

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No. 118-22 Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF

Ref: (a) Title 10 U.S.C. § 1552

(b) COMNAVCRUITCOM NOTE 1130 of 12 Oct 18

(c) DoD 7000.14R FMR Volume 7A

Encl: (1) DD Form 149 w/attachments

- (2) OCNO memo 7431 N130C2/22U0306 of 18 Feb 22
- (3) Subject's naval record
- 1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her naval record be corrected to show Petitioner received Basic Allowance for Housing (BAH) at the with-dependent rate, Family Separation Allowance (FSA), and Basis Allowance for Subsistence (BAS) from 8 July 2020 to 16 June 2021.
- 2. The Board, consisting of reviewed Petitioner's allegations of error and injustice on 27 April 2022 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, relevant portions of Petitioner's naval record, 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
- b. On 4 February 2017, Petitioner's child was born. On 20 August 2019, Superior Court of the State of awarded Petitioner sole legal custody and sole physical custody of the minor child.
- c. On 20 August 2019, Petitioner certified a Department of the Navy Family Care Certificate (NAVPERS 1740/6) naming Petitioner's mother as agreeing to assume temporary care for the minor child in the event of Petitioner's death or incapacity. Enlistment waiver for single parent with one dependent child was approved by Commander, Navy Recruiting Command per letter 1133 Ser 00/679 dated 3 October 2019—waiver code: BBB.
- d. On 8 July 2020, Petitioner entered active duty for 4 years with an End of Active Obligated Service of 7 July 2024 and Soft End of Active Obligated Service of 7 July 2026.

f. On 12 January 2022, Petitioner was issued official separation orders (BUPERS order: 0122) while at On 14 July 2021, Petitioner was authorized BAH at the with-dependent rate for effective 11 June 2021.

g. On 14 January 2022, Petitioner was discharged under honorable conditions (General) due to Misconduct – Drug Abuse.

h. On 24 January 2022, Petitioner was charged leave from 6 January 2022 to 13 January 2022 (8 days). Furthermore, on 3 February 2022 Petitioner received 18 days lump-sum leave payment.

CONCLUSION

for duty under instruction.

Upon review and consideration of all the evidence of record, and especially in light of the contents of references $(b)^1 - (c)^2$, and enclosure $(2)^3$, the Board finds the existence of an injustice warranting the following partial corrective action. The Board concluded that Petitioner was authorized to enlist in the Navy while unmarried and having sole and legal custody of an unmarried, minor dependent, therefore Petitioner was authorized BAH at the with dependent rate from the date she entered active duty. Furthermore, because Petitioner was in the accession pipeline and her dependent was not authorized to accompany her, she was entitled to FSA-R. However, the Board concluded that Petitioner's meal deductions were appropriate due to her status in the accession pipeline.

¹ In accordance with reference (b), unmarried applicants with physical custody of minor dependents must: Be approved by Navy Recruiting Command (NAVCRUITCOM) prior to enlistment. Complete a Family Care Certificate and Family Care Plan arrangements per OPNAVINST 1740.4E. Applicants must be briefed and understand their dependents may not accompany them until after they have completed their initial training pipeline (i.e. boot camp, Class "A" school, etc.). Present a court or child support order, which clearly indicates who has physical custody of the child. The order must be from the state where the child resides.

² In accordance with reference (c), a Service member on Active Duty entitled to basic pay is authorized a housing allowance based on his or her grade, rank, location, and whether he or she has any dependents. A housing allowance at the with-dependent rate is authorized effective the date the Service member provides proper certification. A Service member may claim a dependent child, adopted child, stepchild, or out of wedlock child, for housing allowance purposes. The Service member is authorized a housing allowance if the Service member contributes to the dependent's support and that support is at least equal to the applicable BAH-Diff. This includes a Service member authorized BAH-Diff and a Service member assigned to single-type Government quarters when the child is in the physical custody of another person.

Military members are not entitled to BAS of any type under the following conditions: When undergoing Basic Military Training, including initial officer training (Officer Candidate School, Officer Training School), except when the member has continuous prior enlisted service (active or reserve). Members will be subsisted-in-kind while attending initial basic military training. Mandatory pay account collection may be required in the following situations: Accession Pipeline Military Training.

FSA is payable to members with dependents. FSA is payable in addition to any other allowance or per diem, to which a member may be entitled. The member, however, may not receive more than one payment of FSA for the same period, even though qualified for FSA - Restricted (FSA-R), FSA - Ship (FSA-S), and FSA - Temporary (FSA-T). FSA is payable to a member serving in any grade as a member with dependents. The member must meet all general requirements and one of the following conditions: FSA-R. The member's dependents, including dependents acquired after the effective date of Permanent Change of Station orders (see Table 27-1 (FSA Commencement Dates), rules 8 and 9), do not live in the vicinity of the member's homeport/PDS, and their transportation to or near the PDS is not authorized at government expense.

³ Enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants partial favorable action.

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RECOMMENDATION

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

Petitioner was authorized BAH at the with-dependent rate for effective 8 July 2020 to 14 January 2022.

Petitioner was authorized FSA effective 8 July 2020 to 13 January 2022. Note: Defense Finance & Accounting Service (DFAS) will complete an audit of Petitioner's records to determine if Petitioner is due any back pay and allowances.

That part of the Petitioner's request for corrective action that exceeds the foregoing be denied.

That no further changes be made to Petitioner's naval record.

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 Board's proceedings in the above-entitled matter.
- 5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

