



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01718

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT’S REQUEST

1. Thirty two (32) days of lost leave be restored.
2. Her consecutive overseas tour (COT) leave entitlement be restored.

APPLICANT’S CONTENTIONS

Due to COVID-19, she lost leave and her COT entitlement during her permanent change of station (PCS) from Kunsan AB, Korea to Aviano AB, Italy. While enroute to pick up her dependents, their passport and visa applications were delayed due to COVID-19. She was directed to remain in place pending processing of the passport and visas. The delay enroute was beyond her control. However, due to an incorrect duty status code and the extensive delay, she lost 32 days of leave from 18 Dec 20 to 24 Jan 21 and her COT entitlement. Her PCS orders and amendments show she was approved to defer her COT leave.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a staff sergeant (E-5) in the Air Force.

AF Form 899, *Request and Authorization for Permanent Change of Station-Military*, Special Order **Work-Product** dated 17 Sep 20, shows the applicant was on PCS orders from Kunsan AB to Aviano AB, with a report not later than date of 15 Jan 21. Her dependents are listed as residing in Nevada and Florida. Block 15, *Authority for Concurrent Travel (CCTVL)*, states Delayed in accordance with Stop Movement/COVID-19 Guidance.

AF Form 973, *Request and Authorization for Change of Administrative Orders*, Special Order, **Work-Product** dated 6 Nov 20 amended the applicant’s PCS order to authorize the applicant travel and transportation allowances to Nevada to assist her spouse in moving per the Joint Travel Regulation (JTR) paragraph 051202.

AF Form 973, Special Order **Work-Product** dated 13 Nov 20, amended the applicant’s PCS order to authorize the applicant travel and transportation allowances to Florida to assist her child in moving in accordance with the JTR 051202.

AF Form 973, Special Order **Work-Product** dated 23 Nov 20, amended the applicant’s PCS order to include authorized leave travel for the applicant in conjunction with her COT assignment per JTR

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to home of record (HOR) and she was authorized to defer COT leave travel. The applicant's dependents are not authorized COT leave travel.

The applicant provides a letter from her squadron commander (SQ/CC) dated 6 Jun 22 requesting her duty status code be changed, her lost leave be restored and her COT entitlements be reinstated. While enroute PCS from Kunsan AB to Aviano AB, dependent pick-up was authorized. Due to COVID-19 restrictions, the passport and visa applications were delayed and the applicant was directed to remain in place pending completion of the passport and visa applications. The delay enroute was beyond her control.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

APPLICABLE AUTHORITY/GUIDANCE

DAFI 36-3003, *Military Leave Program*, Paragraph 5.9. Members not eligible for special leave accrual (SLA) for the reasons listed can request recovery of days lost by submitting a DD Form 149, *Application for Correction of Military Record*.

DAFI 36-3003, Paragraph 6.3.2, Members have until the end of their new tour to use the COT leave travel and transportation allowances. Otherwise, the allowance expires. Since the travel restrictions that were put in place due to the COVID-19 pandemic applied to all military members and their dependents, no error occurred when members were prohibited from using their COT leave entitlement. Furthermore, members' inability to use their 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 to preserve good order and discipline. The enforcement of COVID-19 travel restrictions during the pandemic does not shock the sense of justice.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends granting the application. The applicant was met with a Stop Movement and the error of not having her duty status to reflect the Stop Movement resulted in her losing 32 days of leave. The applicant was directed by her wing leadership to stay in place while her dependents' passports and visas were delayed. For members affected by the Stop Movement, their duty status should have reflected duty status code 14 (Not present for duty-other). Her duty status did not account for the delay from 18 Dec 20 to 24 Jan 21, which led to her being charged for 32 days of leave.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 15 Aug 23 for comment (Exhibit D) 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 AFPC/DPMSSM and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided evidence to show she lost 32 days of leave due to no fault of her own when she was not placed in the correct duty status code, which is sufficient to justify granting the applicant's request for restoration of 32 days of leave. However, the evidence presented did not demonstrate an error or injustice with respect to the restoration of her COT leave entitlement, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. While the Board acknowledges the applicant lost her COT leave entitlement due to COVID-19 pandemic travel restrictions and AFPC/DPMSSM recommends relief, the Board does not find the travel restrictions resulted in an error or injustice singularly to the applicant because everyone lived by the same rules. Therefore, the Board recommends correcting the applicant's records as indicated below.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show thirty-two (32) days of lost leave be restored through 30 Sep 25.

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.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-01718 in Executive Session on 27 Sep 23 and 11 Jun 24:

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| <i>Work-Product</i> | , Panel Chair |
| <i>Work-Product</i> | Panel Member |
| <i>Work-Product</i> | Panel Member |

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 22 May 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPMSSM, dated 14 Aug 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 15 Aug 23.

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Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

7/2/2024

Work-Product

Board Operations Manager, AFBCMR

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