

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-187

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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 on August 15, 2008, upon receipt of the applicant's completed application, 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 April 30, 2009, 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 award him compensation for 9 days of accrued, unused leave. The applicant stated that sometime prior to his retirement on November 1, 2007, he was advised that he would be able to sell 40.5 days of leave,¹ so he submitted a request to be paid for 40.5 days upon his retirement.² However, on December 31, 2007, the Coast Guard Personnel Service Center (PSC) sent him a letter stating that he had been overpaid because on the date of his retirement, he had only 31.5 days of accrued, unused leave to sell. Therefore, the Coast Guard recouped an overpayment of \$1,411.47 from his bank account.

The applicant explained that the reason he had only 31.5 days of leave to sell on October 31, 2007, rather than 40.5 days, is because he lost 9 days of leave on September 30, 2007, the end of the prior fiscal year. He lost that leave because the Coast Guard determined that as of September 30, 2007, he had accrued 69 days of leave, and under the Personnel Manual, members

¹ Under Article 7.A.11.a. of the Personnel Manual, members earn 2.5 days of leave per month of continuous active duty. Article 7.A.15.a. states that "[e]arned leave may exceed 60 days during a fiscal year, but must be reduced to 60 days on the first day of the next fiscal year except as outlined in paragraphs b. through d. below. The amount so reduced is irrevocably lost without compensation." Paragraphs b. through d. concern situations that might prevent members from using leave, such as national emergencies and long deployments at sea. Under Chapter 10.A.1. of the Pay Manual, each member may sell a maximum of 60 days of accrued, unused leave during his military career. Leave may be sold on any date the member is being discharged or retired from active duty.

² Members report their intention to sell leave on a "Career Intentions Worksheet," form PSC-2045.

may only carry over 60 days of accrued leave from one fiscal year to the next. During the month of October 2007, he was credited with using 31 of the 60 days of leave he carried over and accruing the usual 2.5 days, leaving him with 31.5 days of leave to sell upon retiring on November 1, 2007. However, this calculation and attribution of leave were not what he had intended or been led to expect.

The applicant explained that when planning his retirement, he received varying and erroneous advice from three different yeoman in June and July 2007. The first, a YN2, told him that he could sell 60 days of leave and “use the maximum 15 days of processing point.”³ Within a week he received an email from the YN2 stating that he could only sell 51.5 days, but later that same day a YN1 sent him another email saying that he could sell 60 days of leave. At a subsequent meeting with a YNCS, he asked them to “figure out how many days of leave I could sell back and keep my retirement ceremony date of August 23rd to coincide with the project meeting that would be taking place in Boston with my entire command of the RESCUE-21 project.” At this meeting, the YNCS told him that he could not use any days of “processing point” because he was selling leave, which he later heard was not true.

Finally, the applicant stated, he was advised that he could sell 40.5 days of leave and also have 20 days of administrative absence,⁴ which he requested in an email to the YN2 on July 19, 2007. Therefore, prior to his retirement, he believed that he was taking terminal leave from Monday, August 27 through October 11, 2007; using 20 days of administrative absence from October 12 through October 31, 2007; and selling 40.5 days of accrued, unused leave on October 31, 2007. His command prepared his DD 214 to show that he had sold 40.5 days of leave.

The applicant stated that when he received the letter about the overpayment from the PSC in January 2008, he quickly notified his command’s administrative office in Boston and was told that the matter would be resolved and that the recouped funds would be repaid. After exchanging many emails with the PSC, the administrative officers “took the low road” and claimed that he had returned to work at the end of October, even though everyone knew that he did not return to work. In light of this “glaring misrepresentation” and the varying stories from Boston, the PSC advised him that he would have to apply to the BCMR to resolve the issue.

The applicant stated that he believes that “this case revolves around the fact that ISC Boston PERSRU counseled [him] to use leave first and the 20 days of administrative absence at the end, thus not losing any leave. ... [I]t is my understanding that there is no written policy that the administrative absence must be used prior to any leave, but that it is common practice to

³ Under Article 12.C.1.e.1. of the Personnel Manual, a member whose selected home upon retirement is not near his last permanent duty station “may request Commander (CGPC-epm) or (CGPC-opm) to authorize (rather than direct) retirement processing at a shore unit convenient to his or her designated home of selection, provided: ... If approved, the member detaches in time to report to the processing station between 12 and 15 working days before the effective retirement date and the member’s orders shall be so endorsed.”

⁴ Article 12.C.1.f.1. of the Personnel Manual states that “[u]nder the provisions of Article 7.A.10., retiring members are eligible for an administrative absence not to exceed 20 days (if separated INCONUS), or 30 days (if separated OCONUS), to facilitate relocation. This administrative absence in conjunction with retirement is not an entitlement; however, it may be granted at the discretion of the member’s command provided it does not adversely affect mission performance. This duty is intended for activities related to transition or relocation, e.g., job interviews, not to extend leave periods.”

process the administrative absence first. It appears it was this practice that caused me to be in excess of sixty days of leave on September 30th.” In support of his allegations, the applicant submitted a calendar showing the days that he initially requested to use leave, administrative absence, and processing point. He also submitted a copy of the PSC’s letter dated December 31, 2007, about the recoupment of the overpayment, and a copy of a Leave and Earnings Statement (LES). The LES shows that he was “charged 31 days regular leave for period 01OCT07 to 31 OCT07” and that he was originally paid for 40.5 days of leave but that this was corrected to 31.5 days, resulting in an overpayment of \$1,411.47. In addition, the applicant submitted copies of the following emails:

- On June 29, 2007, a YN2 at the Integrated Services Center (ISC) in Boston, attached a copy of the Personnel Manual to her email and advised the applicant that the rules did not allow a member to “break the administrative absence up with liberty and leave. We have to do it all in one lump.” She told him that he could “take 35 days of leave and sell 51.5 if you want to still use the [August 24th] start.”
- The applicant responded to the YN2’s email the same afternoon, saying that he believed that under Article 12.C.1.f.2. of the Personnel Manual, administrative absence could be taken in increments but, if not, he would take leave from August 27 to September 26, 2007; administrative absence from September 27 through October 16, 2007; and “processing point” from October 17 through October 30, 2007.
- Later that evening, a YN1 at the ISC sent an email to both the YN2 and the applicant stating that he had misinterpreted the Personnel Manual and that administrative leave could be taken in increments.⁵
- On the morning of July 19, 2007, the applicant sent the YN2 an email saying that “[t]he new work up for terminal leave, admin time and selling leave is as follows: Terminal leave [from] August 27th to October 11th, total 46 days; Administrative absence [from]

⁵ Article 7.A.10.a.4. of the Personnel Manual states that administrative absences, not chargeable as leave, may be granted to [a]llow retiring and involuntarily separated members time to participate in pre-separation job search and house hunting activities prior to separation.” Article 7.A.10.b.11. states that “[r]etiring members and members separated involuntarily may be authorized up to 20 days (if separated INCONUS), or 30 days (if separated OCONUS), of administrative absence to conduct pre-separation job search and house hunting/relocation activities prior to the effective date of separation. The administrative absence can be taken in consecutive days, including weekends and holidays; in increments, not to exceed the authorized total based on the location of their last duty station; or, in connection with leave enroute to home with no intent to return to their last permanent duty station. This includes leave enroute to a retirement processing point. [See] Article 12.C.1.d.” Article 12.C.1.f.2. states the following regarding a member’s administrative absence prior to retirement:

- a. It may be authorized for consecutive days, including weekends and holidays.
- b. It may be taken in increments, not to exceed the totals dictated in Article 12.C.1.f.1.
- c. Liberty or a period of combined leave and liberty is not authorized between consecutive periods of administrative absence in conjunction with retirement.
- d. It may be used in conjunction with leave enroute to home, with no intent to return to the last permanent duty station, including leave enroute to a retirement processing point as defined in Article 12.C.1.d.

October 12th to October 31st, total 20 days; Sell remainder of leave balance, 40.5 days. Please let me know if this all works out.”

- On January 23, 2008, a supervisor at the PSC advised the applicant in an email that to avoid the recoupment of the overpayment, he would have to request a waiver through CG-122 of the rule that limited the carry-over of leave between fiscal years to 60 days. The PSC supervisor stated that the adjustment would be made if the waiver was approved. The applicant forwarded this email to the YN1 at ISC Boston the same day.
- On April 10, 2008, the applicant advised the YN1 in an email that the PSC had not yet adjusted the recoupment from his retired pay and asked him to follow up to make sure they were “on the right track to correct it.”
- On May 5, 2008, the applicant “touched base” with the YN1 in an email stating that the PSC had not yet adjusted the recoupment.
- On June 6, 2008, a chief warrant officer (CWO W) at ISC Boston sent another chief warrant officer (CWO S) at the PSC, who was an Authorized Certifying Officer (ACO) an email saying that the applicant “ended up being 9 days excess leave. Come to find out, he changed his leave and the unit didn’t notify us. After the unit notified us, we went and made the corrections to his leave. Since then global pay or something has made his account inaccessible to us. ... The member’s being real patient about it, but at this point I’m frustrated. We owe him 9 days and ISC Boston feels like we’ve done everything we can to get him paid.” In response, the ACO asked about the actual dates of leave.
- On June 9, 2008, the YN1 advised the ACO that “[t]he leave dates that should have been charged as retirement term leave was 9/25/2007 to 10/31/2007 (37 days).” The ACO replied the same day stating the following:

Based on new terminal leave dates, it appears to me that either the member miscalculated, or the SPO YN miscalculated member’s leave balance, and forgot to figure that 9.0 days would be lost at the end of the [fiscal year]. No further pay or administrative action is required. ETCS was never excess leave. His final entitlement was 31.5 days of LV SOLD on 10/31/2007 and it was proper.

Being that Retirees are paid their final paycheck automatically by JUMPS which is calculated by the submission of the electronic SOI and SPO Separation transaction asking for 40.5 LV SOLD, member’s final paycheck was produced selling 40.5 days of LV SOLD, along with final pay and allowances. When the system recalculated member’s leave in October due to Fiscal Year leave accounting requirements to drop to 60.0 days at end of September, this member lost 9.0 days of leave at the end of month September. It doesn’t matter that the member claims and it’s been verified that he started terminal leave on 9/25 vice 9/16. On September 30, this member’s leave balance dropped to 60.0. The recent leave change now results in member losing 18.0 days of leave vice 9.0 previously recorded.

The ACO included in his email a table of the applicant’s leave prior to his retirement in 2007, which shows the following:

Month	Leave Accrued	Leave Used	Leave Balance on Last Day of Month	Note
May	+ 2.5 days	none	74.0 days	
June	+ 2.5 days	none	76.5 days	
July	+ 2.5 days	none	79.0 days	
Aug.	+ 2.5 days	none	81.5 days	
Sep.	+ 2.5 days	9/25 – 9/30	60.0 days	Member lost 18.0 days vice 9.0
Oct.	+ 2.5 days	10/1 – 10/31	31.5 days	Member paid for 31.5 days of leave

- On June 9, 2008, CWO W sent the ACO an email saying that the YN1 “was wrong” and had reported the dates of the applicant’s leave inaccurately. “What [the applicant] did was not terminal leave. His leave was from 9.16/07 thru 10/22/07 (a total of 37 days). He returned to his unit on 10/23//07. We’ve got it right this time. Sorry for the bum scoop.”
- On June 12, 2008, the ACO responded to CWO W, saying “Wrong again! No action required from SES. I’m not sure what you mean by saying you’re frustrated and that ISC Boston has done everything possible to get this guy paid but in less than 24 hours, I obtained documentation that this leave change did not occur, and in fact, this member was on leave from 9/16/07 – 10/31/07 and the overpayment is valid.”
- On June 16, 2008, CWO W replied, stating that he did not know “who validated the [applicant’s] ‘Terminal Leave,’ but here is the email string and the actual calendar that we used to discuss his retirement absence. As you can see it was set up as leave, then administrative absence. This was the only way to do it to avoid the member losing leave. The unit may think that it was terminal leave, but we are the Admin for this member. We discussed it and set it up properly. Then we charged it incorrectly at the SPO. We have been trying since January to correct. That’s the frustrating part. Please correct the leave and remove the overpayment.”
- The ACO replied to CWO W and the applicant as well the same day, stating the following:

Please understand that as an Authorized Certifying Officer, I am liable for any payment I generate, or any overpayment I cancel. At this point, the leave periods keep changing. (5 times in the past week.) I recommend that if you feel you have received a “wrong” from the Coast Guard, your option is to submit a BCMR review. Here is a summary of what I see in Direct Access, and what I’ve been recently provided thru email from the unit, Boston Admin, and Boston SPO. I’m sure you will agree that as an ACO with ultimate liability, why I’m not comfortable cancelling the overpayment. I believe a BCMR is the proper avenue to take at this point.

Oct. 31, 2007: Retirement orders state annual leave from 9/16 – 10/31.

June 6, 2008: Email from Boston Admin states member was 9 days excess leave.

June 6, 2008: PSC email back to Boston Admin/SPO requests to know actual leave dates.

June 7, 2008: Boston SPO states leave was from 9/25 – 10/31.

June 9, 2008: PSC email states amended leave dates received from SPO does not remove overpayment and result in no further action. The overpayment stands.

June 9, 2008: Boston Admin email states Boston SPO was wrong, and that actual leave dates were 9/16 – 10/22. And that they’ve got it right this time.

- June 11, 2008: PSC queries Unit XO in an attempt to confirm leave dates which is standard practice in disputes. Unit XO advises they contacted R21, and indicates member was on leave from 9/16 – 10/31.
- June 12, 2008: PSC email to Boston SPO and Admin advises PSC obtained confirmation with unit that leave was from 9/16 – 10/31. That no action is required and the overpayment stands.
- June 16, 2008: Boston submits PDF file to document each day of absence from 8/24 thru 10/31 with an annotated calendar that outlines status on each day after retirement ceremony on 8/23. Calendar includes leave, admin absence, and processing point days. Calendar provided indicates the following chargeable leave dates.
- 8/24 – 9/10 18 days
 - 9/17 – 9/17 1 day
 - 9/24 – 9/24 1 day
 - 10/1 – 10/1 1 day
 - 10/22 – 10/22 1 day
 - 10/15 – 10/16 2 days
- June 16, 2008: Boston Admin sends follow-up email stating new amended leave dates are 8/27 – 10/11. This email contradicts the PDF file, and the previous emails on June 9.
- June 16, 2008: ACO decision made to take no action, and refer member to BCMR for review and final decision.

VIEWS OF THE COAST GUARD

On January 12, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request.

The JAG stated that at the beginning of fiscal year 2008, the applicant's leave balance was properly adjusted from 69 to 60; he was authorized 30 days of leave in October; earned another 2.5 days of leave; and ended October with a leave balance of 31.5 days.⁶ Because he was paid for 40.5 days of leave in his final paycheck, the PSC properly recouped the overpayment for 9 days of leave that the applicant did not have on October 31, 2007.

The JAG argued that "the only question presented here is whether Commanding Officer, PSC Topeka, KS abused his discretion in his attempt to collect a debt from the Applicant based on his over paid status." The JAG concluded that the applicant had failed to prove that the Command Officer, PSC abused his discretion in recouping the overpayment.

The JAG stated that both federal law and Coast Guard policy do not allow members to carry over more than 60 days of leave into a new fiscal year. He alleged that as a retiring senior chief petty officer, the applicant "knew or should have known" about this policy and scheduled his retirement plans accordingly. He also stated that upon notification of the overpayment, the applicant should have submitted a request for a waiver⁷ of the debt if he believed he was miscounseled by his SPO.

⁶ The Board notes that to end October with a leave balance of 31.5 days, the applicant must have taken leave for all 31 days of October, not just the 30 days stated by the JAG.

⁷ Chapter 11.F. of the Pay Manual states that a member or former member may submit a written request "for the cancellation of an indebtedness to the U.S. Government which resulted from erroneous payments of pay and allowances made to or on behalf of the member or former member. ... 10 USC 2774 gives the Secretary of Department of Homeland Security authority to effect waiver of claims for erroneous payments of pay and allowances and travel and transportation allowances, when collection of the claim would be against equity and good conscience, and

The JAG claimed that the applicant's assertion that he was miscounseled about "whether he should used administrative absence then earned leave carries no weight." The JAG alleged that regardless of which type of leave the applicant claims he should have used first, he had 69 days of leave on September 30, 2007, which was by law reduced to 60 days on October 1, 2007.

The JAG attached to his advisory opinion an email from the ACO at the PSC, who recommended that no relief be granted. The ACO stated the following in pertinent part:

[The applicant] departed his unit on August 27th using 20 days of non-chargeable Administrative Absence. The member was then charged for 47 days of terminal leave. It appears either the member or the Servicing Personnel Officer, or both, failed to realize the member's leave account would be reduced to 60 days on 1 Oct. 2007.

In June 2008, the member and the Servicing Personnel Office contacted PSC Topeka and disputed the overpayment, stating if they reversed the order of charging the Administrative Absence and the terminal leave, the member would not have lost 9.0 days at the end of the FY and would then be entitled to sell 40.5 days. In June 2008, the ACO at PSC Topeka correctly determined Coast Guard policy in effect in July 2007 was to charge delay enroute to retirement as follows:^[8]

- 1) 20 days non-chargeable administrative absence for house-hunting/job searching.
- 2) Leave in conjunction with retirement.
- 3) Retirement processing point if authorized. (Up to 15 working days non-chargeable days to finalize retirement paperwork.

not in the best interest of the United States. The authority of the Secretary has been delegated to Commandant (CG-122) [the Office of Military Personnel]." Paragraph 3 limits such waivers to overpayments not exceeding \$10,000.00. Paragraph 5 provides the following conditions for determining waiver requests:

- a. Claims for erroneous payments which may be waived in whole or in part, must have resulted from an erroneous overpayment.
- b. The erroneous payment must not be the subject of an exception made by the Comptroller General in the account of any accountable official, or which has been transmitted to the General Accounting Office (GAO) for collection, or to the Attorney General for litigation.
- c. Erroneous payments of pay and allowances, and travel and transportation allowances may be considered for waiver action provided the application is received by the Coast Guard or the General Accounting Office within a three year period following date of discovery of the error which caused the erroneous payment.
- d. Erroneous payments that have been wholly or partially recovered must be considered for waiver in the gross amount.
- e. Overpayments must be of such a nature that they would normally go unnoticed or undetected by the member.
- f. Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally, this criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining waiver of the claim. Any significant, unexplained increase in pay and allowances which would require a reasonable person to inquire concerning the correctness of the pay or allowances, ordinarily would preclude a waiver when the member fails to bring the matter to the attention of appropriate officials.

⁸ ALCOAST 293/08, issued in late 2008 after the applicant's retirement, states in paragraph 5 that "[f]or clarification and to avoid confusion, a retiring member's absences will be accounted for in this order: AA, time at processing point if authorized, and leave."

[The applicant] was not authorized a Retirement Processing Point in conjunction with retirement. Therefore, member was properly charged for his 20 days administrative absence first, and then charged for 47 days' leave from 9/15 – 10/31. The leave dates were also confirmed thru follow up with the unit XO that [the applicant] did not return to his unit early and remained on leave thru Oct. 31st.

In support of the contention about the order in which administrative absence, terminal leave, and processing point were to be taken, the JAG submitted a copy of a "Career Intentions Worksheet" form, which is used to document a member's intentions whenever they need to reenlist or are separating or retiring from active duty. Block 28 of this form requires the member to indicate whether he has been authorized to use a retirement processing point by the Personnel Command in accordance with Article 12.C.1.e. of the Personnel Manual and whether his own command has approved his request for 20 days of permissive temporary duty (administrative absence) under Article 10.C.1.f.. It further counsels the member to "[u]se in the following order: 20 days permissive temporary duty, terminal leave, and processing point permissive orders. Contact your admin office for assistance in determining your departure date when using any combination of the above. Block 28 contains a chart wherein members are to enter first their dates of permissive temporary duty (administrative absence); second their dates of terminal leave; and third their dates at the retirement processing point. The form is to be signed by the member, his supervisor, his division or branch chief, his department head, the command, and the servicing personnel officer (SPO).

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 4, 2009, the applicant responded to the Coast Guard's recommendation. With regard to the JAG's statement that the applicant should have known that he would only be able to carry 60 days of leave into the new fiscal year, the applicant strongly disagreed, noting that his specialty is electronics, and the yeomen he consulted are supposed to be the administrative experts. He stated that his emails with his unit's yeomen show that they advised him that he could take his administrative absence after taking terminal leave, rather than before.

The applicant pointed out that despite the order listed on the Career Intentions Worksheet form, the Personnel Manual does not require a retiring member's time away from work to be attributed to administrative absence before it is attributed to leave. In addition, the applicant alleged that the PSC never advised him to seek a waiver of the recoupment. Instead, they advised him to submit an application to the BCMR. The applicant concluded that he had trusted the yeoman in good faith to advise him properly. He stated that he is "not looking for anything that [he's] not entitled to but [feels he] was done an injustice that resulted in money being taken out of [his] retirement account at a time that created a financial burden" on his family.

In support of his allegations, the applicant submitted copies of more email messages. In one, dated June 1, 2007, the YN1 advises the applicant that he could take terminal leave from July 3 to September 26, 2007; administrative absence from September 27 to October 16, 2007; and processing point from October 17 to 31, 2007. The applicant responded on June 7, 2007, stating that he "would like August 23rd to be my last day (date of retirement ceremony) if not possible the following Monday the 27th." On June 26, 2007, a yeoman at ISC Boston advised him to come to the office for a consultation and to "start your retirement paperwork."

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 10 U.S.C. § 1552. The application was timely.

2. Under 33 C.F.R. § 52.13(b), an applicant must have “exhausted all effective administrative remedies” before applying to the Board for relief. The JAG pointed out that the applicant never applied for a waiver of his debt as allowed under Chapter 11.F. of the Pay Manual, but did not argue that the applicant had failed to exhaust his administrative remedies and instead recommended denial. There is no evidence in the record that the JAG consulted the Office of Military Personnel (CG-122), which has authority to grant waivers of indebtedness under Chapter 11.F. of the Pay Manual. Instead, the JAG apparently relied on the opinion of an ACO at the PSC, who did not have authority to grant or deny waivers under Chapter 11.F. and who was clearly upset with the inconsistent information he was receiving about the applicant’s leave from various administrative officials in Boston. Because there is no evidence that CG-122 has ever been consulted in this matter, the Board is not convinced that a proper request for waiver by the applicant would necessarily be futile. Moreover, under Chapter 11.F.5.c., a former member may request a waiver “within a three-year period following date of discovery of the error which caused the erroneous payment.” Since the applicant learned of the overpayment in January 2008, the Board is not persuaded that the applicant has exhausted all potentially effective administrative remedies.

3. Given the applicant’s email dated July 19, 2007, and the fact that his SPO apparently reviewed his request to sell 40.5 days of leave and forwarded it to the PSC as accurate, the applicant has proved by a preponderance of the evidence that in July 2007 his local SPO led him to believe that he could attribute his absence from the office from August 27 through October 31, 2007, first to 46 days of accrued leave (August 27 – October 11) and then to 20 days of administrative absence (October 12 – 31) so that he would have 40.5 days of leave to sell upon his retirement. This advice was erroneous because it was contrary to the policy shown on the Career Intentions Worksheet, which counsels the member to “[u]se in the following order: 20 days permissive temporary duty [administrative absence], terminal leave, and processing point permissive orders.” The Board notes that the applicant began the month of August 2007 with 79 days of accrued, unused leave. Therefore, if he had been allowed to take his days of leave before his days of administrative absence, he would have had 40.5 days of leave to sell upon his retirement, as shown in the table below.

Month	Leave Balance at Start of Month	Leave Accrued	Leave	Leave Balance on Last Day of Month
Aug.	79 days	+ 2.5 days	5 days of leave (Aug. 27 – 31)	76.5 days
Sep.	76.5 days	+ 2.5 days	30 days of leave (Sep. 1 – 30)	49.0 days
Oct.	49.0 days	+ 2.5 days	11 days of leave (Oct. 1 – 11) (20 days of Adm. Abs., Oct. 11 – 31)	40.5 days

4. Although not stated in either the Personnel Manual or the Pay Manual, the Career Intentions Worksheet shows that, by policy, a retiring member's absence from work is first attributed to administrative absence and then to accrued leave. The Career Intentions Worksheet is the form retiring members complete to indicate their intention to sell accrued, unused leave and to take terminal leave and, if granted, administrative absence and "processing point" time. Under Article 12.C.1. of the Personnel Manual, neither administrative absence nor processing point is an entitlement. The record indicates that the applicant was granted 20 days of administrative absence by his command, but he was not granted processing point by the Personnel Command. Therefore, if the applicant had been properly counseled by his SPO in July 2007, he would have been advised that, because he was scheduling his retirement ceremony for Thursday, August 23, 2007, and planned to be absent from work from Monday, August 27, 2007, through his retirement on November 1, 2007, he would be able to sell only 31.5 days of leave, as shown in the table below.

Month	Leave Balance at Start of Month	Leave Accrued	Leave Used	Leave Balance on Last Day of Month
Aug.	79 days	+ 2.5 days	No leave (5 days of Adm. Abs., Aug. 27 - 31)	81.5 days
Sep.	81.5 days	+ 2.5 days	15 days of leave (Sep. 16 – 30) (15 days of Adm. Abs., Sep. 1 – 15)	69.0 days (reduced to 60.0 by new FY)
Oct.	60.0 days	+ 2.5 days	31 days of leave (Oct. 1 – 31)	31.5 days

5. The record shows that in his final pay deposit, the applicant was paid for the 40.5 days of leave sold he had requested, but that in December 2007, the PSC detected the error and informed him that the overpayment for 9 days of leave would be recouped. Although he was advised by a supervisor of the PSC on January 23, 2008, to request a waiver, subsequent emails in the record indicate that administrative officials in the ISC in Boston told the applicant that they would fix the problem and reverse the recoupment without any waiver. The \$1,411.47 overpayment was recouped, however, and so the applicant asks the Board to order the Coast Guard to repay him this sum because he was improperly counseled by his SPO in July 2007.

6. Had the SPO properly counseled the applicant in response to the email dated July 19, 2007, it is not clear how the applicant could have been paid for 40.5 days of leave upon his retirement, instead of 31.5 days, without major changes in his plans. His retirement date of November 1, 2007, had already been approved, and under Article 12.C.1.d.1. of the Personnel Manual, approved retirement dates may not be changed for the purpose of scheduling leave. Theoretically, the applicant could have chosen to work throughout October 2007 so as not to lose 31 of the 60 days of leave he was legally allowed to carry over from the last fiscal year, but his clearly stated desire was to hold his retirement ceremony on August 23, 2007, when his entire command would be present for a meeting about the RESCUE-21 project, and to never return to work after that date. However, if he had known he would lose 9 days of leave with the advent of the new fiscal year, he might have requested and been granted 9 days of leave in late July or early August 2007, prior to his retirement ceremony. This action would have stopped him from losing 9 days of leave with the start of the new fiscal year, but it would not have resulted in any payment for those 9 days of leave. Under the regulations, the applicant could have no more than

60 days of accrued leave as of October 1, 2007, and he could not retain 40.5 days to sell on October 31, 2007, without returning to work during October.

7. The recoupment of the overpayment was not legal error, but potential equitable remedies exist under both Chapter 11.F. of the Pay Manual and under the Board's statute, 10 U.S.C. § 1552(a). Chapter 11.F.5.f. states that CG-122 may grant a waiver of indebtedness resulting from overpayments in cases in which

[c]ollection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally, this criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining waiver of the claim. Any significant, unexplained increase in pay and allowances which would require a reasonable person to inquire concerning the correctness of the pay or allowances, ordinarily would preclude a waiver when the member fails to bring the matter to the attention of appropriate officials.

It appears to the Board that the applicant may be eligible for a waiver from CG-122 under this provision because the overpayment resulted from his SPO's administrative error, and there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant. With regard to the latter requirement, the Board notes that it was the applicant's administrative officers, and *not* the applicant himself, who provided the PSC with more than one story about his terminal leave in their efforts to protect the applicant from the consequences of their own bad advice. In addition, because the applicant had been led to believe he was entitled to sell 40.5 days of leave, he had no reason to suspect when he received his final active duty pay that \$1,411.47 of the lump sum for leave sold was an overpayment.

8. Therefore, because there is no evidence in the record that CG-122, which has authority to waive a retired member's indebtedness, has ever been consulted in this matter and because the applicant may be eligible for a waiver from CG-122 under the criteria stated in Chapter 11.F.5.f. of the Pay Manual, the applicant's request should be dismissed without prejudice so that he can exhaust his administrative remedies by requesting a waiver of the indebtedness from CG-122. If CG-122 denies his request for a waiver, he can resubmit his application to this Board.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of ETCS xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG (Retired), for correction of his military record is denied without prejudice for the reasons stated in the findings.

Paul B. Oman

Thomas H. Van Horn

Janice Williams-Jones