

AUG 19 1998

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-03558

COUNSEL: None

HEARING DESIRED: No

APPLICANT REQUESTS THAT:

Her Home of Record (HOR) be changed from [REDACTED]
to [REDACTED]

APPLICANT CONTENDS THAT:

The HOR chosen for her seems to have been based on her high school diploma; however, she has not lived in [REDACTED], for years. Once she married and became her husband's dependent, her HOR became his HOR, which is [REDACTED]. Had she not entered the military, she would have returned with her husband to "their" HOR-- [REDACTED]. They will ship their household goods to [REDACTED] on her husband's orders since his weight allowance is much greater than hers. However, she would still like to have her HOR changed to [REDACTED] so that she can prove her residency and attend college at the [REDACTED]. An HOR should reflect the domicile, which is where one intends to return. She never intended to return to [REDACTED].

In support, she provides a review from a paralegal service and other documents pertaining to this issue.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant enlisted for four years in the Regular Air Force on 24 August 1995 at [REDACTED] where she resided as a dependent of her then active duty spouse. Upon her enlistment, her husband separated from the service. Enlistment records showed her HOR as [REDACTED] since that was the location from which she enlisted. However, when she began processing for separation, she was advised by the Transportation Management Office that, based on her HOR, she would not be entitled to stateside household goods shipment. She requested that her HOR of [REDACTED] be changed to [REDACTED]. The [REDACTED] HOR was administratively changed to [REDACTED] on 8 December 1997, the location where she graduated from high school. However, on 10 December 1997, the applicant's husband's request to have his travel and

transportation entitlements extended was granted until 30 July 1998. Consequently, member/dependent travel and shipment of household goods from [REDACTED] to [REDACTED] would be allowed under his orders.

Applicant separated from the service on 24 February 1998.

Based on her National Agency Questionnaire, dated August 1995, she last resided in the United States in [REDACTED]

AIR FORCE EVALUATION:

The Chief, Skills Management Branch, HQ AFPC/DPPAE, reviewed this appeal and states that HOR is the place recorded as the home of the individual when commissioned, enlisted, or ordered into the relevant tour of active duty. It is recorded in the military personnel record for the sole purpose of determining transportation entitlements upon separation. While legal addresses may change during a member's career, the HOR remains constant. The HOR can be changed only if there has been a break in service of one full day or a bona fide error was made in recording information given by the member. The HOR must be the actual home of the member upon entering the service and not a different place selected for the member's convenience. As information, upon retirement, travel and transportation entitlements are to Home of Selection, not HOR. This office administratively corrected applicant's HOR to [REDACTED] based on documentation provided. She has not provided documentation to substantiate changing her [REDACTED]. As a result, denial is recommended.

A copy of the complete Air Force evaluation is attached at Exhibit C.

The Senior Attorney-Advisor, HQ AFPC/JA, also reviewed the case and explains the concept of HOR, which requires understanding three things: the legal definitions of domicile and residence; the effect that the Soldiers' and Sailors' Civil Relief Act (SSCRA) has had on the residence/domicile of military members; and the military definition and purpose of HOR. These issues are discussed at length. Residence is the place where a person lives right now, while domicile is the place where a person intends to permanently reside in the future. According to the SSCRA, a military member who enters the military from State A does not lose his domicile and residence in State A unless the member makes a decision to abandon State A for some other location where he is physically present. That protection does not, however, follow the spouse of the military member. HOR is not defined in **Black's Law Dictionary**. It is a military term used for one specific purpose: the computation of distance for the shipment of household goods after a service member completes his service or

for travel of dependents of a member who dies on active duty. Applicant's argument that her HOR should be the same as her husband's since she was married to a service member at the time of her enlistment is fundamentally flawed. She is not the property of her husband and does not automatically pick up her husband's HOR. Subsequently, it must be assumed that her HOR was either the location where she enlisted or the last location where she and her service member husband resided prior to the assignment at [REDACTED]. She could legitimately claim [REDACTED] AB, [REDACTED], as her HOR. Yet, clearly from the facts available, she was not a domicile of [REDACTED] and certainly was not a permanent resident of [REDACTED]. Thus a change in her HOR was appropriate to prevent an unjust result. The applicant has not provided any evidence that her last legal residence at the time of her enlistment was [REDACTED], nor has she provided evidence that her husband's last duty assignment prior to the [REDACTED] assignment was at or near [REDACTED]. However, the author is also of the opinion that the Air Force's decision to name [REDACTED] as her HOR is not supported by her records. Her records indicate that she last resided in the United States in [REDACTED] and that, the author opines, is her correct HOR. Recommend the requested relief be denied; however, the author recommends that the applicant's HOR be changed to [REDACTED] the location of her last legal residence and domicile in the United States prior to her enlistment.

A copy of the complete Air Force evaluation is attached at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 9 February 1998, complete copies of the Air Force evaluations were forwarded to the applicant's last known address, which was in Japan, for review and comment within 30 days. As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations,
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that her HOR should be changed from [REDACTED] to [REDACTED]. Applicant's contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the very thorough comments and rationale provided by the

Senior Attorney-Advisor. We therefore agree with the recommendations of HQ AFPC/JA and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain her burden that she has suffered either an error or an injustice. In view of the above and absent persuasive evidence to the contrary, we find no compelling basis to recommend granting the relief sought.

4. However, we do believe some correction of applicant's records is warranted. In this regard, we noted the Senior Attorney-Advisor's contention that the applicant's HOR should be changed from [REDACTED] to [REDACTED]. Based on our review of the available evidence, we agree with his rationale for this amendment and recommend applicant's records be so corrected.

THE BOARD RECOMMENDS THAT:

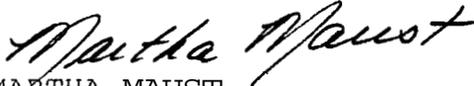
The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that her home of record was [REDACTED] rather than [REDACTED].

The following members of the Board considered this application in Executive Session on 23 July 1998, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chair
Mr. Robert W. Zook, Member
Mr. Kenneth L. Reinertson, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 22 Dec 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPAE, dated 6 Jan 98.
- Exhibit D. Letter, HQ AFPC/JA, dated 30 Jan 98.
- Exhibit E. Letter, AFBCMR, dated 9 Feb 98.


MARTHA MAUST
Panel Chair



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

06 JAN 1998

MEMORANDUM FOR AFBCMR

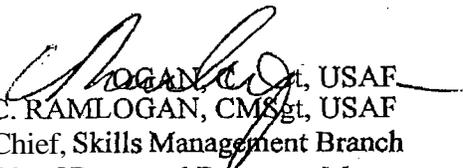
FROM: HQ AFPC/DPPAE
550 C Street West, Ste 10
Randolph AFB TX 78150-4712

SUBJECT: Application for ~~correction~~ of Record - [REDACTED]

The applicant requests her **Home of Record (HOR)** changed from [REDACTED] to [REDACTED]. The applicant filed a timely request within three years of discovering the alleged injustice.

HOR is defined as the place recorded as the home of the individual when commissioned, enlisted, or ordered into the relevant tour of active duty. It is recorded in the military personnel record for the sole purpose of determining transportation entitlements upon separation, or those of dependents in the event of a member's death while on active duty. While legal addresses may change from time to time during a member's career, HOR remains constant. HOR can be changed only if there has been a break in service of one full day or a bona fide error was made in recording information given by member. The HOR must be the actual home of the member upon entering the service, and not a different place selected for the member's convenience. As information, upon retirement, travel and transportation entitlements are to Home of Selection, not HOR.

On 24 August 1995, the applicant enlisted in the RegAF from [REDACTED] where she resided as a dependent of her then active duty spouse. Her HOR was designated as being [REDACTED]. When the applicant began processing for separation, the Transportation Management Office advised her that, based on her HOR of [REDACTED] she would not be entitled to stateside household goods shipment. The applicant requested correction of her HOR to [REDACTED] through the BCMR process. We administratively corrected HOR on 8 December 1997, to [REDACTED] (based on documentation provided). Although this resolved the household goods dilemma, the member wishes to further pursue changing her HOR to [REDACTED]. This is to establish state residency for college purposes. The applicant has not provided documentation to substantiate changing her HOR to [REDACTED]. As a result, we recommend denial of the applicant's request.


C. RAMLOGAN, CMSgt, USAF
Chief, Skills Management Branch
Dir of Personnel Programs Management

C



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

30 January 1998

MEMORANDUM FOR AFBCMR

FROM HQ AFPC/JA (Maj Reed)
550 C Street West Ste 44
Randolph AFB TX 78150-4746

SUBJECT: Application for *correction* of Military Records -

REQUESTED ACTION: Applicant requests that her home of record (HOR) be
ha [REDACTED]

BASIS FOR REQUEST: Applicant believes that it is an error for the Air Force to use the location at which she graduated from high school as her HOR. She believes that her HOR should be the HOR of her formerly military spouse.

FACTS: Applicant enlisted in the Air Force on 24 Aug 95 for a term of four years. Prior to her enlistment, she was the dependent spouse of an active duty Air Force enlisted member. Her husband was stationed at [REDACTED] and she was residing with her husband, at [REDACTED] the time of her enlistment. Her husband has since separated from the Air Force and is living with her at her current duty assignment, [REDACTED]. Her HOR was originally recorded as [REDACTED] however, it has since been administratively changed to [REDACTED], the location where she graduated from high school.

DISCUSSION Resolving applicant's petition involves understanding the concept of HOR. HOR, however, is not necessarily a simple concept. To fully understand HOR, we need to understand three things: the legal definitions of domicile and residence; the effect that the Soldiers' and Sailors' Civil Relief Act, 50 USC §§ 501 - 591, has had on the residence/domicile of military members; and the military definition and purpose of HOR.

According to *Black's Law Dictionary* domicile is "[t]hat place where a man has his true, fixed, and permanent home and principle establishment, and to which whenever he is absent he has the intention of returning." The secondary definition in *Black's*² is [t]he permanent residence of a person or the place to which he intends to return even though he may actually reside elsewhere." Residence, however, is significantly different from domicile. *Black's*³ defines

¹ *Black's Law Dictionary*, 5th ed., West Publishing Company, 1979, at page 435.

² *Id.*

³ *Id.* at 1176.

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residence as “[p]ersonal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined With design to stay permanently.” Thus, residence is the place where a person lives right now, while domicile is the place where a person intends to permanently reside in the future. Domicile and residence can be, and frequently are, the same place. In fact, most people reside at their domicile.

One provision of the Soldiers’ and Sailors’ Civil Relief Act, Section 574, provides that when a person is absent from their State of domicile and residence by virtue of military orders, that person and his personal property do not lose their domicile or residence for purposes of taxes and licenses, nor does that person become a legal resident or domicile of the State to which their military orders assign them for purposes of taxes or domicile. What this means is a military member who enters the military from State A does not lose his domicile and residence in State A, unless the member makes a decision to abandon State A for some other location where he is physically present. That protection does not, however, follow the spouse of the military member.

You will not find “home of record” defined in Black’s. HOR is a term unique to the military and is defined as the residence of a recruit at the time the recruit first enters military service. For most recruits, domicile and residence are the place they are living when they enter military service. Thus, it has become common practice for recruiters to enter the place of residence at the time of recruitment as the HOR.⁴

HOR is defined as the actual home of an individual service member prior to her enlistment, commissioning, or relevant tour of active duty. It is a military term that is used for one specific purpose, the computation of distance for the shipment of household goods after a service member completes his service or for travel of dependents of a service member who dies on active duty. HOR has no other legitimate use and no legitimate application for any purpose in the civilian community. Moreover, it does not determine or indicate current legal residence.

As a general rule, HOR can only be changed under two specific conditions. First, it can be changed when a service member separates from the service and reenlists after an actual break in service. Second, it can be reestablished when the service member can provide evidence that the original HOR was in error.

In this case, applicant believes that the use of the [REDACTED] HOR is in error. She claims her HOR should be the same as her husband’s since she was married to a service member at the time of her enlistment. Applicant’s argument is, however, fundamentally flawed. Her HOR at the time of her enlistment is not automatically her husband’s legal residence. Her residence and domicile can change to her husband’s domicile only by virtue of her residing in that location for a period long enough to establish her personal residence. She is

⁴ Generally, only college students, who enlist from a school not located near their home, have an HOR that is not the location from which they enlisted.

not the property of her husband and does not automatically pick up her husband's HOR.⁵ Subsequently, we must assume that her HOR was either the location where she enlisted, or the last location where she and her service member husband resided prior to the assignment at [REDACTED]

Enlistees do not have the right to pick and chose their HOR. HOR is the place of residence at the time of enlistment, unless the enlistee provides evidence that he is domiciled in a place other than his residence. Based on all the evidence before us, we are of the opinion that applicant could legitimately claim [REDACTED], as her HOR. Yet, clearly from the facts available, applicant was not a domicile of [REDACTED] and certainly was not a permanent resident of [REDACTED]. Thus, a change in her HOR was appropriate to prevent an unjust result. Logically, the HOR would thus be the place where she resided prior to her arrival in [REDACTED]. The problem that arises is that the Air Force must determine that location from the evidence in applicant's records and the evidence presented by applicant in her application. In correcting applicant's HOR, the Air Force looked to her military records and determined that her last residence was the location where she graduated from high school, [REDACTED]. Applicant disagrees and claims [REDACTED].

It is our opinion, that applicant has not provided any evidence that her last legal residence at the time of her enlistment was [REDACTED], nor has she provided evidence that her husband's last duty assignment prior to the [REDACTED] assignment was at or near [REDACTED]. I.e., she has not submitted records of a [REDACTED] driver's license dated prior to her enlistment; she has not submitted records of voter registration in [REDACTED] dated prior to her enlistment; she has not submitted records or ownership of real estate in or around [REDACTED] prior to her enlistment. Finally, she has submitted no professional license, no income tax records, and no automobile registration showing [REDACTED], as residence prior to her enlistment. We, therefore, conclude that there is no evidence to support applicant's claim that [REDACTED] was her HOR at the time of her enlistment.

However, we are also of the opinion that the Air Force's decision to name [REDACTED] as applicant's HOR is not supported by her records. Applicant's records (her DD Form 398-2, National Agency Questionnaire) indicate that she last resided in the United States in [REDACTED]. In our opinion, [REDACTED] is applicant's correct HOR.

⁵ Interestingly, in less enlightened times, the Air Force would have assigned her her husband's HOR automatically simply because she was a woman. That practice is no longer acceptable, however, because it makes the assumption that a female spouse is incapable of choosing her own residence and relates to a time when women were legally the chattel of their spouse.

⁶ While military members can change their place of permanent residence by doing things such as registering cars, registering to vote, getting driver's licenses, occupational licenses, or purchasing property with an intent to maintain that location as a permanent residence, military spouses become residents of the place where they are residing because the protections of the SSCRA do not apply to them. Military spouses like all civilians become residents of the place they are living simply by virtue of their physical presence in that location.

RECOMMENDATION : We recommend that the Board deny the relief requested in this application for failure to prove the existence of the error or injustice alleged; however, we recommend the Board direct that applicant's HOR be changed to [REDACTED] the location of her last legal residence and domicile in the United States prior to her enlistment.



Willard K. Lockwood

WILLARD K. LOCKWOOD
Senior Attorney-Advisor