

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2024

DOCKET NUMBER: AR20230006128

APPLICANT REQUESTS: in effect,

- housing allowance for his previous duty station, where his spouse resided for the period of August 2018 through December 2019
- a personal appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- U.S. Army Combined Arms Support Command (CASCOM) Orders Number 128-00422
- DD Form 2367 (Individual Overseas Housing Allowance (OHA) Report), 22 July 2015, 1 August 2018, 23 December 2019, 10 March 2020, and 2 August 2021
- U.S. Army Garrison Rheinland-Pfalz Orders Number 184-104
- 266th Financial Management Support Center (FMSC) Memorandum, Subject: Cost Estimate for Permanent Change of Station (PCS) Move
- U.S. Army Garrison Bavaria Memorandum, Subject: Request for Overseas Housing Allowance While Residing in Unaccompanied Personnel Housing until 13 August 2021

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states in effect, he was married to a civilian dependent, who was registered in the Defense Enrollment Eligibility Reporting System and was command sponsored while he was assigned to the 2nd Calvary Regiment in Vilseck, Germany, during the period of August 2018 through December 2019. He was never provided housing or housing allowance of any kind and his chain of command refused to provide him an approved DA Form 5960 ((Authorization to Start, Stop or Change Basic Allowance for Quarters, and/or Variable Housing Allowance). He was assigned to U.S.

Army Garrison, Rheinland-Pfalz, Germany from July 2015 through August 2018, U.S. Army Garrison Bavaria, Vilseck, Germany from August 2018 through December 2019 and then was reassigned back to Rheinland-Pfalz. His spouse remained at U.S. Army Garrison Rheinland-Pfalz during the period of July 2015 through August 2021.

3. A review of the applicant's service record shows:

a. The applicant enlisted in the Regular Army on 13 January 2009 and he served with continuous service through reenlistments and extensions.

b. The applicant's Enlisted Record Brief shows he is married to a U.S. citizen. His assignments show:

- 17 July 2015 assigned to 21st Theater Sustainment Command (TSC) in Panzer Kaserne, Germany
- 13 August 2018 assigned to 2nd Sustainment Brigade in Vilseck, Germany
- 20 December 2019 assigned to 21st TSC in Panzer Kaserne, Germany
- 22 March 2022 assigned to 101st Special Troop Battalion, Fort Campbell, KY

c. On 22 September 2011, the applicant was divorced from his spouse S-T-.

d. The applicant's service record is void of a marriage certificate from this point forward.

e. On 8 May 2014, Orders Number 128-00422, issued by the U.S. Army CASCOM, the applicant was assigned to the 21 TSC in Panzer Kaserne, Germany, effective 10 July 2015. The additional instructions (TT) shows the applicant did not have dependents.

f. On 26 June 2018, Orders Number 177-100, issued by the U.S. Army Garrison Rheinland-Pfalz, the applicant was assigned to 2nd Sustainment Brigade, Vilseck, Germany, effective 10 August 2018. The additional instructions stated the applicant did have dependents, M- T- who was authorized travel from Kaiserslautern, Germany to Santa Barbara, CA (not command sponsored). The applicant elected to serve the "all others tour" in an unaccompanied status. Travel of his family members to his overseas duty station at Government expense was not authorized.

g. On 3 July 2018, Orders Number 184-104, issued by the U.S. Army Garrison Rheinland-Pfalz, the applicant was assigned to 2nd Sustainment Brigade, Vilseck, Germany, effective 10 August 2018. The additional instructions stated the applicant did have dependents, M- T- who was authorized travel from Kaiserslautern, Germany to Vilseck, Germany (command sponsored).

h. The applicant's service record is void of evidence of a revocation of either assignment order.

i. On 11 March 2021, Orders Number 070-107, issued by the U.S. Army Garrison Rheinland-Pfalz, the applicant was assigned to the 101st Corps Support Replacement, Fort Campbell, KY, effective 10 October 2021. The additional instructions stated the applicant did have dependents, M- T- who was authorized travel from Kaiserslautern, Germany, to Fort Campbell, KY (command sponsored).

4. The applicant provides:

a. DD Form 2367, Individual Overseas Housing Allowance (OHA) Report, effective 1 August 2015 which shows the applicant was:

- assigned to the 21st TSC
- not entitled to cost of living of Overseas Housing Allowance (OHA) for dependents residing elsewhere
- his residence was in Lambsborn, Rheinland-Pfalz
- signed by the housing officer on 22 July 2015
- did have command sponsored dependents in area of Permanent Duty Station (PDS)
- start housing allowance

b. DD Form 2367 effective 9 August 2018 which shows the applicant was:

- assigned in Panzer, Germany
- not entitled to cost of living or OHA for dependents residing elsewhere
- his residence was in Lambsborn, Rheinland-Pfalz
- signed by the housing officer on 1 August 2018
- did have command sponsored dependents in area of PDS
- stop housing allowance action

c. DD Form 2367 effective 20 December 2019 which shows the applicant was:

- assigned in Panzer, Germany
- entitled to cost of living or OHA for dependents residing elsewhere was not specified
- his residence was in Lambsborn, Rheinland-Pfalz
- signed by the housing officer on 23 December 2019
- did not have command sponsored dependents in area of PDS
- start housing allowance action

d. DD Form 2367 effective 1 March 2020 which shows the applicant was:

- assigned in Kaiserslautern, Germany
- not entitled to cost of living or OHA for dependents residing elsewhere
- his residence was in Lambsborn, Rheinland-Pfalz
- signed by the housing officer on 10 March 2020
- did have command sponsored dependents in area of PDS
- change housing allowance action

e. DD Form 2367 effective 31 July 2021 which shows the applicant was:

- assigned in Panzer, Germany
- not entitled to cost of living or OHA for dependents residing elsewhere
- his residence was in Lambsborn, Rheinland-Pfalz
- signed by the housing officer on 2 August 2021
- did have command sponsored dependents in area of PDS
- stop housing allowance action

f. 266th FMSC Memorandum, Subject: Cost Estimate for PCS Move dated 14 August 2018 which shows computation to substantiate a low cost PCS move. A PCS move from Landstuhl to Grafenwoehr was estimated at \$165.30.

g. U.S. Army Garrison Bavaria Memorandum, Subject: Request for OHA While Residing in Unaccompanied Personnel Housing until 13 August 2021 shows the applicant's request for exception to policy for OHA for a command sponsored dependents residing in Private Rental Quarters in Lambsborn, Germany, while he occupied unaccompanied personnel housing in the U.S. Army Garrison Bavaria footprint was approved. The OHA at the Grafenwoehr rate was approved for the period of 9 August 2018 through 13 August 2021. The approval did not replace a Secretarial waiver from the Headquarters Department of the Army, Deputy Chief of Staff, G-1.

h. Message from U.S. Army Garrison Kaiserslautern which stated effective 20 December 2019 wherein the applicant's spouse was recognized as command sponsored.

5. On 16 October 2023, in the process of this case the Office of the Deputy Chief of Staff, G-1, provided an advisory opinion regarding the applicant's request for housing allowance based on his previous duty station or where his spouse resided.

a. The advisory official stated it was recommending the disapproval of the applicant's request. He did not submit evidence of a debt owed to the U.S. government or that he exhausted all administrative remedies to address his debt. The housing officer's approval memorandum dated 6 February 2019 only authorized the applicant to

reside in government unaccompanied housing at his duty station in Vilseck, Germany and receive housing allowance based on his previous duty station where his spouse was residing. However, the memorandum advised the applicant the approval did not replace the Secretarial waiver required by Headquarters Department of the Army to be able to receive housing allowance based on his previous duty station.

b. The applicant's concerns were previously addressed by the Army Compensation and Entitlements Division Chief who on 16 September 2022 advised he was not authorized to receive housing allowance based on his previous duty station or where his spouse resided without Secretarial waiver and there is no confirmed record a waiver was requested from the applicant or his unit in Germany.

6. On 26 October 2023, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment. He replied on the same day and stated, after reviewing the attached documents it seems there is no record of his request for Secretarial waiver. He did submit the request in July of 2018 prior to his PCS from Landstuhl, Germany to Vilseck, Germany. Unfortunately, he has no record of this because it was done via email and those were lost when he PCSd to Fort Campbell.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant contends he should be paid housing allowance for his previous duty station, where his spouse resided for the period August 2018 through December 2019. On 6 February 2019, he was approved to receive overseas housing allowance (OHA) effective 9 August 2018, the date that OHA at the old permanent duty station in Baumholder, Germany was stopped, until 13 August 2021. This approval memorandum only authorized the applicant to reside in government unaccompanied housing at his duty station in Vilsek, Germany and receive a housing allowance based on his old duty station where his wife was residing. However, the memorandum advises him that the approval does not replace a Secretarial waiver required by HQDA to receive a housing allowance based on his old duty station. The Board was convinced by and agreed with the G-1 advisory officials' determination that the applicant was not authorized to receive a housing allowance based on his previous duty station or where his spouse resides without an approved Secretarial waiver and confirmed there is no record of this office receiving a waiver request from him and/or his unit in Germany.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> | |
|--------------|--------------|--------------|----------------------|
| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| █ | █ | █ | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Department of Defense Financial Management Regulation 7000.14-R, Volume 7A, chapter 26 (Housing Allowances), establishes policy pertaining to housing allowances. Housing allowances include Basic Allowance for Housing (BAH), Overseas Housing Allowance (OHA), and Family Separation Housing (FSH) Allowance. The authorizing

document for OHA is the DD Form 2367. A Service member is reimbursed actual rental costs, limited to the maximum OHA rate for each locality and grade. A Service member authorized to live in private sector leased or owned housing is authorized OHA provided a DD Form 2367 is completed and approved. The senior officer of the Uniformed Services in the country concerned, or the individuals or offices designated for that purpose by the senior officer has approval authority. The reported housing must be the actual residence that the Service member occupies and from which the Service member commutes to and from work daily. OHA rates are based on a Service member's PDS except a special determination jointly issued by the Secretary concerned and the Office of the Under Secretary of Defense, Personnel and Readiness (OUSD (P&R)) authorizes a different rate due to special circumstances. Ordinarily a housing allowance is paid based on the Service member's PDS.

Except for a Service member paying child support and assigned to Government quarters, a Service member with a dependent, who is entitled to basic pay is authorized BAH or OHA at the with-dependent rate. However, the Service may determine that a Service member's assignment to a PDS, or the circumstances of that assignment, requires a dependent to reside separately. Authorization or approval of a housing allowance based on the dependent's location or old PDS is through the Service Secretary or through the Secretarial Process. A Service may pay BAH or OHA based on the old PDS rate in situations involving low or no-cost moves and for situations in which the Service member and dependent are residing separately. The determination of whether it is inequitable to pay BAH or OHA based on the new PDS is through the Secretarial process. It was requested by the Service member; and the decision of whether it would be inequitable or not to base the allowance on the housing cost in the new PDS area to which the Service member is reassigned, is determined through the Secretarial Process. The Secretary concerned may determine that other circumstances may require a dependent to reside separately from the Service member and authorize or approve a housing allowance payment based on either the dependent's location or the old PDS. If the Secretary concerned determined that an additional reason for a BAH or OHA waiver was acceptable, the Secretarial Process may then be used to authorize or approve individual cases based on that determination. Unless otherwise authorized or approved, a Service member's housing allowance is based on the PDS. If authorized or approved through the Secretarial Process, a Service member may be authorized a housing allowance based on the location at which a dependent maintains a permanent residence or the old PDS.

3. Joint Travel Regulation, chapter 10 (Housing Allowance), A Service member on active duty 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. (Overseas Housing Allowance (OHA)), OHA rates are based on a Service member's PDS. Ordinarily a housing allowance is based on the Service member's PDS. However, the Service may determine that a Service member's assignment to a PDS, or the circumstances of that

assignment, requires a dependent to reside separately. Authorization or approval of a housing allowance based on the dependent's location or old PDS is through the Service Secretary or through the Secretarial Process.

4. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//