



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

LCC
Docket No. 203-09
17 Nov 09

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) PCS Orders to [REDACTED]
(3) TEMADD orders to [REDACTED]
(4) CNO memo 7220 Ser N130C2/09U0618 of 18 Aug 09
(5) Para U10402.B6, JFTR

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, that the applicable naval record be corrected to show Petitioner is entitled to Basic Allowance for Housing (BAH) for designated location of dependents during the period he was on Temporary Additional Duty (TEMADD) assignment in support of Global War on Terrorism (GWOT) to [REDACTED] from 4 September 2006 to 3 August 2007.

2. The Board, consisting of Messrs. George, Pfeiffer, and Zsalman reviewed Petitioner's allegations of error and injustice on 26 October 2009 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. From 9 August 2004 to 6 July 2006, Petitioner was assigned to the [REDACTED]. The assignment [REDACTED] was considered to be arduous sea duty. During his tour of duty [REDACTED] his dependents were residing in a designated location, [REDACTED] and Petitioner was entitled to and receiving BAH at the rate applicable to [REDACTED].

c. In March 2006 the Petitioner received Permanent Change of Station (PCS) orders reassigning him to [REDACTED] (Enclosure 2).

d. Petitioner reported to [REDACTED] on 7 July 2006. He was immediately notified that he would be further ordered TEMADD to [REDACTED] from September 2006 to August 2007. (Enclosure 3, TEMADD orders).

e. He immediately commenced preparation for his TDY trip and did not have time to locate housing and move his dependents to [REDACTED]. He departed for [REDACTED] on 3 September 2006 and returned to the [REDACTED] area on 4 August 2007. During that period, his family remained in [REDACTED]. However, during that period, he received BAH at the [REDACTED] rate (which is approximately \$400.00 lower than the [REDACTED] rate).

f. Accordingly, on 7 January 2009, the Petitioner submitted the instant application seeking BAH at the [REDACTED] rate for the period he was TEMADD to [REDACTED] from 4 September 2006 to 7 August 2007.

g. In correspondence attached as enclosure (4), the office having cognizance over the subject matter involved in Petitioner's application recommended denial, commenting that, in their opinion, no relief was warranted. They note that BAH is authorized for the assigned duty station when the member is on TEMADD and not the designated location of the dependents.

h. Paragraph U10402.B6 of the Joint Federal Travel Regulations (JFTR) authorizes the Secretary concerned to permit,

in special circumstances, the dependents(s) to reside separately and to authorize/approve housing allowance payment based on either the dependent's location or the old PDS. Enclosure (5).

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (4), the Board finds the existence of an injustice warranting the requested relief. The Board carefully noted that Petitioner had just completed two years of arduous sea duty when he executed his orders to [REDACTED]. Within two months, he was ordered to another assignment which would separate him from his family for an additional year. In light of the almost "back to back" hardship assignments, it was reasonable for him to leave his family in place in [REDACTED] so as not to create even greater hardship to the family. The Board found that the member should not be financially penalized for that decision and that he therefore should be authorized BAH at the designated location of dependents while TEMADD to [REDACTED] because of his special circumstances.

RECOMMENDATION:

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

a. Petitioner was authorized BAH for designated location of dependents for the period 4 September 2006 to 3 August 2007. Address for dependents is [REDACTED]

b. A copy of this Report of Proceedings will 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 Board's proceedings in the above-entitled matter.

ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS III
Acting Recorder

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


W. DEAN PFEIFFER

Reviewed and approved:


Assistant General Counsel
(Manpower & Reserve Affairs)
11/25/09