

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-096

**XXXXXXXXXXXXXX
XXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application on March 21, 2008, upon receipt of the applicant's completed application and military records, and subsequently prepared the final decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 17, 2008, 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 asked the Board to correct his record in accordance with ALCOAST 118/06¹ to restore the 18 days of leave that he was not allowed to carry forward into fiscal year

¹ ALCOAST 118/06 announced a special leave accrual (SLA) policy as a result of Hurricanes Katrina or Rita. It provided for the following:

2. All Coast Guard military personnel who either directly participated in or directly supported hurricane disaster relief operations for hurricanes Katrina or Rita Between 29 Aug 05 and 30 Sep 05, regardless of location are authorized to carry over leave in excess of 60 days but not more than 120 days accumulated. To qualify for SLA, the member must have been on active duty for a continuous period of 30 days, and must have actually been prevented from taking leave during the period which would have otherwise reduced his or her leave balance to 60 days or less prior to the end of FY05.

* * *

5. Leave in excess of 60 days restored under this provision shall be lost unless used before 01OCT08.

* * *

7. All requests for SLA must be submitted IAW the Personnel Pay and Procedures Manual by the command in time to arrive to PSC no later than 03Apr06. This is a firm deadline that cannot be extended due to database automation constraints. Requests received by PSC after this date will not be considered. This request must be sent through the appropriate chain of command to the area commanders who are the approving authorities and will forward approved requests to PSC (mas). Given the relatively short timeframe for request submission, units may send their list via

2005. He further requested correction of his record to show that he sold the 18 days of leave back to the government at the time of his retirement on June 30, 2006.

The applicant alleged that due to an oversight his command failed to include his name on its list of members entitled to SLA. He believed this oversight occurred because he had departed on terminal leave prior to the command's compilation and submission of the list. The applicant stated that during the processing of his DD Form 214 he asked the YN about SLA and was told that there was no process in place at that time. According to the applicant, the YN believed that the unit would compile and submit a list of those eligible for SLA. He stated he retired believing that his name would be included on the list for SLA because he met the requirements of the ALCOAST.

The applicant stated that the Coast Guard denied his 2008 request to have the 18 days of leave restored, even though he qualified for SLA. The applicant argued that the ALCOAST placed responsibility on the command for compilation and submission of SLA requests to the appropriate Coast Guard office.

The applicant submitted an email string that shows on January 15, 2008, he asked to have the 18 days of leave restored under ALCOAST 118/06. On March 4, 2008, the applicant's request was denied because it was not submitted by April 3, 2006, as required by the ALCOAST. In a subsequent email dated March 4, 2008, a LCDR in the Office of Military Personnel told the applicant that it was ultimately his responsibility to inform the command of his eligibility under the ALCOAST.

The applicant claimed that he discovered the error on May 1, 2005. He stated that because he was busy with finding employment, beginning a new job, and moving, he lost track of the issue until he received his final DD Form 214. It is not possible to tell from the DD Form 214 the date on which it was received by the applicant.

VIEWS OF THE COAST GUARD

On August 12, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted a memorandum in which he adopted the comments provided by Commander, Coast Guard Personnel Command (CGPC), as the Coast Guard's advisory opinion. CGPC recommended that the Board grant the following relief:

- a. The applicant's record be corrected to reflect that he did not lose 18 days of leave on October 1, 2005 (end of FY 2005).

message or email . . . Consolidated roster of eligible personnel, rather than individual requests, are most strongly encouraged.

b. The applicant's record . . . be corrected to reflect that he sold 18.5 days vice .5 days of accrued leave in conjunction with his July 1, 2006 retirement. The member should be paid any amount due as a result of this correction.

c. The applicant should be issued a correction to his DD Form 214 . . . correcting block 16 from 0.5 to 18.5 days accrued leave paid.

CGPC determined that from September 12, 2005, through October 4, 2005, the applicant was assigned TAD to Mobile, AL in support of hurricane Katrina relief. On February 28, 2006, ALCOAST 118/06 announced the policy for SLA as a result of hurricanes Katrina and Rita. April 3, 2006 was the deadline for submitting requests for SLA. On April 10, 2006, the applicant commenced 82 days of leave in conjunction with his retirement orders. On January 15, 2008, the applicant requested authorization from Headquarters Division CG-1221 to be credited with 18 days of SLA. His then-request was denied.

In recommending relief in the current case, CGPC reached the following pertinent conclusions:

The applicant does not present a persuasive argument in his belief that the matter was being taken care of by his unit yeoman. Since the submission date required by the ALCOAST was prior to the applicant's departure on terminal leave, the applicant should have followed up to ensure that his name was properly included in the roster of individuals eligible for SLA. However, per the Pay and Procedures Manual, group submission is preferred (though not explicitly required). Other than individual SLA requests there is no specific requirement of form or format for members to request their names be included in the consolidated unit roster. The applicant presents that he in good faith requested inclusion [of his name] through his unit administrative staff. There is nothing in the applicant's record to counteract his claim of this request, and given the applicant's 25 plus years of service, [his] assertion is not disputed.

In BCMR 2008-063, the applicant was granted [an] administrative remedy by the Coast Guard for nearly identical circumstances. In 2008-063, the applicant was under permanent change of station orders and transferred prior to the release of ALCOAST 118/06. [That] applicant had inquired into SLA prior to the issuance of [the ALCOAST] and presumed that his name would be included with the roster of those eligible for SLA. The Coast Guard approved SLA in April 2008, well past the deadline established in ALCOAST 1118/06. Failure to meet the submission deadline is the presumptive reason for denial of the applicant's request and based upon the findings of 2008-063, there is precedent for the Coast Guard waiving this standard when through no fault of the applicant's their name was erroneously left off of the unit roster for SLA under ALCOAST 118/06.

CGPC stated that Chapter 5.D. of the Coast Guard Pay and Personnel Procedures Manual specifies the procedures for carrying over leave. The instruction requires a unit to submit a consolidated memo or message to PSC for carry over leave, instead of individual requests.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

In August 2008, the Board received a letter from the applicant in which he agreed with the advisory opinion.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The JAG recommends, and the Board agrees, that the applicant's record should be corrected to show that he did not lose 18 days of accrued leave on October 1, 2005 because he was eligible to carry over in excess of 60 days of accrued leave under the SLA policy announced under ALCOAST 118/06. His record should also be corrected to show that he sold the 18 days of leave back to the government upon his retirement. In this regard, the Board agrees with the JAG that the applicant's unit committed an error by not including his name on the list it compiled and submitted of those members who were entitled to SLA under ALCOAST 118/06. The applicant stated that he inquired about SLA prior to his retirement and was told by the yeoman that the command would probably compile a list of those eligible for SLA. The applicant stated that he believed his name would be included on that list. The JAG determined that the applicant's statement is credible based upon his twenty-five years of honorable service to the Coast Guard and the absence of any evidence in the record to refute his contention. The Board agrees that the applicant's explanation is reasonable and credible.

3. Further, the applicant's case is similar to that in Docket No. 2008-063 where the Coast Guard administratively restored 5 days of leave to an applicant under ALCOAST 118-06 in May 2008. The applicant in Docket No. 2008-063 presumed that his name would be included on the unit's list after he departed the command on permanent change of station orders. The Coast Guard waived the deadline requirement in the ALCOAST and paid that applicant. Therefore, failure to comply with the submission deadline in the ALCOAST should not bar relief under the circumstances of this case.

4. Accordingly, the applicant's request for relief should be granted in accordance with the advisory opinion.

[ORDER AND SIGNATURES APPEAR ON FOLLOWING PAGE]

ORDER

The application of XXXXXXXXXXXX, USCG, Retired, for correction of his military record is granted. His record shall be corrected to show that he did not lose 18 days of leave on September 30, 2005, but that the 18 days were brought forward into fiscal year 2006. His record shall be further corrected to show that he sold the 18 days SLA upon his retirement on July 1, 2006. The Coast Guard shall pay him the amount due as a result of this correction.

The Coast Guard shall correct block 16 of his DD Form 214 to show that he was paid for 18.5 days of accrued leave, instead of 0.5.

Vicki J. Ray

George A. Weller

Janice Williams-Jones