

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-092

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX, YN1

FINAL DECISION

Author: Ulmer, D.

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 application was docketed on April 15, 2005, upon receipt of the applicant's completed application and military records.

This final decision, dated February 8, 2006, is 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 her record to show that she did not sell 15 days of accrued leave upon her release from active duty. The applicant was released from active duty into the Reserve on January 22, 2002 and is currently a member of the Selected Reserve.

The applicant claimed that she never requested to sell leave; nor was she ever paid for the 15 days listed as leave sold in her record. She stated that she planned to reenter active duty and might want to sell leave in the future.

The applicant submitted leave and earnings statements (LESs) in support of her allegation. The LES for the period January 1-31, 2002, showed the applicant had used 23 days of leave, including a charge of 15 days regular leave for the period January 8, 2002, through January 22, 2002, with no leave sold. The LES informed the applicant that it

was her final active duty LES and that it reflected all pay and leave information processed through her last day of active duty.

A February 2002 LES shows that the applicant was paid active duty pay and allowances in the amount of \$2,412.76 for that month and her leave account was corrected to show a 15-day leave balance.

Subsequently, a May 2002 LES explained that the applicant had been overpaid by \$2,280.67 and that debt collection would begin in June 2002.

In June 2002, the Coast Guard sent the applicant another LES showing that 15 days of accrued leave had been sold to reduce the debt she owed to the government.

VIEWS OF THE COAST GUARD

On August 26, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. In recommending denial, the JAG stated that the applicant has the burden of proving error. The JAG argued that the applicant has provided no evidence that the Coast Guard committed an error or injustice. To the contrary, according to the JAG, the record shows that the applicant's leave was sold in accordance with the Coast Guard Pay Manual, COMDTINST M7220.29A, Art. 10.A.9. to liquidate a debt.

The JAG attached a memorandum from Commander, Coast Guard Personnel Command (CGPC) as Enclosure (1) to the advisory opinion and asked the Board to accept it as part of the advisory opinion. CGPC offered the following:

The applicant was discharged from active duty on January 22, 2002, however due to late processing of documents she received a payment for mid-month February 2002 in the amount of \$2412.76. That payment caused her to be overpaid by \$2280.67 because she was only entitled to approximately \$132 at the time of her separation.

The applicant alleges that she was never paid for the 15 days of leave that was sold in 2002. However, the leave was sold and used to liquidate the debt in accordance with [the Pay Manual].

The transaction reflecting the accrued leave payment was on her June 2002 [LES]. The applicant may not have noticed the payment because it was located on the second page of the LES and was used to offset her active duty debt by crediting the applicant [with] \$840.15.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 30, 2005, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond. The BCMR did not receive a reply from the applicant.

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. Upon release from active duty, the applicant had 15 days of accrued leave. She failed to prove that the Coast Guard committed an error or injustice by selling the 15 leave days and applying the proceeds against her indebtedness to the government. The applicant was informed in May 2002 that she had been overpaid in the amount of \$2,280.67 and that the Coast Guard intended to collect the debt. She does not deny that the Coast Guard mistakenly overpaid her in February 2002.

3. The Coast Guard acted in accordance with the regulation and the applicant's record correctly reflects the 15 days of leave sold. The Pay Manual states that the lump sale of leave may be used to liquidate debts to the U.S. Government and it does not require the consent of the member for lump sale of leave to be used in this manner. See Chapter 10.A.9. of the Pay Manual.

4. The applicant alleged that she did not receive payment for the leave sold. However, the Board finds that while she did not personally receive a cash payment, she benefited by having \$840.15 resulting from the sale of leave applied to her indebtedness.

5. Accordingly, the applicant is not entitled to relief.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of YN1 xxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxx, USCGR, for correction of her military record is denied.

Kevin M. Walker

Richard Walter

Kenneth Walton