

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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 2003-018

FINAL DECISION

This is a proceeding under section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on December 2, 2002, upon the BCMR's receipt of the applicant's complete application for the correction of his military record.

This final decision, dated October 30, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant asked that money withheld from his pay to cover several days of excess leave¹ be returned to him. He stated that \$1,905.55 has been withheld from his pay for this purpose.

According to the record, the Coast Guard withheld from the applicant's pay, the cost for several days of excess leave that he used in December 2001 and January 2002, March 2002, and April 2002. Apparently upon taking leave during these periods, the applicant had already used all of the leave available to him for his four year and nine month enlistment. His then-enlistment contract was due to expire on May 25, 2002. Since there was no current enlistment extension in effect at the time to cover the excess leave, it was charged against the applicant's pay.

¹ Article 7.A.2.d. of the Personnel Manual states that excess leave is authorized leave over and beyond any earned or advance leave that can be granted during which the member is not entitled to pay and/or allowances. A minus leave balance at the time of discharge, first extension of an enlistment, separation from active duty, desertion, or death is considered as excess leave without regard to the authority under which the leave resulting in a minus balance was granted.

Article 7.A.4.b. states, "Officers granting leave should caution personnel that advance leave resulting in a minus balance on the date of discharge, first extension of enlistment or separation from active duty becomes excess leave and is subject to checkage of pay and allowances."

The applicant stated that his request for a one-year extension had been approved in January 2002 and that his Personnel Reporting Unit (PERSRU) was supposed to submit the necessary paperwork. He claimed that he learned on April 30, 2002, that the PERSRU had not submitted his request for an enlistment extension. The applicant stated that "I don't think it is unreasonable for me to be paid for services rendered and hope that you can help me rectify this problem . . ." He stated that the loss of pay is a financial burden for him.

The applicant's commanding officer (CO) wrote a letter of support for the applicant. The CO wrote the following:

[The applicant] had a negative leave balance, as permitted by COMDTINST 1000.6A, Personnel Manual. Both he and his supervisor did not understand the ramifications of carrying a negative leave balance as he approached his end of enlistment. [The applicant's] pay began to be docked a significant amount, and upon determining the cause of the problem he completed a career intentions worksheet to extend. He then submitted another leave request (he was getting married), and thought that he would not have further pay problems. However, he did not understand that the career intentions worksheet was not sufficient, and that he needed to sign an extension contract to rectify the problem. His pay was docked again.

This was a confusing sequence of events for [the applicant], his supervisor, and my administration staff to sort out. For this good performing petty officer to bear the financial burden of this poorly understood facet of the pay system is extremely unfortunate. I strongly urge relief be granted in this instance.

Views of the Coast Guard

On March 3, 2003, the BCMR received the views of the Coast Guard. The Chief Counsel, in recommending relief, adopted the comments of the Commander, Coast Guard Personnel Command (CGPC).

CGPC stated that there is no evidence in the record that the applicant's leave balance was computed when he requested leave for December 2001 or that he was counseled, as required by the Personnel Manual, that entering into an excess leave status would result in checkage of his pay and allowances. See Articles 7.A.4.b. and 7.A.19.a(1) of the Personnel Manual. CGPC stated that the applicant's PERSRU failed to properly counsel him, and that if the applicant had been properly counseled, he would have had the opportunity to withdraw his request for leave during the months of December 2001 and January 2002.

With respect to excess leave charged to the applicant in March and April 2002, CGPC stated that although the applicant was aware of being in an excess leave status at that time, he mistakenly believed that submission of his career intentions worksheet indicating an intention to extend his enlistment would protect him from an excess leave status. He stated that the applicant should have been counseled to extend his enlistment at the earliest date permitted under the Personnel Manual. CGPC concluded that the "periods of excess leave charged in March and April would have been avoided if more care and diligence was exercised by administrative personnel to assist the applicant in this matter."

CGPC stated that no excess leave has been charged against the applicant's pay since April 2002. The applicant executed a two-year enlistment extension on May 1, 2002.

Applicant's Reply to the Coast Guard Views

On March 18, 2003, the applicant responded to the views of the Coast Guard and agreed with them.

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 submission, and applicable law:

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10 of the United States Code. The application is timely.

2. The Coast Guard recommended and the Board finds that the applicant is entitled to relief. In this regard, the Board finds by a preponderance of the evidence that the applicant was not informed that he was in an excess leave status in December 2001 and January 2002, as required by the Personnel Manual. Nor was he informed at this time that excess leave could result in a loss of pay if there was insufficient time remaining in his enlistment to cover the excess leave period. See Articles 7A.3.g. & 7.A.4.b. of the Personnel Manual. The Coast Guard's failure to inform the applicant of these facts caused the applicant to unknowingly enter into an excess leave status and to suffer a financial loss.

3. The Board finds that the excess leave charged to the applicant in March and April 2002, could have been avoided if the applicant's PERSRU had complied with Article 7.A.4.c. of the Personnel Manual, which prohibited the granting of additional advanced leave that could not be earned by the discharge date. The situation was further exacerbated by the PERSRU's delay in processing the applicant's January 2002 request for an enlistment extension. The PERSRU's failures resulted in an injustice to the applicant.

4. The Board notes that the applicant has been on continuous active duty since his enlistment in 1997 and that the excess leave days can be recouped from his current and future leave balances if the money withheld from his pay is returned to him.

5. Accordingly, the applicant is entitled to relief.

ORDER

The application of xxxxxxxxxxxxxxxxxxxx, USCG, for the correction of his military is granted. His record shall be corrected to show that he was not charged with excess leave between December 1, 2001 and April 30, 2002. The Coast Guard is directed to take the necessary action to remove excess leave charges from the applicant's record. The approximately 13 days of excess leave shall be deducted from the applicant's current and future leave balances. The Coast Guard shall return to the applicant the money withheld from his pay to cover the excess leave charges.

Janis Monk

Dorothy J. Ulmer

Thomas H. Van Horn