



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

[REDACTED]
Docket No. 9595-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN,
XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) NAVADMIN 101/10, 19 Mar 10

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 his naval record be corrected to show Petitioner received Basic Allowance for Housing (BAH) at previous permanent duty station (PDS) zip code [REDACTED] under the provisions of close proximity move with back pay from 4 April 2023.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 January 2024 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. In accordance with reference (b), this NAVADMIN clarifies eligibility and procedures for execution of a close proximity move. The following policy is in accordance with Title 37 U.S. Code Section 403 and Joint Federal Travel Regulations 1 November 2008 and supersedes any guidance on BAH as it pertains to close proximity moves listed in OPNAVINST 7220.12 and NAVADMIN 026/09.

Service members who have not executed their orders are eligible to remove the household goods (HHG) funding from those orders in order to fall under the provisions of a close proximity move and may be eligible to receive BAH based on the previous Permanent Duty Station (PDS).

Service members with or without dependents who are reassigned within the continental United States, maintain an established residence, and still commute daily to their new PDS or homeport, may qualify for BAH based on their previous PDS under the provisions of a close proximity move.

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To qualify for BAH based on the previous PDS the following provisions must be met: funding for a HHG move must not be authorized; the member must maintain a continuous residence. The member must have established a continuous residence at the previous PDS prior to receiving his/her new orders; the member must commute daily to the new PDS from the same residence.

Finally, to receive BAH based on the old PDS, the member must complete the below steps prior to the execution of orders: request authorization from the gaining commanding officer to receive BAH based on his/her previous duty station. Gaining commanding officers should ensure that member is maintaining a continuous residence and that the commuting distance from that continuous residence is reasonable for the geographic location of the assignment. If approved by the gaining commanding officer, the member must send the approval letter to his/her detailee in order to get the HHG funding removed from his/her orders. Once HHG funding is removed from the orders and the orders are re-issued, the member must take the approval letter and the orders to personnel support detachment (PSD) upon check in to the gaining command to have BAH based on the previous duty station continued.

b. On 28 September 2022, Petitioner was issued official change duty orders (BUPERS order: 2712) with required obligated service to May 2026, while stationed in [REDACTED] with an effective date of departure of April 2023. Petitioner's ultimate activity was [REDACTED] for duty with an effective date of arrival of 15 May 2023 with a Projected Rotation Date of May 2026.

c. On 16 March 2023, Petitioner was issued official modification to change duty orders (BUPERS order: 2712) with required obligated service to May 2026, while stationed in [REDACTED] with an effective date of departure of April 2023. Petitioner's ultimate activity was [REDACTED] for duty with an effective date of arrival of 15 May 2023 with a Projected Rotation Date of May 2026.

d. On 1 April 2023, Petitioner notified Commanding Officer, [REDACTED] that, "After reading and understanding the limitations of NAVADMIN 101/10, I am requesting to maintain BAH at my previous PDS. Upon reporting to your command, I will have maintained a continuous residence in [REDACTED] and intend to continue residing there for the duration of my tour. The commuting distance from my residence to your command is 48 miles and takes approximately 50 minutes one way.

I fully understand that with your approval of my request, I will have the funding for a household goods move removed from my orders and the authorization to move my family at government expense revoked. Additionally, I realize that if I move my residence at my own expense, I will forfeit the right to receive BAH based on my previous PDS and my BAH rate will be reverted to my current duty location. I understand that any obligated service that would have been associated with a funded move still applies, and that I am expected to complete that obligated service."

e. On 5 April 2023, Commanding Officer, [REDACTED] notified Commander, Navy Personnel Command (PERS-405DE) via Petitioner that, "In response to Petitioner's letter of 1 April 2023 and 37 U.S.C. section 403, DoD 7000.14-R FMR, Volume 7A, and NAVADMIN 101/10 the requesting service member is authorized to receive basic BAH based on his previous PDS. Please remove the funding for a HHG move from the member's orders and re-issue those orders.

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The member established a residence prior to the date the member's orders were issued, the member will be commuting daily to his new PDS, and the commuting distance is reasonable for this geographic location.

With the removal of the funding for an HHG move, the member realizes he has forfeited the authorization for the government to fund a move. Additionally, the member will forfeit the right to receive BAH based on his previous PDS if the member moves his residence at his own expense. As indicated in the request, the member acknowledges that any obligated service associated with these orders must still be completed."

f. On 5 April 2023, Petitioner transferred from [REDACTED], and arrived to [REDACTED] on 10 May 2023 for duty.

g. On 9 May 2023, Petitioner's BAH at the with dependents rate for [REDACTED] stopped.

h. On 10 May 2023, Petitioner's BAH at the with dependents rate for [REDACTED] started.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following partial corrective action. The Board concluded that Petitioner met the requirements listed in reference (b) to continue to receive BAH based on the old PDS under the provisions of a close proximity move. Furthermore, before the execution of his orders, Petitioner initiated the process of requesting the funding for HHG move be removed from his orders and to have those orders reissued, however due to the short notice orders modification, the Petitioner did not have the opportunity to have the BAH Close Proximity request completed prior to detachment from his former command. Petitioner requested back pay from 4 April 2023, however Petitioner has already received BAH based on the old PDS up to 9 May 2023, therefore Petitioner is authorized to continue to receive BAH based on the old PDS from 10 May 2023 to present.

RECOMMENDATION

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

Petitioner's official modification to change duty orders (BUPERS order: 2712) issued on 16 March 2023 did not contain HHG funding.

Petitioner's BAH at the with dependents rate for [REDACTED] vice [REDACTED] started on 10 May 2023. Note: If Petitioner moves from his residence, he will no longer be authorized BAH at the old PDS.

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

That no further changes be made to Petitioner's naval record.

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That 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.

1/30/2024

[REDACTED]

Deputy Director

Signed by: [REDACTED]