

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.

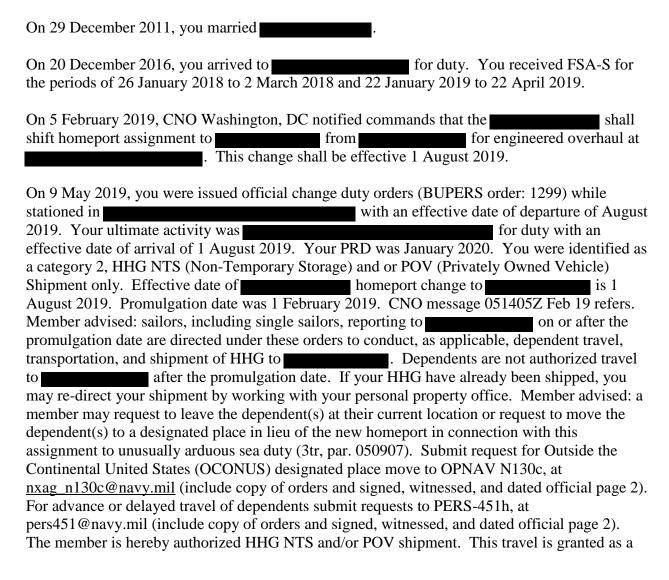
A three-member panel of the Board, sitting in executive session, considered your application on 18 May 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures 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.

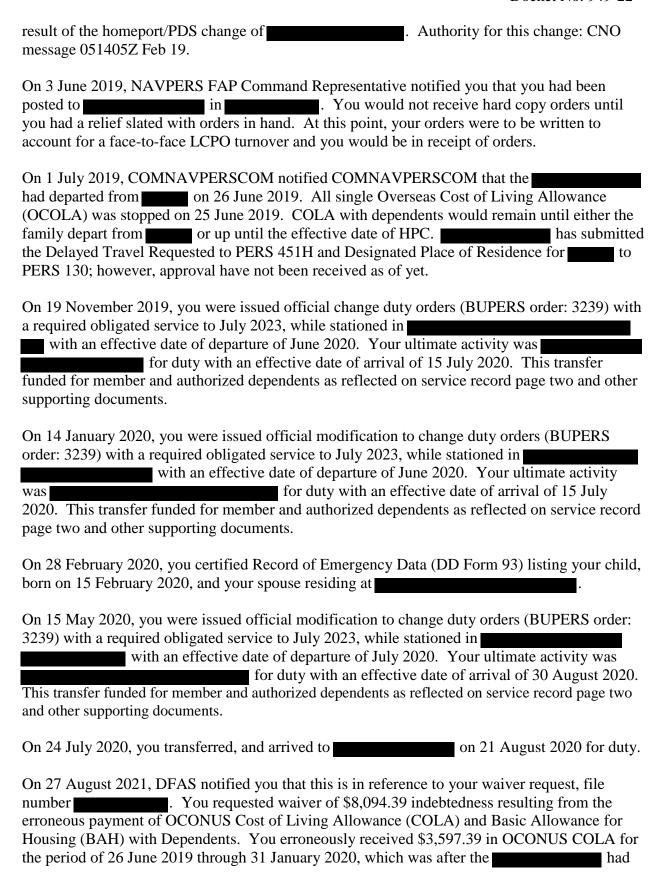
In accordance with MILPERSMAN 1320-322 published on 22 May 2007. Members on Board at Time of Chief of Naval Operations (CNO) Promulgation Message. When members have less than 12 months remaining on their tours as of the effective date of change of homeport or Permanent Duty Station (PDS), their cases 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 detailer 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.

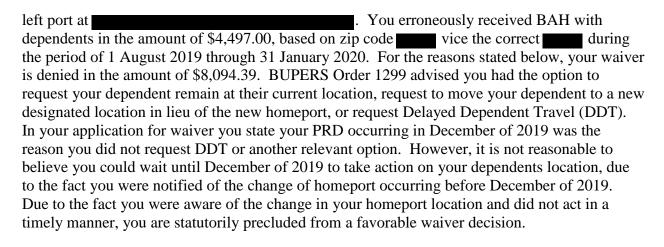
Homeport Change Certificate. All members who are attached or assigned on the date CNO promulgates a change of homeport or PDS are entitled to move their family member(s) and ship Household Goods (HHG) except members who have received PCS orders (including separation or Release from Active Duty (RAD)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

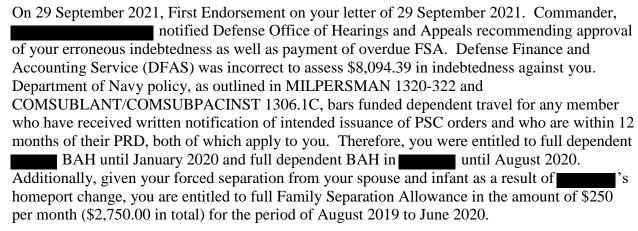
In accordance with DoD 7000.14-R FMR Volume 7a, Chapter 27. Family Separation Allowance (FSA) is payable to members with dependents and a member married to another member of the uniformed services regardless of any other dependency status. FSA is payable in addition to any other allowance or per diem, 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).



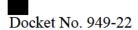






On 14 December 2021, DFAS notified you that this is in reference to your waiver request and file number ______. You applied for waiver consideration of an \$8,094.39 indebtedness resulting from the erroneous payment of OCONUS COLA and BAH with dependents. On August 27, 2021, a decision was rendered on 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.

