



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

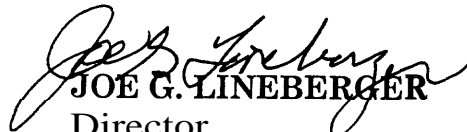
AFBCMR 97-00744

NOV 04 1997

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED], be corrected to show that he was not released from the Regular Air Force on 4 November 1996, but on that date, his enlistment of 5 November 1990 was extended for a period of 61 days and he continued on active duty in a terminal leave status until 4 January 1997, on which date he was released from active duty and transferred to the Reserve of the Air Force.


JOE G. LINEBERGER

Director
Air Force Review Boards Agency

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00744

COUNSEL: None

HEARING DESIRED: No

NOV 0 4 1997

APPLICANT REQUESTS THAT:

Sixty-One (61) days of leave be restored to his leave account.

APPLICANT CONTENDS THAT:

He went Temporary Duty (TDY) to Haiti from 19 May 1996 to 13 August 1996 and was unable to use his leave.

In support of his request, he submitted a copy of his Leave and Earnings Statement and a copy of his TDY orders to Haiti.

His complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

Commander's Programs Branch, AFPC/DPSFC, reviewed the application and stated that the entitlement to payment for accrued leave in a military career may not exceed 60 days. The applicant is contending he was TDY to Haiti in support of Operation UPHOLD DEMOCRACY 19 May-13 August 96 and was unable to use all accrued leave upon return from TDY and before 4 November 1996. He had 60 days on 1 October 1996 and used only 2 days (1-2 Oct 96) before his release from active duty on 4 November 1996. He was on 20 days PTDY 15 Oct - 3 Nov 96. Title 10 USC requires members to take leave annually as accruing to the extent consistent with military requirements. When members accumulate large amounts of accrued leave, they risk losing it if they are unable to use it before they separate or retire. The applicant forfeited 61 days' unused leave because of previous payment for the maximum 60 days

authorized under Title 37 UCS. DPSFC stated they could not find that an error or injustice caused the forfeiture of 61 days; therefore, they cannot find the Air Force culpable.

The complete evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the evaluation and responded that during his 16 years and 1 month tenure with the USAF, he sold the allotted 60 days early on in his military career. And, he took at least 30 days each year so that he wouldn't risk losing it. He had plans to burn his leave but his commander made other plans. She selected him to go TDY for 87 days. She was well aware of the fact that he had to burn this leave and couldn't do so if he went on this TDY. While in Haiti the commander said anyone TDY in country more than 60 consecutive days would not lose any days per a DOD Message that had come out. He began using his leave when he returned and also went to separations to see if his DOS could be extended to accommodate his use of the leave. He pointed out that according to AFI 36-3003, members may accrue up to 90 days leave if they were assigned to an operational mission at the national level which Operation UPHOLD DEMOCRACY was. He asked for favorable consideration by the Board on this matter.

His complete response is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After thoroughly reviewing this application, the Board majority is persuaded that applicant should be reimbursed for his lost leave. It appears that applicant projected using his leave before the end of the fiscal year. However, due to mission requirements to support Operation Uphold/Maintain Democracy, he was unable to use his total projected leave. Since applicant has previously sold the maximum amount of leave authorized by law, he could not sell his accrued leave when he separated. In view of these circumstances, the majority of the Board believes his records should be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that he was not released from the Regular Air Force on 4 November 1996, but on that date, his enlistment of 5 November 1990 was extended for a period of 61 days and he continued on active duty in a terminal leave status until 4 January 1997, on which date he was released from active duty and transferred to the Reserve of the Air Force.

The following members of the Board considered this application in Executive Session on 7 August 1997, under the provisions of AFI 36-2603:

Mr. Oscar A. Goldfarb, Panel Chairman
Mr. Thomas S. Markiewicz, Member
Ms. Sophie A. Clark, Member
Ms. Kay Byrne, Examiner (without vote)

Mr. Markiewicz and Ms. Clark voted to correct the records, as recommended. Mr. Goldfarb voted to deny but did not desire to submit a minority report. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 4 Mar 97 with atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSFC, dated 19 Mar 97.
- Exhibit D. Letter, AFBCMR, dated 14 Apr 97.
- Exhibit E. Applicant's Letter, postmarked 10 May 97.


OSCAR A. GOLDFARB
Panel Chairman



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS



MEMORANDUM FOR AFBCMR

19 MAR 1997


FROM: HQ AFPC/DPSFC
550 C Street West Ste 37
Randolph AFB TX 78150-4739

SUBJECT: Application for Correction of Military Records [REDACTED]

Requested Action and Basis for Request. Payment for 61 days of accrued leave he forfeited when released from active duty on 4 Nov 96. Applicant states he forfeited these days because he had already received payment for the maximum 60 days and because he could not take all accrued leave before 4 Nov 96.

Facts and Discussion. Entitlement to payment for accrued leave in a military career may not exceed 60 days (Title 37, U.S.C. 501). Records show payment for the maximum 60 days accrued leave (30 days on 4 Oct 84 and 30 days on 27 Sep 88). Applicant states he was TDY to Haiti in support of Operation UPHOLD DEMOCRACY 19 May-13 Aug 96 and was unable to use all accrued leave upon return from TDY and before 4 Nov 96. He had 60 days on 1 Oct 95 and used 30 days during FY96. He had 60 days on 1 Oct 96 and used only 2 days (1-2 Oct 96) before his release from active duty on 4 Nov 96. He was on 20 days PTDY 15 Oct - 3 Nov 96. Title 10 U.S.C. 704(b)(3) requires members to take leave annually as accruing to the extent consistent with military requirements. When members accumulate large amounts of accrued leave, they risk losing it if they are unable to use it before they separate or retire. In this case, applicant forfeited 61 days' unused leave because of previous payment for the maximum 60 days authorized under Title 37 U.S.C. 501. We could not find that an error or injustice caused the forfeiture of 61 days; therefore, we cannot find the Air Force culpable.

Recommendation. Deny since, under Title 37 U.S.C. 501, payment for accrued leave may not exceed 60 days.


AL HERNANDEZ, DAFC, GS11
Commander's Programs Branch
Dir of Customer Assistance

[REDACTED]

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