



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

WJH  
Docket: 10424-10  
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/10U0850 of 22 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 of 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 2006, Petitioner received Permanent Change of Station (PCS) orders directing him to transfer from Bahrain to Sasebo JN in November 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 in November 2006. His dependents were in Portland OR and did not join him right away.

d. Upon arrival, Petitioner checked in with the Personnel Support Detachment (PSD) Sasebo. He was not advised by the PSD to request BAH based on the dependent's Continental United States (CONUS) location. His tour length was not adjusted from "accompanied" (36 months) to "unaccompanied" (12 months). His CONUS BAH based on his dependent's location (Portland OR) was continued until 16 February 2007 when, pursuant to command sponsorship, his family joined him in Sasebo. Because he lacked authorization to receive BAH based on the dependent's Continental United States (CONUS) location, he was overpaid BAH between approximately 30 November 2006 and 16 February 2007 in the amount of \$2506.64.

e. In June 2009, Petitioner's spouse returned to Portland OR at no expense to the Navy. The move was not made pursuant to command sponsorship. After June 2009, Petitioner once again erroneously received BAH based on the dependent's Continental United States (CONUS) location. Because he lacked authorization to receive BAH based on the dependent's Continental United States (CONUS) location, he was overpaid BAH between approximately 19 June 2009 and 30 April 2010 in the amount of \$13,500.08.

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 \$16,006.72.

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

h. In September 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. Regarding the \$2506.64 debt, N130 reasons that Petitioner was not entitled to CONUS BAH because he was serving in Sasebo on "accompanied" orders and had no prior authorization to receive BAH based on his dependent's location. Regarding the \$13,500.08 debt, N130 reasons that Petitioner was not entitled to CONUS BAH because he was serving in Sasebo on "accompanied" orders, he had no prior authorization to receive BAH based on his dependent's location, and he returned his family at his own expense. He was not required to return his family but elected to do so voluntarily.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds an injustice and concludes that Petitioner's request warrants favorable action. The Board 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 in November 2006 when it allowed the CONUS BAH to continue even though there was no prior authorization from PERS 451. Absent that error, Petitioner would likely have sought PERS 451H approval. The PSD Sasebo erred again in June 2009 when it started the CONUS BAH even though Petitioner was serving in Sasebo on "accompanied" orders, there was no prior authorization from PERS 451, and Petitioner had returned his family at his own expense. Additionally, the PSD Officer in Charge has confirmed that the erroneous payment of BAH during these periods was at least in part,

attributable to the PSD. He further opined that the receipt of the BAH was not an effort by Petitioner to defraud the United States. Also, due to its size, enforcing the debt would create an extremely heavy financial burden on a Second Class Petty Officer. For these reasons, the Board finds that, Petitioner's request should be granted favorable action extending to waiver of the \$16,006.72 debt.

RECOMMENDATION:

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

a. The \$16,006.72 debt 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:

  
ROBERT L. WOODS  
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4/21/11