

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2011-005**

**XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX**

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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on October 16, 2010, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 16, 2011, 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 to show that he sold leave when he signed an indefinite reenlistment contract on April 6, 2009.<sup>1</sup> The applicant stated that when he signed the contract, he did not intend to sell any leave. However, later he asked a yeoman about selling leave and learned that his indefinite reenlistment had been his last opportunity to sell leave. The yeoman showed him ALCOAST 307/08,<sup>2</sup> which advises members about selling

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<sup>1</sup> Whenever a member reenlists, his record automatically shows that he was discharged from his prior enlistment the day before the date of reenlistment. Under 37 U.S.C. § 37(b), a member of the armed forces "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. ... However, the number of days of leave for which payment is made may not exceed sixty, less the number of days for which payment was previously made under this section after February 9, 1976." This statute is reflected in Article 7.A.20.a. of the Personnel Manual, which authorizes upon discharge a lump sum payment of unused leave "to a maximum career total of 60 days." Members may not carry more than 75 days of accrued leave from one fiscal year to the next, and any accrued leave in excess of 75 days is lost at the start of a new fiscal year. Personnel and Pay Procedures Manual, PPCINST M1000.2A, Chapter 5.D.2.1.

<sup>2</sup> ALCOAST 307/08, which became effective on September 1, 2008, states the following in pertinent part:

1. In order to afford our members serving on indefinite reenlistment contracts the opportunity to sell leave prior to separation or retirement, the following change is effective immediately and will be reflected in a future change to [the Personnel Manual].

leave when they reenlist indefinitely. The applicant stated that he did not see ALCOAST 307/08 before he reenlisted and he was not counseled when he signed the contract that it would be his last opportunity before retirement to sell leave. The applicant alleged that, if he had been properly advised, he would have sold leave because he had accumulated 73 days of leave. In support of this allegation, the applicant submitted a copy of his Leave and Earnings Statement for the month of April 2009, which shows that he had a leave balance of 73 days and that he had never sold any leave. He also submitted a copy of his indefinite reenlistment contract, wherein he initialed block 8, which states "Member is not selling any leave at this time."

### **VIEWS OF THE COAST GUARD**

On January 5, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant the applicant's request and adopting the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

The PSC recommended that relief be granted. The PSC noted that although the applicant initialed block 8 of his reenlistment contract and signed the contract in block 18, he failed to execute blocks 13 or 14, so the contract is invalid even though it is currently in effect. The PSC stated that the Coast Guard's policy is "to provide members the opportunity to sell leave before entering into [an indefinite reenlistment] contract. Had the applicant received proper career counseling, this should have been the time the applicant sold any leave." Therefore, the PSC recommended that the Board void the applicant's invalid contract and allow him to enter into a new contract and sell leave.

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

On January 18, 2011, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

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2. Effective 1 September 2008, members who are currently serving on an indefinite reenlistment contract are authorized to enter into a new indefinite reenlistment, one time, during a career for the purpose of selling leave. Those members who desire to enter into a new indefinite contract should contact their unit YN and submit a Career Intentions Worksheet (CG-PSC-2045) indicating their desire to reenlist and the number of days of leave they desire to sell.

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5. It is important for members to understand that if they were already in an indefinite reenlistment, and cancel that contract to sell leave, they will return to an indefinite reenlistment. CGPC (epm-2) remains the cancellation authority for all other issues related to enlistment contracts.

6. Effective 1 SEP 2008, members who have 10 or more years of active service will be allowed to reenlist for periods of three years, four years, five years, six years or for an indefinite period up to their 30-year active duty anniversary date. Members reenlisting for an indefinite period on or after 1 SEP 2008 cannot reenlist again later in their career for the purpose of selling leave. Paragraph 2 (above) applies to members who entered into indefinite reenlistment contracts prior to 1 SEP 2008.

7. Guidance to servicing personnel offices processing new Indefinite reenlistment transactions will be provided by PSC via e-mail ALSPO.

## 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 over this matter under 10 U.S.C. § 1552. The application was timely.

2. The applicant alleged that he was not properly counseled when he reenlisted on April 6, 2009, that it would be his last opportunity to sell leave before his retirement and so his record should be corrected to show that he sold leave when he reenlisted. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>3</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>4</sup>

3. The applicant admitted that he knew on April 6, 2009, that he could sell leave and opted not to do so. He initialed block 8 of his indefinite reenlistment contract, affirming his intention not to sell leave. The applicant alleges, however, that he should have been advised that it was his last opportunity to sell leave before retirement; that he was not so advised; and that if had been advised of this fact, he would have sold leave. The Board agrees that the applicant was entitled to proper counseling about the effect of an indefinite reenlistment on his entitlement to sell leave because on March 29, 2001, the Commandant issued ALPERSRU I/01 to instruct yeomen on the new indefinite reenlistment policy. The ALPERSRU states that "[m]embers subject to the new indefinite reenlistment policy should be counseled concerning lump sum leave entitlements. The date the member executes an indefinite reenlistment will be the last opportunity for the member to sell leave until such time as the member retires/separates, pursuant to article 7.A.20. of [the Personnel Manual]." Absent evidence to the contrary, however, the Board presumes that the personnel officer who reenlisted the applicant on April 6, 2009, performed this duty.<sup>5</sup>

4. The applicant has not submitted specific evidence showing that he was not counseled when he reenlisted on April 6, 2009, that it would be his last opportunity to sell leave. In this regard, the Board notes that even if his yeoman said nothing about it, the Career Intentions Worksheet that members normally complete when they reenlist clearly states in block 24, the "Leave Section," that "[i]f you are entering into an indefinite reenlistment this will be the last opportunity to sell leave before you retire or are discharged."<sup>6</sup> However, the applicant has proved that his reenlistment contract was improperly completed, which lends some credence to his claim that he was not properly counseled when he reenlisted. Therefore, the Board will accede to the Coast Guard's recommendation that the applicant be allowed to re-execute the

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<sup>3</sup> 33 C.F.R. § 52.24(b).

<sup>4</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>5</sup> *Id.*

<sup>6</sup> CG-2045 (Rev. 06/08), Career Intentions Worksheet.

contract and to sell leave on that date, as long as the sale of leave does not exceed the 60-day career maximum under 37 U.S.C. § 37(b) and does not leave him with a negative leave balance after his leave records are adjusted to reflect the sale.

5. Accordingly, relief should be granted.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

Within 120 days of the date of this decision, the Coast Guard shall offer the applicant the opportunity to execute a new indefinite reenlistment contract dated April 6, 2009, and to sell leave in conjunction with the indefinite reenlistment, provided that the sale of leave shall not exceed the 60-day career maximum under 37 U.S.C. § 37(b) and shall not leave him with a negative leave balance after his leave records are adjusted to reflect the sale. If the applicant executes a new indefinite reenlistment contract dated April 6, 2009, the old one shall be removed from his record as null and void, and the Coast Guard shall pay him any amount due as a result of this correction. If the applicant opts not to execute the new contract, no correction shall be made to his record.

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Donna M. Bivona

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Bruce D. Burkley

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Randall J. Kaplan