



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

■  
Docket No. 949-22  
Ref: Signature Date

Dear ■■■■■:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 18 May 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

In accordance with MILPERSMAN 1320-322 published on 22 May 2007. Members on Board at Time of Chief of Naval Operations (CNO) Promulgation Message. When members have less than 12 months remaining on their tours as of the effective date of change of homeport or Permanent Duty Station (PDS), their cases will be individually reviewed. Whenever possible, the projected rotation date (PRD) will be extended in order to have a minimum of 12 months remaining on the tour as of the effective date of change. When it is not feasible to extend the PRD, the cognizant detailee will review each case (coordinating with the commanding officer as required) to determine if it is more appropriate to permit completion of the scheduled tour or to issue Permanent Change of Station (PCS) orders.

Homeport Change Certificate. All members who are attached or assigned on the date CNO promulgates a change of homeport or PDS are entitled to move their family member(s) and ship Household Goods (HHG) except members who have received PCS orders (including separation or Release from Active Duty (RAD) orders) or received written notification of intended issuance of such orders prior to movement of family member(s) or shipment of HHG.

In accordance with DoD 7000.14-R FMR Volume 7a, Chapter 27. Family Separation Allowance (FSA) is payable to members with dependents and a member married to another member of the uniformed services regardless of any other dependency status. 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). Members must complete a DoD (DD) Form 1561 (Statement to Substantiate Payment of Family Separation Allowance) to substantiate entitlement to FSA.

FSA-R 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: The member's dependents, including dependents acquired after the effective date of Permanent Change of Station (PCS) 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 (see paragraph 4.1).

On 29 December 2011, you married █.

On 20 December 2016, you arrived to █ for duty. You received FSA-S for the periods of 26 January 2018 to 2 March 2018 and 22 January 2019 to 22 April 2019.

On 5 February 2019, CNO Washington, DC notified commands that the █ shall shift homeport assignment to █ from █ for engineered overhaul at █. This change shall be effective 1 August 2019.

On 9 May 2019, you were issued official change duty orders (BUPERS order: 1299) while stationed in █ with an effective date of departure of August 2019. Your ultimate activity was █ for duty with an effective date of arrival of 1 August 2019. Your PRD was January 2020. You were identified as a category 2, HHG NTS (Non-Temporary Storage) and or POV (Privately Owned Vehicle) Shipment only. Effective date of █ homeport change to █ is 1 August 2019. Promulgation date was 1 February 2019. CNO message 051405Z Feb 19 refers. Member advised: sailors, including single sailors, reporting to █ on or after the promulgation date are directed under these orders to conduct, as applicable, dependent travel, transportation, and shipment of HHG to █. Dependents are not authorized travel to █ after the promulgation date. If your HHG have already been shipped, you may re-direct your shipment by working with your personal property office. Member advised: a member may request to leave the dependent(s) at their current location or request to move the dependent(s) to a designated place in lieu of the new homeport in connection with this assignment to unusually arduous sea duty (3tr, par. 050907). Submit request for Outside the Continental United States (OCONUS) designated place move to OPNAV N130c, at [nxag\\_n130c@navy.mil](mailto:nxag_n130c@navy.mil) (include copy of orders and signed, witnessed, and dated official page 2). For advance or delayed travel of dependents submit requests to PERS-451h, at [pers451@navy.mil](mailto:pers451@navy.mil) (include copy of orders and signed, witnessed, and dated official page 2). The member is hereby authorized HHG NTS and/or POV shipment. This travel is granted as a

result of the homeport/PDS change of █. Authority for this change: CNO message 051405Z Feb 19.

On 3 June 2019, NAVPERS FAP Command Representative notified you that you had been posted to █ in █. You would not receive hard copy orders until you had a relief slated with orders in hand. At this point, your orders were to be written to account for a face-to-face LCPO turnover and you would be in receipt of orders.

On 1 July 2019, COMNAVPERSCOM notified COMNAVPERSCOM that the █ had departed from █ on 26 June 2019. All single Overseas Cost of Living Allowance (OCOLA) was stopped on 25 June 2019. COLA with dependents would remain until either the family depart from █ or up until the effective date of HPC. █ has submitted the Delayed Travel Requested to PERS 451H and Designated Place of Residence for █ to PERS 130; however, approval have not been received as of yet.

On 19 November 2019, you were issued official change duty orders (BUPERS order: 3239) with a required obligated service to July 2023, while stationed in █ with an effective date of departure of June 2020. Your ultimate activity was █ for duty with an effective date of arrival of 15 July 2020. This transfer funded for member and authorized dependents as reflected on service record page two and other supporting documents.

On 14 January 2020, you were issued official modification to change duty orders (BUPERS order: 3239) with a required obligated service to July 2023, while stationed in █ with an effective date of departure of June 2020. Your ultimate activity was █ for duty with an effective date of arrival of 15 July 2020. This transfer funded for member and authorized dependents as reflected on service record page two and other supporting documents.

On 28 February 2020, you certified Record of Emergency Data (DD Form 93) listing your child, born on 15 February 2020, and your spouse residing at █.

On 15 May 2020, you were issued official modification to change duty orders (BUPERS order: 3239) with a required obligated service to July 2023, while stationed in █ with an effective date of departure of July 2020. Your ultimate activity was █ for duty with an effective date of arrival of 30 August 2020. This transfer funded for member and authorized dependents as reflected on service record page two and other supporting documents.

On 24 July 2020, you transferred, and arrived to █ on 21 August 2020 for duty.

On 27 August 2021, DFAS notified you that this is in reference to your waiver request, file number █. You requested waiver of \$8,094.39 indebtedness resulting from the erroneous payment of OCONUS Cost of Living Allowance (COLA) and Basic Allowance for Housing (BAH) with Dependents. You erroneously received \$3,597.39 in OCONUS COLA for the period of 26 June 2019 through 31 January 2020, which was after the █ had

left port at █. You erroneously received BAH with dependents in the amount of \$4,497.00, based on zip code █ vice the correct █ during the period of 1 August 2019 through 31 January 2020. For the reasons stated below, your waiver is denied in the amount of \$8,094.39. BUPERS Order 1299 advised you had the option to request your dependent remain at their current location, request to move your dependent to a new designated location in lieu of the new homeport, or request Delayed Dependent Travel (DDT). In your application for waiver you state your PRD occurring in December of 2019 was the reason you did not request DDT or another relevant option. However, it is not reasonable to believe you could wait until December of 2019 to take action on your dependents location, due to the fact you were notified of the change of homeport occurring before December of 2019. Due to the fact you were aware of the change in your homeport location and did not act in a timely manner, you are statutorily precluded from a favorable waiver decision.

On 29 September 2021, First Endorsement on your letter of 29 September 2021. Commander, █ notified Defense Office of Hearings and Appeals recommending approval of your erroneous indebtedness as well as payment of overdue FSA. Defense Finance and Accounting Service (DFAS) was incorrect to assess \$8,094.39 in indebtedness against you. Department of Navy policy, as outlined in MILPERSMAN 1320-322 and COMSUBLANT/COMSUBPACINST 1306.1C, bars funded dependent travel for any member who have received written notification of intended issuance of PSC orders and who are within 12 months of their PRD, both of which apply to you. Therefore, you were entitled to full dependent █ BAH until January 2020 and full dependent BAH in █ until August 2020. Additionally, given your forced separation from your spouse and infant as a result of █'s homeport change, you are entitled to full Family Separation Allowance in the amount of \$250 per month (\$2,750.00 in total) for the period of August 2019 to June 2020.

On 14 December 2021, DFAS notified you that this is in reference to your waiver request and file number █. You applied for waiver consideration of an \$8,094.39 indebtedness resulting from the erroneous payment of OCONUS COLA and BAH with dependents. On August 27, 2021, a decision was rendered on your case and you were provided instructions on the process of requesting a reconsideration of our decision. Based upon the new information provided within your appeal we have overturned our initial decision. Based on the facts presented the DFAS has determined that waiver of the \$8,094.39 indebtedness is in the best interest of the Government. Therefore, your waiver is approved.

You requested FSA for the period of 26 June 2019 to 24 July 2020; the Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. The Board agreed that BUPERS order: 1299 did not authorize travel entitlement for your spouse and that you received written notification that new PCS orders would be forthcoming; therefore, you could be eligible for FSA-R. In accordance with DoD 7000.14-R FMR, members must complete a DoD (DD) Form 1561 (Statement to Substantiate Payment of Family Separation Allowance) to substantiate entitlement to FSA; however there is no evidence that you did so. Although DFAS granted you a waiver of indebtedness resulting from overpayment of BAH and COLA entitlements, the Board could not determine, from the evidence at hand, certain key pieces of information relating to your dependents' location, effective dates of travel, or movement of HHG. There are inconsistencies between your orders, your official

military personnel files, and your case file. For example, you stated that in January 2020, you were in talks with the detailer to move your spouse and child from █ to █ to give birth; however, your child was born on 15 February 2020 and Record of Emergency Data signed on 28 February 2020, lists your spouse as still residing in █ with your child. While it is reasonable for the Board to assume that your spouse did not move before she gave birth, the Board cannot determine when your family did move and under which authority. Without more relevant information, the Board cannot determine your exact FSA entitlement, if any.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

6/13/2022

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Deputy Director

Signed by: █