



Work-Product

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

**ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-01909-2

Work-Product

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

**APPLICANT’S REQUEST**

The Board reconsider his request for reinstatement of his unused deferred Consecutive Overseas Tour (COT) leave entitlement for his assignment from Work-Product (AB), Work-Product AB, Japan.

**RESUME OF THE CASE**

The applicant is a currently serving Air Force technical sergeant (E-6).

On 6 Oct 21 and 9 Oct 21, the Board considered and approved his request to show that his Deferred COT entitlement reflect “Member and/or Dependents Command Sponsored at the previous Overseas Location is/are authorized government funded travel from Deferred COT location (Work-Product) to his Home of Record. This reinstated entitlement is to be utilized before the end of Fiscal Year 2022.” In this regard, the Board concurred with AFPC/DP2SSM that due to the COVID-19 travel restrictions, the applicant was unable to take his approved deferred COT entitlement before the end of his 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 7 Mar 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 8 Mar 23, the case was reopened as a request for reconsideration based on the findings of SAF/MRB Legal.

For more information, see copies of the applicant’s records at Exhibit F and the advisory at Exhibit G.

**STATEMENT OF FACTS**

On 14 Mar 19, per Special Order Work-Product, he was assigned from Work-Product AB to Work-Product AB for a 24-month tour with a report not later than date (RNLTD) of 28 Jun 19; however, the Military

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Personnel Database (MilPDS) confirms that the applicant's Date Arrived on Station (DAS) was 7 May 2019.

On 19 Jun 19, amendment order AM-118132, amended PCS order **Work-Product** to reflect "Airman is authorized to defer COT travel."

The MilPDS confirms that the applicant had a contingency deployment from 11 Jul 20 through 8 Feb 21. In addition, MilPDS shows that the applicant remained for an In-Place Consecutive Overseas Tour (IPCOT) at **Work-Product** AB, which would have been subsequently following his first 24-month tour. In this regard, while the applicant remained at **Work-Product**, he would have been required to use the deferred COT travel entitlement for his PCS from **Work-P...** AB before his IPCOT tour began (approximately May 2021).

For more information, see copies of the applicant's records at Exhibit F and the advisory at Exhibit G.

### **APPLICABLE AUTHORITY**

DAFI 36-3003, Military Leave Program

6.1. In-Place Consecutive Overseas Tour (IPCOT). IPCOT refers to members assigned to a consecutive tour at the same overseas duty station. Members cannot initiate the travel until they have entered the new IPCOT tour, and have until the end of the IPCOT tour to use the travel and transportation allowances, otherwise the authority expires. (T-0). The leave taken is ordinary leave charged based on authorized allowable travel. See paragraph 6.4 for exception to the end of tour limitation when members are unable to use the travel due to duty in connection with a contingency operation.

6.2. Deferred Consecutive Overseas Tour (COT). Deferred COT refers to members unable to use the COT leave travel and transportation allowances between the two tours because of military necessity, or when requested by member and approved for COT leave deferment. Members have until the end of their new tour to use the COT leave travel and transportation allowances, otherwise the authority expires. (T-0). The leave taken is ordinary leave charged based on authorized allowable travel time. See paragraph 6.4 for exception to the end of tour limitation when members are unable to use the travel due to duty in connection with a contingency operation.

6.3.3. Exception to End of Tour Limitation. Members unable to use the authority before completing the new tour due to duty in connection with contingency operations may defer travel until not more than 1 year after the completion of the duties precluding travel. In this case, the member is still authorized to leave travel from the new Permanent Duty Station (i.e., the permanent duty station after departure from the OCONUS location from which deferred travel could not be taken) to an authorized location. The cost limitation for travel from this new permanent duty station and return is the cost from the permanent duty station from which deferred travel could not be taken to the home of record and return. The cost limitations are established in the JTR. Note: The additional deferment based solely on duty performed in connection with a contingency operation is a one-time additional authority and cannot be further extended. If members do not qualify for an extension based on duty in connection with a contingency operation, they may submit a DD Form 149.

## 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 his deferred Consecutive Overseas Tour (COT) leave entitlement for his Permanent Change of Station (PCS) from [Work-P... AB, [Work-P]Work-Product AB, Japan prior to his departure from. 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.

Due to the travel restrictions in place during the COVID-19 pandemic, no error occurred when the applicant was prohibited from using his COT leave entitlement before the end of his 24 month tour in [Work-Product]. Furthermore, the applicant's inability to use his 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 his 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 G.

## APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 8 Mar 23 for comment (Exhibit G), but has received no response.

## 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 concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of SAF/MRB Legal Advisor; however, we have found that a preponderance of the evidence substantiates the applicant's contentions in part. The Board notes that the COVID-19 travel restrictions were put in place for the safety and well-being of Airmen and the fact the applicant was unable to use their original COT entitlement due to the restrictions is not an error or an injustice. Therefore, the Board finds no basis to recommend granting the applicant's request based solely on COVID-19 travel restrictions. However, the Board further notes that the applicant had a contingency deployment from 11 Jul 20 through 8 Feb 21 and in accordance with DAFI 36-3003, *Military Leave Program*, Paragraph 6.3.3. the applicant should have been authorized a one-year extension of his COT

entitlement, which would have began at the completion of his deployment thus extending the expiration date of his COT entitlement to 7 Feb 22. This in turn would have provided the applicant the opportunity to use his entitlement after the COVID-19 travel restrictions were lifted. In this regard, the Board opines that the guidance at that time was to submit an AFBCMR application for COT entitlement reinstatement due to COVID-19 travel restrictions and had it not been for that guidance, the applicant would have otherwise received the one-year extension due to his deployment. As such, the applicant submitted his AFBCMR request on 21 Apr 21, the Board erroneously approved his request on 23 Nov 21, and now recognizes that their recommendation to overturn their previous decision has caused even further delays. Given that the one-year window from the time he returned from deployment has past, the Board finds the applicant should be given one-year from the date of the signed directive to utilize his COT travel entitlement due to his previous contingency deployment in accordance with DAFI 36-3003, Paragraph 6.3.3. Therefore, the Board recommends correcting the applicant's records as indicated below.

**RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that his Deferred COT entitlement reflect Member and/or Dependents Command Sponsored at the previous Overseas Location is/are authorized government funded travel from Deferred COT location (Work-Product) to his Home of Record. This reinstated entitlement is to be utilized within one (1) year from the signing of this directive, otherwise the entitlement is lost.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board. One year from the date the directive is signed.

**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-2021-01909-2 in Executive Session on 12 Jun 23:

- (Work-Product) Panel Chair
- (Work-Product) Panel Member
- (Work-Product) Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 27 Oct 21.
- Exhibit F: Additional documentary evidence, including excerpts from official records.
- Exhibit G: Advisory Opinion, SAF/MRB Legal, dated 7 Mar 23.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Mar 23.

*Work-Product*

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.

9/8/2025

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