



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

[REDACTED]  
Docket No. 5041-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MBR [REDACTED] USN,  
[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552  
(b) DoD 7000.14-R FMR Volume 7A, Chapter 26

Encl: (1) DD Form 149 w/attachments  
(2) 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 \$4,828.30 in Basic Allowance for Housing (BAH) at the with dependent rate not paid prior to separation.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 11 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 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 29 January 2017, Petitioner's active duty spouse arrived to [REDACTED] for duty.

c. On 27 February 2018, Petitioner arrived to [REDACTED] for duty.

d. On 19 October 2020, Petitioner's active duty spouse's BAH at the without dependent rate for [REDACTED] [REDACTED] started.

e. On 21 December 2020, Petitioner was issued official change duty orders (BUPERS order: 3560) while stationed in [REDACTED] with an effective date of departure of December 2020. Petitioner's ultimate activity was [REDACTED] for duty with an effective date of arrival of 31 December 2020 and a Projected Rotation Date (PRD) of August 2022.

f. On 29 January 2021, Petitioner transferred from [REDACTED], and arrived to [REDACTED] for duty.

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[REDACTED]

g. On 11 February 2021, Petitioner's BAH at the without dependent rate for [REDACTED] started.

h. On 29 May 2021, Petitioner got married [REDACTED]

i. In accordance with reference (b), in accordance with 37 U.S.C. § 421, a dependent who is on Active Duty (AD) in a Uniformed Service and is entitled to basic pay cannot be considered a dependent for housing allowance purposes. When one Service member enters a non-pay status, the other Service member may claim the Service member not entitled to pay and allowances as a dependent and be authorized to draw BAH or Overseas Housing Allowance (OHA) at the with-dependent rate for the duration of the non-pay status, if otherwise authorized, unless a dependent is confined in a penal or correctional institution (see paragraph 3.8). A Service member may claim as a dependent a Service member on inactive duty for training (Reserve drills).

When two Service members have a dependent, the Service members must choose which one will receive BAH or OHA at the with-dependent rate. If they cannot agree, then the senior Service member receives the with-dependent rate. The Service members may subsequently elect to transfer BAH authorization from one Service member to the other for any reason. Changes are effective as of the election date and may not be applied retroactively

j. On 29 July 2021, Petitioner's child ([REDACTED]) was born. Petitioner's active duty spouse's Dependency Application/Record of Emergency Data (NAVPERS 1070/602) listed both marriage and child information.

k. On 19 February 2022, Petitioner's active duty spouse was released from active duty and transferred to the Navy Reserve as an E-4. Furthermore, Petitioner's active duty spouse BAH at the without dependent rate for [REDACTED] stopped.

l. Petitioner was discharged with a Honorable character of service and he was issued a Certificate of Release or Discharge from Active duty (DD Form 214) for the period of 8 November 2017 to 5 March 2022 due to misconduct (Serious offense) as an E-3. Furthermore, Petitioner's BAH at the without dependent rate for [REDACTED] stopped.

## CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2) and reference (b), the Board finds the existence of an injustice warranting the following partial corrective action. The Board concluded that either Petitioner or her active duty spouse were entitled to BAH at the with dependents rate. Because Petitioner's AD spouse was the senior service member and he claimed their child on his Dependency Application/Record of Emergency Data (NAVPERS 1070/602), he was entitled to BAH at the with dependents rate beginning the date of their child's birth; however, he never received the entitlement. Petitioner became eligible to claim their child and her spouse as dependents upon her spouse's release from active duty and should have received it until her discharge.

## RECOMMENDATION

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

Petitioner was authorized BAH at the with-dependent rate for [REDACTED], from 20 February 2022 to 5 March 2022.

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[REDACTED]

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

That part of the Petitioner's request for corrective action that exceeds the foregoing be denied, however, the Board recommends that Petitioner's spouse submit a DD Form 149 requesting BAH at the with dependents rate for the period of 29 July 2021 to 19 February 2022. If Petitioner's spouse is not willing to submit said application, Petitioner may resubmit a new application requesting payment of additional BAH with a statement from her spouse.

A copy of this Report of Proceedings will 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.

8/26/2022

[REDACTED]