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## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-00838-2

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

The Board reconsider her request for reinstatement of her unused Consecutive Overseas Tour (COT) leave entitlement.

### RESUME OF THE CASE

The applicant is a currently serving Air Force lieutenant colonel (O-5).

On 9 Oct 21, the Board considered and approved her request to show her COT leave entitlements reflect "Member and/or Dependents Command Sponsored at the previous Overseas Location is/are authorized government funded travel from Deferred COT location (Naples Italy) to her Home of Record. The reinstated entitlement is to be utilized before the end of fiscal year 2022 (30 Sep 22)." In this regard, the Board concurred with AFPC/DP2SSM that due to the COVID-19 travel restrictions, the applicant was unable to take her approved deferred COT entitlement before the end of her overseas tour.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

On 23 Jan 23, the Secretary of the Air Force Military Review Boards (SAF/MRB) agency Senior Legal Advisor provided new evidence in the form of an advisory opinion and recommended that the case be reopened for reconsideration by the Board due to a mistake of law contained in the AFPC/DP2SSM advisory.

On 28 Feb 23, the case was reopened as a request for reconsideration based on the findings of SAF/MRB Legal.

For more information, see the advisory at Exhibit F.

### AIR FORCE EVALUATION

SAF/MRB Legal recommends denying the application. There is no evidence the applicant's record was corrected as previously ordered by the Board. Due to COVID-19 travel restrictions, the applicant was unable to use her deferred Consecutive Overseas Tour (COT) leave entitlement for her Permanent Change of Station (PCS) from Osan AB, South Korea to Naples Italy. Pursuant to paragraph 6.3.2. of AFI 36-3003, Military Leave Program (24 Aug 20), members have until the end of their new tour to use the COT leave travel and transportation allowances. Otherwise, the allowance expires.

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Due to the travel restrictions in place during the COVID-19 pandemic, no error occurred when the applicant was prohibited from using her COT leave entitlement before her departure from Naples, Italy in 2021. Furthermore, the applicant's inability to use her COT leave entitlement is not an injustice because everyone lived by the same rules at the time. The COVID-19 pandemic adversely affected the lives of nearly everyone in some way or another, but that does not constitute an injustice. Injustice is treatment by the military authorities, that shocks the sense of justice, but is not technically illegal. *Reale v. United States*, 28 Ct Cl. 1010 (1976) (citing *Yee v. United States*, 206 Ct. Cl. 388, 512 F. 2d 1383 (1975)). The military requires its members to obey rules in an effort to preserve good order and discipline. The enforcement of COVID-19 travel restrictions during the pandemic does not shock the sense of justice. COVID-19 travel restrictions applied to all military members and their dependents at the time that the applicant was unable to use her deferred COT leave entitlement. As such, there is no evidence of an error or injustice in this case.

Moreover, the board is limited in its ability to provide relief (if desired) and is legally limited by nature of the entitlement itself. COT is only available while the member is overseas. While the board can change history to make a member eligible for a pay or benefit, the board cannot create an entitlement that is contrary to law or regulations.

The complete advisory opinion is at Exhibit F.

#### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 1 Mar 23 for comment (Exhibit G), and the applicant replied on 31 Mar 23. In her response, the applicant expresses her extreme disappointment with her Air Force. The Board previously recognized, she faithfully followed all the guidelines and orders by her chain of command and did not take her COT leave because of the high-risk environment. As such, the Board approved her request because she lost the entitlement that she would have otherwise received for volunteering for a COT assignment.

The applicant argues that the advisory depiction that "everyone was affected in the same manner," is not accurate. If this is the case, then Airmen in higher risk areas, such as Italy, which was the epicenter of the epidemic for a period in Europe, should have been able to request an exception to policy and have their COT window extended. However, this was not the case and instead, she had to request the Board approve the extension of her entitlement to carry over to her current overseas tour in Lisbon, Portugal. This request took place in the beginning of 2021 and was approved in October 2021.

The Air Force allowed the accrual of leave during the COVID-19 epidemic but failed to synchronize this action with the entitlement of COT. Thus, this textbook example of a "Catch 22" implies that a member can have the leave, but are not able to use the leave. Furthermore, service members who did not receive the first round of 'denial' letters are being considered for reinstatement of their entitlement. The Air Force approved her initial request, thus the 'updated' denial should not influence the overall outcome of 'Approval.'

She believes that if Air Force leaders knew that Airmen were going to be put in a no-win situation, they would have extended the COT entitlement for personnel who were assigned to high-risk areas or were previously approved for reinstatement of the entitlement and are currently still serving overseas.

The applicant's complete response is at Exhibit H.

## FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board has been convinced the evidence presented does not demonstrate an error or injustice. The Board concurs with the rationale and recommendation of SAF/MRB Legal Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board recognized that while the applicant's situation is unfortunate, it is not different than similarly situated Airmen who were all hindered by COVID-19 travel restrictions. As such, these restrictions were put in place for the safety and well-being of Airmen and the fact that the applicant was unable to use their COT entitlement due to the restrictions is not an error or an injustice. Therefore, the Board recommends against correcting the applicant's records.

## RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

## CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-00838-2 in Executive Session on 12 Jun 23:

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Panel Chair  
Panel Member  
Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 19 Oct 21.
- Exhibit F: Advisory Opinion, SAF/MRB Legal, dated 23 Jan 21.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Mar 23.
- Exhibit H: Applicant's Response, dated 31 Mar 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

6/13/2025

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