



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

██████████
Docket No. 712-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO ██████████
██████████

Ref: (a) 10 U.S.C. § 1552
(b) NAVADMIN 101/10, 19 Mar 10

Encl: (1) DD Form 149 w/attachments
(2) Closing Disclosure, 10 Mar 16
(3) History of Assignments
(4) MMPA
(5) NAVPERS 1070/602, 26 Apr 21
(6) BUPERS Order: 1451, 25 May 21
(7) BUPERS Order: 0682, 9 Mar 22
(8) Advisory Opinion by NPC, received 2 Jun 22
(9) Petitioner's response to Advisory Opinion, (undated)
(10) CO, ██████████ ltr, 28 Jul 22

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 his naval record be corrected to remove appropriation data from enclosure (6) and approve a close proximity move (CPM).

2. The Board, reviewed Petitioner's allegations of error and injustice on 2 August 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 enclosures (1) through (10), relevant portions of Petitioner's 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. On 10 March 2016, Petitioner purchased a home located in ██████████

██████████. Enclosure (2).

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[REDACTED]

c. On 18 September 2018, Petitioner transferred from [REDACTED], and arrived to [REDACTED] on 18 September 2018 for duty. Furthermore, Petitioner's Basic Allowance for Housing (BAH) at the with-dependent rate for [REDACTED] started. Enclosures (3) and (4).

d. On 26 April 2021, Petitioner signed a Dependency Application (NAVPERS 1070/602) listing spouse's address of [REDACTED]. Enclosure (5).

e. On 25 May 2021, Petitioner was issued official change duty orders (BUPERS order: 1451) while stationed in [REDACTED] with an effective date of departure of June 2021. Petitioner's intermediate (1) activity was [REDACTED] for temporary duty under instruction with an effective date of arrival of 26 June 2021. Petitioner's ultimate activity was [REDACTED] for duty with an effective date of arrival of 6 September 2021 and a Projected Rotation Date (PRD) of October 2024. These orders stated "[t]his transfer funded for member and auth dependents as reflected on service record page two and other supporting documents" and further stated "[m]embers who receive Permanent Change of Station (PCS) orders when their old and new Permanent Duty Stations (PDS) are within close proximity to each other (based on a reasonable commute determined by the gaining CO) may be eligible to receive a close proximity waiver and receive BAH based on their old PDS location. See NAVADMIN 101/10¹ for waiver eligibility requirements and procedures." Enclosure (6).

f. On 24 June 2021, Petitioner transferred from [REDACTED], and arrived to [REDACTED] on 27 June 2021 for temporary duty. Enclosure (3).

¹ Reference (b), this NAVADMIN clarifies eligibility and procedures for execution of a close proximity move. The following policy is in accordance with Title 37 U.S. Code Section 403 and Joint Federal Travel Regulations 1 November 2008 and supersedes any guidance on BAH as it pertains to close proximity moves listed in OPNAVINST 7220.12 and NAVADMIN 026/09.

Service members who have not executed their orders are eligible to remove the household goods (HHG) funding from those orders in order to fall under the provisions of a close proximity move and may be eligible to receive BAH based on the previous PDS.

Service members with or without dependents who are reassigned within the continental United States, maintain an established residence, and still commute daily to their new PDS or homeport, may qualify for BAH based on their previous PDS under the provisions of a close proximity move.

To qualify for BAH based on the previous PDS, the following provisions must be met: funding for a HHG move must not be authorized, the member must maintain a continuous residence. The member must have established a continuous residence at the previous PDS prior to receiving his/her new orders, the member must commute daily to the new PDS from the same residence. Finally, to receive BAH based on the old PDS, the member must complete the below steps prior to the execution of orders: request authorization from the gaining commanding officer (CO) to receive BAH based on his/her previous duty station. Gaining CO should ensure that member is maintaining a continuous residence and that the commuting distance from that continuous residence is reasonable for the geographic location of the assignment. If approved by the gaining CO, the member must send the approval letter to his/her detailer in order to get the HHG funding removed from his/her orders. Once HHG funding is removed from the orders and the orders are re-issued, the member must take the approval letter and the orders to Personnel Support Detachment upon check in to the gaining command to have BAH based on the previous duty station continued.

Back-To-Back close proximity moves. A member who qualifies (as stipulated above) and executes Back-To-Back close proximity moves that result in a return to a permanent duty station in the original military housing area is generally not authorized to maintain BAH at the previous PDS rate. In this case, the member may experience a reduction in BAH, since the member's housing decision was made based on the last PCS move that authorized reassignment to that geographic area.

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[REDACTED]

g. On 6 August 2021, Petitioner transferred from [REDACTED], and arrived to [REDACTED] on 13 August 2021 for duty. Furthermore, Petitioner's BAH at the with-dependent rate for [REDACTED] started. Enclosures (3) and (4).

h. On 9 March 2022, Petitioner was issued official change duty orders (BUPERS order: 0682) while stationed in [REDACTED] with an effective date of departure of March 2022. Petitioner's ultimate activity was [REDACTED] for duty with an effective date of arrival of 30 March 2022 and a PRD of October 2024. These orders stated "[t]his permissive travel order issued with the understanding that member will not be entitled to reimbursement for any travel, transportation per diem, or miscellaneous expenses in execution thereof. If you do not desire to bear these expenses, you may choose not to execute this permissive travel order and will consider it cancelled." Enclosure (7).

i. On 28 March 2022, Petitioner transferred from [REDACTED], and arrived to [REDACTED] on 28 March 2022 for duty. See enclosure (3).

j. On 23 May 2022, Petitioner's BAH at the with-dependent rate for [REDACTED] started. Enclosure (4).

k. As part of the Board's review, the Commander, Navy Personnel Command reviewed Petitioner's request and provided the Board with an Advisory Opinion (AO). The AO stated in part:

"On March 23, 2021, PERS-4010C Rating Detailer ([REDACTED]) posted [REDACTED] to [REDACTED]. [REDACTED] inquired with [REDACTED] about the possibility of retaining his current BAH when he checks into his ultimate duty station. [REDACTED] informed the member that such request would need to be processed prior to checking out of current command, but that request is not something that PERS 4010C can approve. At no point in time did [REDACTED] indicate or inform the member that he would retain his current BAH rate. On August 31, 2022 [REDACTED] called [REDACTED], who had turned over as PERS 4010C Rating Detailer, and requested that he obtain an order modification to his current set of PCS orders to [REDACTED] to reflect him retaining his current BAH. [REDACTED] informed the member that would not be possible, and that specific request needed to be routed through his gaining chain of command prior to transferring from his command. Member was issued PCS funds to move his HHG from [REDACTED] to [REDACTED]

ANALYSIS OF PETITIONERS CONTENTIONS: The petitioner states his BAH rate at his previous command, [REDACTED], should have been retained once he checked into his current command at [REDACTED]. The member stated that this incident has affected his pay. The member was advised on how to properly submit a close proximity move and did not take the proper steps to give the gaining command or NPC an opportunity to properly review his request."

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[REDACTED]

The AO concluded, “[r]ecommend the board deny the petitioner's request to award back pay for previous assigned BAH rate. [REDACTED] did not submit the request prior to executing orders per NAVADMIN 101/10.” Enclosure (8).

1. Petitioner’s response to Advisory Opinion stated in in part:

Petitioner called [REDACTED] and asked him if it was at all possible to get orders to [REDACTED] so Petitioner could potentially remain at his current residence and commute. [REDACTED] informed Petitioner that there were no billets currently available at [REDACTED] but he could likely create a billet to help Petitioner out. [REDACTED] Petitioner a day or two later and gave him verbal orders to [REDACTED]. During that conversation, Petitioner made it very clear his intention to remain at his current residence and retain the BAH rate he was receiving at [REDACTED]. Petitioner checked in to [REDACTED] on 13 August 2021. During check in, ADMIN helped Petitioner draft and submit his request through PERS to receive BAH based on his dependents location. The [REDACTED] commanding officer (CO) signed the request granting Petitioner permission to commute from his current residence at [REDACTED] to his ultimate duty assignment at [REDACTED]. The request was routed to PERS. Petitioner received a response from PERS denying his request for BAH based on his dependents location citing that a “Close Proximity Move” (CPM) was not written in the orders. This was the first time Petitioner had ever even or heard of a CPM. There is no evidence or record of [REDACTED] [REDACTED] advising Petitioner of a specific instruction or process involved with a CPM even though he knew Petitioner’s circumstances and intentions. The advisory opinion was based solely off [REDACTED] statement claiming that he advised Petitioner on the process. CPM are part of the detailing process. Detailers should be expected to know the process and more importantly, advise members in Petitioner’s situation of the requirements for a CPM. Finally, Petitioner did not execute a HHG move or receive any funding for such move since his PCS to [REDACTED].

Enclosure (9).

m. On 28 July 2022, CO, [REDACTED] notified this Board that Petitioner is eligible to receive BAH at the location of the previous duty station because he did not execute a HHG movement in connection with his PCS orders, commutes a reasonable distance daily between his previously established residence, and his current duty station; i.e., a "close proximity move." Due to an unused Line of Accounting (LOA) in his orders, Petitioner would have been able to retain his prior BAH. All administrative remedies have been exhausted to correct this administrative error. In all cases it was determined that an unused LOA was included in his orders, therefore, BAH could not be authorized at his previous PDS. As the gaining command's CO, he fully approved and supported authorization of BAH at the previous PDS. It has been verified that Petitioner did not execute a HHG move, maintained a continuous residence in the vicinity of his previous PDS prior to issuance of his PCS orders, and commutes a reasonable distance from his residence to his current PDS. In reference to Petitioner’s PCS from [REDACTED] to [REDACTED] dated 28 March 2022; per his History of Assignments, this was due to a restructuring of [REDACTED]

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[REDACTED]

These orders were generated for administrative purposes only. His current PDS has remained [REDACTED] and this administrative PCS does not constitute "back to back Close Proximity Moves." Enclosure (10).

CONCLUSION

Upon review and consideration of all the evidence of record, and notwithstanding the comments provided in enclosure (8), the Board finds the existence of an injustice warranting the following corrective action. Petitioner negotiated orders with his detailer with the understanding that Petitioner intended to remain in his established residence and commute to his future PDS. Subsequently, Petitioner received BUPERS order: 1451 including funding for a PCS move and travel for his dependents, which was contrary to what Petitioner discussed with his detailer. The Board concluded that there was not sufficient time from when the orders were issued to when he executed the orders for Petitioner to complete the steps outlined in reference (b) to retain BAH at the old PDS. Furthermore, Petitioner's gaining command verified that Petitioner maintained a continuous residence in the vicinity of his previous PDS, did not execute a HHG move, and commutes a reasonable distance from his residence to current PDS. Therefore, Petitioner is entitled to receive BAH at the with-dependents rate based on the old PDS. Finally, BUPERS Order 0682 issued 9 March 2022 were issued due to restructuring of [REDACTED] and stated, "[t]his permissive travel order issued with the understanding that member will not be entitled to reimbursement for any travel, transportation per diem, or miscellaneous expenses in execution thereof." Petitioner was not authorized travel, therefore, Petitioner is entitled to retain BAH at the with-dependent rate for [REDACTED]

RECOMMENDATION

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

Petitioner's request for a close proximity move was approved by cognizant authority prior to executing orders (BUPERS order: 1451). Furthermore, prior to execution, Petitioner's orders were modified to remove funding for a HHG move.

Petitioner was authorized BAH at the with-dependent rate for [REDACTED] from 13 August 2021 to present. Note: if Petitioner moved from his residence during this period, he will no longer be authorized BAH at the old PDS.

Note: Defense Finance and Accounting Service (DFAS) will complete an audit of Petitioner's records to determine if Petitioner is due any back pay.

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

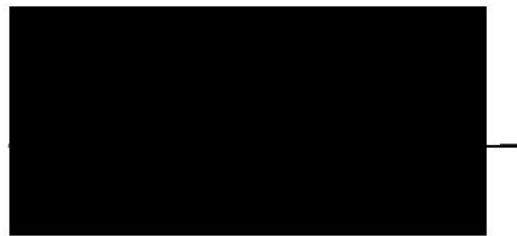
That a copy of this report of proceedings be filed in Petitioner's naval record.

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.

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[REDACTED]

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

8/17/2022



From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Recommendation (Grant Relief)

Reviewed and Approved Advisory Opinion Recommendation (Deny Relief)

9/23/2022

