



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

█  
Docket No. 1993-23  
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 25 May 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.

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.

On 9 September 2009, you enlisted in the U.S. Marine Corps Reserve for 8 years. On █, █, your child █ was born. On 23 December 2012, you married █. On 14 December 2016, █ joined the U.S. Navy.

On 24 January 2018, █ Dependency Application/Record of Emergency Data (NAVPERS 1070/602) listed her as receiving Basic Allowance for Housing (BAH) at the with dependents rate.

On 15 November 2018, you and your spouse signed a Marital Settlement Agreement in which you and █ both agreed that you would have Joint Legal and Physical custody of your child, █, born on █. The child shall make their primary home with the mother/wife.

In accordance with DoD 7000.14-R FMR Volume 7A, Chapter 26, a Service member on Active Duty (AD) 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).

A Service member is not authorized a housing allowance for any of the following: The child is in another active-duty Service member's custody, including a former spouse, as specified in this section; and the Service member with custody of the child is assigned to Government or Government-leased family quarters, or receives a with-dependent housing allowance on behalf of the child.

On 4 April 2019, you were divorced. Marital or domestic partnership status was terminated and the parties were restored to the status of single persons. There is one child (██████████ ██████████) of the marriage or domestic partnership born on ██████████. Child custody and visitation (parenting time) are ordered as set forth in the attached Child Custody and Visitation Order Attachment ██████████

Child Custody and Visitation Order Attachment (██████████ to Marital Settlement Agreement states that custody of the minor children of the parties is awarded as follows: ██████████ ██████████, born on ██████████, Joint Legal custody and Physical custody to (Person with whom the child lives) to ██████████. Furthermore, the custody and visitation on provisions stated in this form shall take precedence over any conflicting provisions in item 2 on pages 2 and 3 of the Marital Settlement Agreement. Any provisions of Item 2 of the Marital Settlement Agreement that are not in conflict with the provisions of this form shall remain in full force and effect. No child support was ordered.

On 5 July 2019, you married ██████████, a U.S. Marine Corps Reservist, in a Full Time Support status, with 2 children. Furthermore, your spouse was receiving BAH at the with-dependents rate for ██████████ at that time.

On 19 August 2019, your former spouse's NAVPERS 1070/602 listed effective date of divorce as 5 April 2019. Her parents' address was listed as ██████████. Furthermore, she had joint legal and joint physical custody of the child. However, the child shall make their primary home with the mother.

On 11 September 2019, ██████████, ██████████ issued you a Dependency Application (NAVMC 10922) listing ██████████ as your legitimate son. Date of allowance claimed from 29 October 2010. Your child's address was listed as ██████████ and your former spouse was listed as the child's mother and custodian. Her address was listed as ██████████

You were released from active duty with an Honorable character of service and were issued a Certificate of Release of Discharge from Active Duty (DD Form 214) for the period of 15 April 2019 to 15 September 2019 upon completion of required active service.

On 24 October 2019, you were issued a Marine Corps Total Force Leave and Earnings Statement for the period of 1 October to 31 October 2019. You were credited with BAH Partial from 14 April 2019 to 15 September 2019 (\$43.79). You were deducted BAH with dependents from 15 April 2019 to 15 September 2019 (\$13,046.40).

Your former spouse's Defense Joint Military Pay System/Master Military Pay Account (DJMS/MMPA) shows that she received BAH at the with-dependents rate ██████████ 92136 from 16 January 2019 to 31 December 2019.

On 29 March 2021, you were discharged from the U.S Marine Corps Reserve.

On 2 March 2023, Defense Finance and Accounting Service (DFAS) notified you that this is in response to your request for a hearing under 31 U.S.C. § 3720D and 31 C.F.R. § 285.i 1, for Account Number ██████████. It was determined an administrative hearing was appropriate. The hearing was accomplished by reviewing the records to validate the debt for the purpose of administrative wage garnishment. You alleged you do not owe the debt. You provided no specific details or documentation to support your claim.

Findings: A military member with permanent duty within the 50 United States, who is not furnished government housing, is eligible for BAH, based on the military member's dependency status at the assigned duty location. A military member without dependents who is living in government quarters is entitled to a Partial BAH - Basic Allowance for Quarters (BAQ).

You were paid BAH at the with-dependent rate through your date of discharge on 15 September 2019. In October 2019, your Marine Corps finance office determined that you were not entitled to BAH at the with-dependent rate effective 15 April 2019, and were only entitled to BAQ. As a result, a debt of \$13,002.61 was established on your military pay account for collection of the overpayment of BAH.

You contend you do not owe the debt; however, you provided no specific details or documentation to support your claim. It is not within the purview or authority of an administrative hearing to determine eligibility requirements for BAH. If you wish to dispute the determination of eligibility to receive BAH, a possible avenue of relief is to petition the Board for Correction of Military Records (BCMR) by completing the enclosed DD Form 149, Application for Correction of Military Records.

Based on a review of your records, and pertinent documentation, it was determined the debt remains valid and the amount is correct. You were provided due process and collection of the debt by administrative wage garnishment, not to exceed 15% of disposable pay, is proper.

You requested BAH for dependent child for the active duty period of 15 April 2019 through 15 September 2019. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertion that your son has resided with you since your former spouse joined the Navy and you were separated. However, the Board concluded that although you provided a divorce decree that states that you were awarded

physical custody of your son, you have provided no evidence that your child actually resided with you during the period in question. Furthermore, you signed NAVMC 10922 on 11 September 2019, stating that your child's custodian was your former spouse. In accordance with DoD 7000.14-R FMR Volume 7A, a Service member is not authorized a housing allowance for a child that is in another active-duty Service member's custody, including a former spouse, and the Service member with custody of the child receives a with-dependent housing allowance on behalf of the child. Your former spouse was an active duty service member who was in receipt of BAH at the with dependents rate because your child resided with her. Therefore, the Board determined that you are not entitled to BAH at the with dependents rate for the same period.

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,

6/5/2023

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Deputy Director

Signed by █