

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-120

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

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 application upon receipt of the applicant's completed application March 27, 2009, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 4, 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

The applicant requested a "pay and leave adjustment . . . to correct erroneous overpayment issues from May 9, 2006 to June 6, 2006 while [she] was in an active duty status." She asserted that she was not in a leave status for this entire period.

The applicant is a reservist currently on the inactive status list (ISL). She was involuntarily ordered to active duty for a period from October 1, 2003, through September 30, 2004. She continued on active duty through an extended active duty (EAD) agreement for the period from October 1, 2004, through June 6, 2006. The applicant subsequently received Active Duty Special Work (ADSW) orders for the period from June 7, 2006, to September 30, 2006. On June 13, 2006, the Integrated Support Command canceled the ADSW orders retroactive to June 7, 2006, because of the applicant's non-compliance with weight standards. The applicant was released from active duty and received a DD 214 that shows she entered active duty on October 1, 2004 and was released from active duty on June 6, 2006.

On November 7, 2006, the applicant received a letter from the Personnel Service Center informing her that she had been overpaid by \$1,054.57 due to excess leave.¹ The letter explained the following:

¹ Article 7.A.2.d. of the Personnel Manual states that excess leave is authorized leave over and beyond any earned or advance that can be granted during which the member is not entitled to pay and/or allowances. A minus leave

1. A review of your leave account shows you used 12.0 days of leave in excess of what you earned while serving on active duty. The inclusive dates of excess leave taken are May 26 through June 6, 2006. For the 12.0 days excess leave used 1.0 day non-accrued leave was incurred for a total charge of 13.0 days excess leave. This resulted in an overpayment of \$2,053.16 because you did not earn leave and were not entitled to pay or allowances while in an excess leave status.
2. [Nine hundred ninety-eight dollars and fifty-nine cents] pay and allowances due you upon discharge were used to partially offset the [amount owed]. Amount now due government: \$1,054.57.

The applicant stated that she was not certain how much leave she actually took prior to May 26, 2006, but she was certain she did not take leave from May 9, 2006 to May 31, 2006, to June 6, 2006, as calculated. The applicant indicated there was confusion about her leave balance. She stated that a yeoman told her that she would have 17 days of leave in June. She stated that she started leave on May 26, 2006 and her title 10 orders ended on June 6, 2006. She stated that this period covered 12 days of leave and that using the yeoman's calculation she should have had 5 days remaining. She denied that she was in a leave status for the entire period from May 9, 2006 to May 31, 2006. In this regard she submitted a statement from a civilian contractor who stated that the applicant assisted with a Morale, Welfare, and Recreation picnic on May 25, 2006.

Prior to filing with the Board, the applicant filed an application for correction of her record with the Personnel Records Review Board (PRRB) in which she asked that her records be corrected to show that she served on active duty from October 1, 2003 to June 6, 2006 instead of October 1, 2004 to June 6, 2006. The PRRB issued the following recommendation for correction of the applicant's record, which was approved on April 6, 2007:

- a. Date entered active duty this period should read 2003/10/01 vice 2004/10/01. Applicant began involuntary Title 10 on 2003/10/01 and was on continuous active duty until RELAD. Block 12.b. Separation this period [of the DD-214] should read 2006/06/13 the actual day the applicant was instructed that the ADSW-AC orders for period 2006/06/07 were cancelled vice the retroactive date of 2006/06/06 indicated on the existing DD-214. Block 12.c. Net Active Service this period needs [to be computed] based upon adjusted date entered [active duty].
- b. Recommend Coast Guard Personnel Service Center . . . audit applicant's pay record to ensure applicant is credited with all pay and allowances through revised separation date of 2006/06/13 vice 2006/06/06 of record.

The applicant submitted a leave and earning statement for the period March 1 through March 31, 2007 with an amendment dated April 12, 2007, that shows that she was credited with

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.

8 additional days of active duty, which appears to have resulted from the PRRB's directive that her separation date be corrected to June 13, 2006. The amendment further shows after the correction granting 8 additional days of active duty, that the applicant's outstanding debt was reduced to zero.

VIEWS OF THE COAST GUARD

On March 3, 2003, the BCMR received the views of the Coast Guard from the Judge Advocate General (JAG) of the Coast Guard, who adopted the comments of the Commander, Personnel Service Center (PSC), as the advisory opinion.

PSC recommended that the Board deny the applicant's request. PSC stated that the applicant failed to prove that she did not take the leave as indicated in her record. With respect to the applicant's argument that she assisted with a picnic on May 25, 2006, and therefore was not in a leave status for the entire period, PSC stated that the mere assistance/attendance with a morale function does not substantiate that the applicant was not on leave as morale events were not her official government duties. PSC further stated that a review of the applicant's leave status by the Pay and Personnel Center does not reveal any error or discrepancies. PSC stated that as a result of the applicant taking more leave than the amount she had accrued, she received a notice of overpayment.

APPLICANT REPLY TO THE VIEWS OF THE COAST GUARD

On August 21, 2009, the Board sent the applicant a copy of the views of the Coast Guard for a response. The Board did not receive a reply to the views of the Coast Guard.

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 applicant claimed that she was not in a leave status for the entire period from May 9, 2006 to June 6, 2007. The only evidence she submitted in this regard is that she assisted with a Morale, Welfare, and Recreation picnic on May 25, 2006; that confusion existed about her leave balance; and that after she reported for duty, her ADSW-AC orders were cancelled on June 13, 2006, retroactive to June 7, 2006. However, on April 6, 2007, the PRRB ordered the applicant's record corrected to show that she separated from active duty on June 13, 2006 rather than June 6, 2006, which granted the applicant an additional 8 days of active duty with pay and allowances. The April 2007 amendment to the March 2007 leave and earnings statement shows that the 8 days of additional active duty pay canceled the excess leave charges and left the applicant owing no government debt.

3. On the issue of whether the applicant is still owed for unused leave, the Board notes that she presented no evidence that she had unused leave days upon her separation from active duty. She asserted that she was told by a yeoman that she had 17 days of leave in June 2006 but she also stated that she did not remember how many days of leave she had used prior to May 26, 2006. It is the applicant's responsibility to prove that she had unused leave days when she separated from active duty or that after being credited with 8 additional days of active duty, as directed by the PRRB, she is owed leave. The Board finds this could have been done by gathering all of her leave and earnings statements while on active duty. Each monthly leave and earnings statement records the leave days used and leave days accrued.

4. Moreover, the PRRB directed that the applicant's pay record be audited to ensure that she is credited with all pay and allowances through her June 13, 2006 separation date. The Board presumes that the Coast Guard performed the audit as directed, as there has been no evidence to the contrary, except for the applicant's allegation that she did not take all of the leave charged to her.

5. Accordingly, the applicant has failed to present sufficient evidence that persuades the Board that she had unused leave upon her separation from active duty on June 13, 2006, or that that she is entitled to any pay and allowance other than that already received.

6. Accordingly, her application should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXX, USCGR, for correction of her military record is denied.

Nancy L. Friedman

Patrick B. Kernan

George A. Weller