



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

LCC:lc
Docket No. 7697-01
22 July 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy
Subj: [REDACTED]
Review of naval record

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NPC memo 5420 PERS-4415, 18 Jun 02
(3) OPNAV memo 7220 Ser N130C3/02U0053, 8 Feb 02
(4) Petitioner's response, 22 Mar 02
(5) Appendix A, JFTR definition of PDS

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, the applicable naval record be corrected to show that Petitioner is entitled to Basic Allowance for Housing (BAH) at the without dependent rate for unit of assignment.

2. The Board, consisting of Messrs. Agresti, Frankfurt, and Ms. Hare reviewed Petitioner's allegations of error and injustice on 16 July 2002 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Prior to filing enclosure (1) with this Board, Petitioner exhausted all administrative remedies afforded under existing law and regulations within the Department of the Navy.

b. In March 2000 Petitioner was assigned as a battalion surgeon to the First Marine Division located at Twentynine Palms, CA. He was scheduled to report in August 2000.

c. Approximately 2 weeks prior to reporting to Twentynine Palms, Petitioner received a call from the First Marine Division Surgeon directing him to fill a billet as battalion surgeon at Camp Pendleton, CA. Petitioner accepted this assignment with the understanding that the permanent change of station (PCS) orders would be changed to Camp Pendleton.

d. Petitioner tried repeatedly to get his orders modified assigning him to Camp Pendleton so that he would be entitled to payment of BAH for Camp Pendleton. The BAH comparison rate for Twentynine Palms and Camp Pendleton is as follows:

<u>CY</u>	<u>Twentynine Palms</u>	<u>Cp Pendleton</u>	<u>Difference</u>
2000	\$499.70	\$833.70	\$334.00
2001	\$576.70	\$1,032.70	\$456.00
2002	\$637.70	\$1,244.70	\$607.70

Petitioner has been working and living in the Camp Pendleton area and has been receiving Twentynine Palms BAH which is far less than Camp Pendleton BAH. Therefore, his out of pocket expenses have been significantly higher than the BAH payment he has been receiving.

e. The detailer for the General Medical Officer advised Petitioner that no official billet exists for an additional medical officer at Camp Pendleton. Consequently she would not modify his orders. Petitioner was given officially no-cost temporary additional duty from Twentynine Palms to Camp Pendleton for the duration of his assignment to Twentynine Palms. Because BAH is based on the unit of assignment, Petitioner has been paid BAH for Twentynine Palms and not Camp Pendleton where he is living and working.

f. In correspondence attached as enclosures (2) and (3), the offices having cognizance over the subject matter involved in Petitioner's application recommended denial, commenting that his official permanent duty station remains Twentynine Palms and the orders were not changed because there was not an official billet for Petitioner at Camp Pendleton. Consequently his request for BAH for Camp Pendleton should be denied. OPNAV N130C3 has

commented that BAH is paid for the PDS and since his orders assigned him to Twentynine Palms that is his PDS. They further advise that Petitioner reported to Twentynine Palms on 24 July 2000.

g. Petitioner responded, enclosure (4), to the OPNAV N130C3 advisory stating that he had never reported to Twentynine Palms but reported to Camp Pendleton on 24 July 2000 as he had been directed by CDR McDonald, the 1st Marine Division Surgeon. The situation is a quality of life issue and Petitioner feels he has suffered an injustice because he reported to Camp Pendleton as directed yet his housing compensation is not commensurate with his peers living in the same area. After approximately eight months at Camp Pendleton he was given the option of continuing to reside at Camp Pendleton and receive BAH for Twentynine Palms or moving his household goods at personal expense to Twentynine Palms. He felt that neither of these options were fair since he had not created this situation.

h. Appendix A, Joint Federal Travel Regulations (JFTR), enclosure (5) which is derived from the Statute and publishes guidance on entitlements relating to a PCS defines the PDS as "the place to which a member is actually assigned for duty, including a place from which the member commutes daily to the assigned station - - -". Petitioner commuted daily from his place of residence to Naval Hospital, Camp Pendleton.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosures (2) and (3), the Board finds the existence of an injustice warranting the requested relief. Clearly Petitioner was directed to report to Camp Pendleton by the 1st Marine Division Surgeon and did so. Under such circumstances the Board concludes it is not fair that Petitioner should be expected to pay out of pocket expenses because he followed orders. It appears that the billets should have been realigned from Twentynine Palms to Camp Pendleton and Petitioner should not have to pay the penalty because this was not done. The Board concluded that it would be only fair and equitable to Petitioner to authorize BAH for the Camp Pendleton area where he is residing.

Accordingly, the Board recommends the following corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that

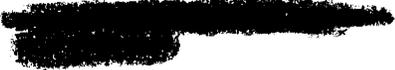
a. The Permanent Change of Station Orders which reassigned Petitioner from San Diego to Twentynine Palms, CA were modified on or about 22 June 2000 to direct the Petitioner to report to the Naval Hospital, Camp Pendleton, CA.

b. Petitioner was authorized BAH at the single rate effective 24 July 2000 for his unit of assignment which was Camp Pendleton, CA

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Boards proceedings in the above-entitled matter.

5. The foregoing action of the Board is submitted for your review and action.



Acting Recorder

Reviewed and approved: SEP 10 2002



Assistant General Counsel
(Manpower and Reserve Affairs)