



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

WJH
Docket: 5014-10
13 April 2011

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) MILPERSMAN 1300-308
(3) OPNAVINST 7220.12
(4) CNO ltr 7220 Ser N130C/10U0818 of 12 Nov 2010

1. Pursuant to the provisions of reference (a) Petitioner filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that he was granted a waiver of repayment for a debt established after he was overpaid Basic Allowance for Housing (BAH) while in Sasebo JN.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George, reviewed Petitioner's allegations of error and injustice on 11 April 2011. After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was sufficient to establish the existence of probable material injustice and 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. The Board also considered an advisory opinion provided by the Chief of Naval Operations Code N130 (hereinafter N130), attached as enclosure (4) that recommended no relief be granted.

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

a. In September 2005, Petitioner received Permanent Change of Station (PCS) orders directing him to transfer from San Diego CA to Sasebo JN in January 2006. The orders were considered "accompanied" orders because they authorized his family to accompany him to the new duty station at government expense.

b. Under the regulations governing overseas transfer orders, members are provided with an opportunity to elect whether they desire to be accompanied by family members in the overseas area. See enclosure (2). Also, in order to receive BAH based on the dependent's Continental United States (CONUS) location, prior approval must be received from the Commander Navy Personnel Command (PERS 451H). See enclosure (3).

c. Petitioner transferred to Sasebo. His dependents did not accompany him. They remained in CONUS.

d. Upon arrival, Petitioner checked in with the Personnel Support Detachment (PSD) Sasebo. A service record entry shows that on 8 January 2006, he elected an "unaccompanied" tour. However, his tour length was not adjusted from "accompanied" (36 months) to "unaccompanied" (12 months). And he was not advised by the PSD to request BAH based on the dependent's Continental United States (CONUS) location. His CONUS BAH based on his dependent's location (San Diego) was continued causing an overpayment.

e. In March 2009, his spouse moved from San Diego CA to San Marcos CA. The BAH rate in San Marcos is lower than the BAH rate in San Diego. Petitioner failed to inform the PSD of the change. Accordingly, he continued to receive BAH based on San Diego which was thought by the Navy to be his dependent's location. Petitioner was paid BAH at the higher San Diego rate from approximately 29 March 2009 to 30 April 2010. The difference in the rates caused a separate overpayment of \$1,030.65.

f. In approximately April 2010, an audit of all Sailors in Sasebo receiving CONUS BAH was conducted. At that time, it was discovered that Petitioner was not entitled to CONUS BAH because he was serving in Sasebo on "accompanied" orders and he had no prior authorization to

receive BAH based on his dependent's location. He had been overpaid a total of \$94,457.94.

g. The PSD Sasebo subsequently established the overpayment as a debt.

h. In June 2010, Petitioner applied to this Board seeking to have the debt for overpayment of BAH waived.

i. By enclosure (4), N130 recommends no relief be granted. N130 reasons that Petitioner was not entitled to CONUS BAH because he was serving in Sasebo on "accompanied" orders and he had no prior authorization to receive BAH based on his dependent's location. He could have brought his family to Sasebo at government expense but chose not to do so.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds an injustice and concludes that Petitioner's request warrants partial favorable action. The majority understood and carefully considered the comments made in enclosure (4). However, it found that the following factors militated in favor of relief. The PSD Sasebo erred when it allowed the CONUS BAH to continue. Absent that error, Petitioner would likely have sought PERS 451H approval or adjustment to his tour length. Also, the PSD Officer in Charge has confirmed that the failure by the PSD Sasebo to stop the BAH or to seek authorization to receive BAH based on the dependent's location was, at least in part, the cause of the overpayment. Also, due to its size, enforcing the debt would create an extremely heavy financial burden on a First Class Petty Officer. For these reasons, the Board finds that, Petitioner's request should be granted partial favorable action extending to waiver of \$93,427.29 of the total debt. In the Board's view, Petitioner should be responsible for the separate overpayment of \$1,030.65 because of his failure to report that his spouse had moved to San Marcos, CA.

RECOMMENDATION:

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

a. \$93,427.29 of the debt (partial amount) caused by the overpayment of BAH will be waived.

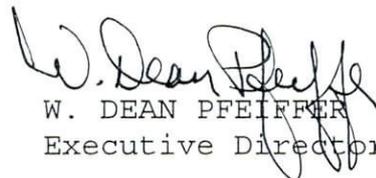
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



ROBERT D. ZSALMAN
Recorder

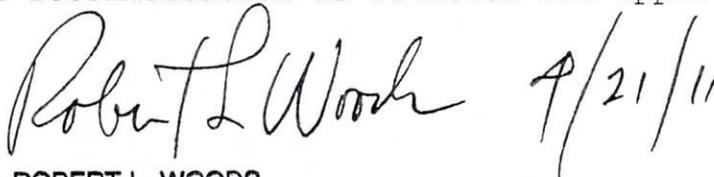
WILLIAM J. HESS, III
Acting Recorder

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



W. DEAN PFEIFFER
Executive Director

The recommendation is reviewed and approved:



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