



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

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Docket No. 8304-22
Ref: Signature Date

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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 14 February 2023. 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 addition, the Board considered the advisory opinion by the Office of the Chief of Naval Operations memorandum 7431 Ser N130C2/22U0025 of 5 January 202[3] and your response to the opinion.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

In accordance with 37 USC 403(a)(1), except as otherwise provided by law, a member of a uniformed service who is entitled to basic pay is entitled to a basic allowance for housing (BAH) at the monthly rates prescribed under this section or another provision of law with regard to the applicable component of the BAH. The amount of the BAH for a member will vary according to the pay grade in which the member is assigned or distributed for basic pay purposes, the dependency status of the member, and the geographic location of the member. The BAH may be paid in advance.

In accordance with DoD 7000.14-R Financial Management Regulations, Volume 7A, Chapter 25, the pay policies and requirements established by the DoD in this chapter are derived

primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 10 and 37. 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 generally is not authorized for a Service member who is assigned to appropriate and adequate Government quarters (see Section 8.0 for Government quarters).

Unless specifically authorized elsewhere in this Chapter, Permanent Duty Station (PDS) housing allowance eligibility starts on a Service member's reporting day to a new PDS. When a home port change is involved, ordinarily a housing allowance based on the rate for the new home port starts on the effective date of the home port change.

On 27 September 2019 Navy Organization Change Request (OPNAV 5400/1) was issued with a promulgation date of ██████████ and an effective date of ██████████. ██████████ ██████████ will shift homeport from ██████████ to ██████████ to conduct an extended Dry dock Selected Restricted Availability (EDSRA) from ██████████ to ██████████. Furthermore, ██████████ possesses the infrastructure and facilities at Naval Station ██████████ to support this action. Commanding Officer, Naval Station ██████████, has the responsibility for Host-Tenant agreements and to provide Base Operating Support. (Note: ██████████ will be physically located at ██████████ for modernization while the crew will be homeported at ██████████.)

On 12 December 2019 the Chief of Naval Operations (CNO) message stating that the ██████████ ██████████ is scheduled to shift homeport from ██████████ to ██████████ to conduct an Extended Dry-dock Selected Restricted Availability, as requested. This homeport assignment change shall be effective ██████████ with immediate promulgation.

On ██████████ ██████████ message stating that in accordance with OPNAVINST 5400.44A and Homeport Reassignment for ██████████ (██████████) is modified to change homeport effective date from ██████████ to ██████████.

On 19 April 2021 you were issued official change duty orders (BUPERS order: 1091) while stationed in ██████████ with an effective date of departure of ██████████. Your ultimate activity was ██████████ for duty with an effective date of arrival of August 2021, with a Projected Rotation Date (PRD) of August 2023.

On 14 June 2021 you were issued official modification to change duty orders (BUPERS order: 1091) while stationed in ██████████ with an effective date of departure of July 2021. Your intermediate (1) activity was ██████████ for temporary duty under instruction with an effective date of arrival of ██████████. Your ultimate activity was ██████████ ██████████ for duty with an effective date of arrival of ██████████, with a PRD of August 2023.

On 8 July 2021 you transferred from ██████████, and arrived to ██████████ for duty on ██████████. On 12 August 2021, you transferred from ██████████, and arrived to ██████████ for duty on ██████████

On 26 August 2021 your BAH at the without dependents rate for ██████████ stopped effective 21 August 2021. Furthermore, BAH at the without dependents rate for ██████████ started effective 22 August 2021.

On 28 April 2022 the Office of the CNO notified the Honorable ██████████, U.S. Senate addressing her letter of April 5, 2022, on your behalf, concerning ██████████) and associated BAH. In accordance with the Department of Defense Financial Management Regulation Volume 7A Chapter 26, service members are paid housing allowances based on the service member's home port assignment and not where the ship is physically located. When Navy leadership designated ██████████ as ██████████ home port that became the basis of the rate for the crew housing allowances. You were therefore being paid the correct BAH based on your ship's homeport.

On 29 July 2022 CNO message states that ██████████ homeport assignment will shift from ██████████ to ██████████, the actual site of the Depot Modernization period the ship is undergoing. This homeport change will allow crew to receive proper entitlements. Furthermore, this change shall be effective immediately.

On 1 August 2022 your BAH at the without dependents rate for ██████████ stopped effective 28 July 2022. Furthermore, BAH at the without dependents rate for ██████████ started effective 29 July 2022.

On 17 August 2022 the Office of the CNO notified The Honorable ██████████ Office addressing his letter of July 28, 2022, on your behalf, concerning the determination of homeport for ██████████ and the effect on BAH for the crew. In accordance with the Department of Defense Financial Management Regulation Volume 7A Chapter 26, a Service Member is paid a housing allowance based on the Service Member's home port assignment and not where the ship is physically located. Navy leadership designated ██████████ as ██████████ home port effective December 16, 2019, setting the housing allowance rate to that of ██████████ Effective July 29, 2022, the Navy designated ██████████ as ██████████ homeport, which is the crew's current rate for housing allowances.

You requested to receive back pay for BAH in the amount of \$ ██████████. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertion that 37 USC 403(a)(1) permits you to receive BAH for your "geographic location" and the fact that you have also filed a lawsuit in the United States Court of Federal Claims. In accordance with BUPERS order: 1091, which you executed, your ultimate activity was ██████████. The Board concluded that your "geographic location" for BAH purposes was your ultimate activity, or PDS. In accordance with the Department of Defense Financial Management Regulation Volume 7A Chapter 26, a Service Member is paid a housing allowance based on the Service Member's homeport assignment and not where the ship is physically located. Accordingly, you received BAH at the without dependents rate for ██████████ effective 22 August 2021. On 29 July 2022, CNO notified ██████████ that ██████████ "homeport assignment will shift from ██████████ to ██████████, the actual site of the Depot Modernization period the ship is undergoing. This homeport change will allow crew to receive proper entitlements. Furthermore, this change shall be effective immediately."

Accordingly, your BAH entitlement changed effective 29 July 2022. Based on the rules and regulations and the effective date of the homeport assignment shift, you are not eligible for BAH at the without dependents rate, retroactive to 22 August 2021, for [REDACTED], therefore, a change to your record is not warranted. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

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, _____

2/22/2023

[REDACTED]
Deputy Director
[REDACTED]