

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-222

**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 upon receipt of the applicant's completed application and military records on August 4, 2009, and subsequently prepared the final decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 13, 2010, 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 so that he is compensated for 34 days of leave charged to him while he was in a not fit for duty (NFFD) status. The applicant alleged that the Coast Guard violated its policy by placing him on annual leave while he was NFFD.

The applicant was a reservist performing active duty when he was placed in a NFFD status from August 8, 2007 to September 19, 2007, while undergoing treatment for a back condition. According to the Coast Guard, the applicant was charged with 31 days of leave during the 43 days that he was not NFFD. The applicant's active duty orders were scheduled to expire on July 30, 2007, but were extended because the applicant was undergoing medical treatment. He was released from active duty on September 24, 2007.

VIEWS OF THE COAST GUARD

On December 18, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted a memorandum in which he adopted the comments provided by Commander, Personnel Service Center (PSC), as the Coast Guard's advisory opinion. PSC recommended that the Board grant the following relief: "[That] partial relief be granted in that 31 days of leave be credited to the applicant along with any associated pay and entitlements."

In this regard, PSC stated that according to Article 7.A.2.e. of the Personnel Manual, sick leave is a period of authorized absence granted to persons while under medical care and treatment and is not chargeable as leave. PSC stated that since the applicant was deemed NFFD from August 8, 2007 to September 19, 2007, by competent medical authority, the leave associated with that status for the entire 43-day period should have been attributed to sick leave in accordance with policy. PSC recommended that the applicant receive any pay or entitlement as a result of the 31 days that were erroneously charged to him as leave while he was NFFD.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 4, 2010, the Board received the applicant's reply to the views of the Coast Guard. He accepted the Coast Guard's offer that he receive pay for the 31 days of leave erroneously charged to him while he was in a NFFD status.

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 found, and the Board agrees, that the Coast Guard committed an error by charging the applicant leave for a portion of the period he was NFFD, instead of granting him sick leave for that entire period from August 8, 2007 to September 19, 2007. Article 7.A.2.e. states that sick leave is not chargeable as leave. Therefore, the Board agrees with the JAG that the 31 days of leave charged to the applicant during the NFFD period should be returned to him. The leave is then to be sold back to the government.
3. Accordingly, the applicant's request for relief should be partially granted in accordance with the advisory opinion and the applicant's reply to the advisory opinion.

[ORDER AND SIGNATURES APPEAR ON FOLLOWING PAGE]

ORDER

The application of XXXXXXXXXXXX, USCGR (Ret.), for correction of his military record is granted, in part, as follows. His record shall be corrected to show that he was not charged with 31 days of leave between August 8, 2007 and September 19, 2007, but that he was authorized sick leave for this entire period. His record shall be further corrected to show that he sold the 31 days of leave back to the government upon his release from active duty on September 24, 2007. The Coast Guard shall pay him the amount due as a result of this correction.

Donna M. Bivona

Nancy L. Friedman

Dorothy J. Ulmer