCOAST 289/22 (dated August 4, 2022) revoked the COVID-19 special leave accrual policy at the end of Fiscal Year (FY) 2023. Starting on October 1, 2023, members were only authorized to carry over 60 days of leave into a new fiscal year in accordance with 10 U.S.C. § 701.

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. The application is made within three years after discovery of the alleged error or injustice, and is therefore timely.

2. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.¹ Error means either legal or factual error.² Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.³ 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 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. The Board finds that the applicant's record clearly contains error. The applicant claims that the election in Block 24 of the form CG-2045 was incorrect, as it both did not reflect his actual intentions, and was inaccurate on its face. The Coast Guard, in their advisory opinion, does not dispute that this was error. This error was made by the applicant, but apparently also not noticed by the command representative who reviewed and approved this form. Regardless of the fault of any individual, the record contains error.

4. How to provide relief in this case is where the Board meets a challenge. The Coast Guard takes the position that the applicant is entitled to no relief because (1) he should have read what he signed, (2) no injustice exists because he hasn't alleged he was prevented from taking leave, and (3) recalculating his leave would be a "practically unsolvable administrative challenge." The Coast Guard's first argument is unconvincing. The fact that the applicant signed a document is clearly evidence of his intentions, but it is not dispositive of those intentions. The Coast Guard does not even allege that the applicant actually intended to sell back his leave. This Board finds that – upon review of the evidence – applicant's intent was clearly not to sell back 60 days of leave,

¹ 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

² *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

³ *Id.*

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).

despite his signature and initials on the document. This Board is not in the business of denying relief to applicants merely because they didn't read something carefully before signing.

5. The second and third arguments are also unconvincing. The applicant does not need to show he was unable to take leave because of the unwanted sell-back of those 60 days. Applicant may have been saving his leave, as was his right to do. He may have chosen not to request leave because his balance was low as a result of this sell-back. Of note, the applicant made this request within weeks of discovering the error, so the effect this may have had on his leave use or accrual during the pendency of his application is not before the Board. In any case, the reasons why the applicant wants his leave balance restored are not entitled to less or greater weight because of how he has subsequently chosen to use his leave. Additionally, the Board does not agree that granting relief would create a "practically unsolvable administrative challenge." In the advisory opinion itself, the PSC addresses in detail how the leave would be credited to the applicant's account. Relief does not demand anything outside the bailiwick of routine pay and personnel transactions.

6. Where the Board confronts a challenge is with the effect of relief. The only relief we can grant is a correction to the Career Intentions Worksheet (CG-2045) to reflect a different amount of leave sold. However, as the Coast Guard notes in their advisory opinion, a correction to zero days sold would result in some leave having been lost at the end of Fiscal Years 2023 and 2024. A rough estimate by the Board indicates that, without sell-back, applicant would have lost 18 days at the end of FY23, and another 18.5 days at the end of FY24, leaving his total leave balance on October 1, 2024 at 60 days. This result hardly seems just, considering that the applicant would have to re-pay the Coast Guard for 60 days of leave sold for a restoration of only 23.5 days of leave to his current balance.

7. In the interest of justice in this case, the Board will grant alternate relief. It is outside of our power to restore leave days to the applicant outside of the authority of 10 U.S.C. § 701 and applicable Coast Guard issuances. However, we can order an amendment to Block 24 of CG-2045 that would restore some leave while preventing the applicant from having to repay the Coast Guard for sold leave that would ultimately have been lost at the end of FY23 and FY24. Effectively, this will allow the applicant to repay the Coast Guard only for the leave he can actually recover and add to his current leave balance. While such collateral financial effects are typically outside the scope of our decisions, the Board must consider them in this case to ensure that the remedy we order does not inflict a further injustice on the applicant.

8. The Coast Guard will correct the applicant's record to show that he sold back 36.5 days of leave and carried over 34 days of leave. This correction will result in the applicant carrying 41.5 days of leave over into FY24, with no leave lost. As the applicant apparently used 11.5 of the 30 days of leave he accrued in FY24, this will bring his leave balance to 60 days as of October 1, 2024. The Board acknowledges that this will result in a debt to the government by the applicant unless waived by the Coast Guard, but it is one he acquiesced to as a part of this request for relief.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of BM1 [REDACTED] is granted in part. The Coast Guard will correct Block 24 of the CG-2045 signed June 26, 2003, to read “I plan to (select any that apply): sell 36.5 days of leave and/or carryover 34 days of leave.”

March 20, 2025

