

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 October 2024

DOCKET NUMBER: AR20240002104

APPLICANT REQUESTS:

- entitlement to Basic Allowance Housing (BAH) at the with dependent rate from 12 May 2016 – 22 February 2017
- personal appearance (video/telephone)

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 040-125, 9 February 2015
- Office of the Deputy Chief of Staff, G-1 letter, 15 January 2021
- Office of the Deputy Chief of Staff, G-1 letter
- Email communication

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 pertinent part that he should have been paid BAH at the with dependent rate while serving at Schofield Barracks, HI, from 12 May 2016 – 22 February 2017. He notes that this request is supported by the Department of the Army, Office of the Deputy Chief of Staff, G-1 (Compensation and Entitlements Division) as referenced in the provided documentation in response to his Congressional representative.
3. A review of the applicant's available service records reflects the following:
 - a. On 5 April 2011, the applicant enlisted in the Regular Army.
 - b. On 25 April 2014, the applicant was legally married to Ms. [REDACTED] as recognized by the State of [REDACTED]

c. On 12 February 2015, the applicant submitted DA Form 5960 (Authorization to Start, Stop, or Change Basic Allowance for Quarters (BAQ) and or Variable Housing Allowance (VHA)) requesting a recertification of his BAH to the "with dependents" rate due to marriage. The applicant was stationed at Fort Campbell, KY, at the time and lists 2 dependent children.

d. On or about 29 March 2015, the applicant proceeded on Permanent Change of Station (PCS) orders to Fort Shafter, HI, and was subsequently assigned to Schofield Barracks, HI.

e. On 31 March 2015, the applicant requested a change (recertification) of his BAH entitlement, effective 29 March 2015. The applicant was stationed at Schofield Barracks, HI, however his dependents resided in Houston, TX.

f. On 6 February 2017, the Directorate of Human Resources, U.S. Army Garrison-HI issued Orders Number 037-0014 reassigning the applicant pending separation processing.

g. On 25 April 2017, the applicant was medically retired from military service.

4. The applicant provides:

a. Orders Number 040-125 dated 9 February 2015, reflective of the applicant being ordered to proceed on PCS orders to Fort Shafter, HI, between 10 March 2015 – 10 April 2015. Dependents are not listed on this order.

b. Office of the Deputy Chief of Staff, G-1 letter dated 15 January 2021, reflective of the applicant being advised that his request for documentation (correspondence) related to his pay and entitlements from May – October 2016 yielded no results.

c. Office of the Deputy Chief of Staff, G-1 letter, reflective of communication provided to the applicant's Congressional representative concerning his request to receive BAH based on his assignment to HI. The Compensation and Entitlements Division advised that based on a review of the applicant's service records, it appeared that he was owed BAH that equates to the difference between BAH partial, the rate he was paid, and BAH differential, the rate he should have received from 11 May 2016 – 22 February 2017. Additionally, it appears that he is also owed BAH that equates to the difference between BAH at the without dependent rate, the rate he received and BAH at the with dependent, the rate he should have received from 23 February 2017 – 25 April 2017. The applicant is required to submit a claim through the Defense Finance and Accounting Services Debts and Claims office.

d. Email communication reflective of communication concerning an "all others" tour. For assignments outside of the Continental U.S. (CONUS) wherein Soldiers elect an "unaccompanied" tour, the government denies the dependents travel to the duty station. Therefore, the Soldier is entitled to BAH for the duty station and the dependents location, provided they are not residing in government quarters.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board considered the evidence of the applicant's dependence and the review and response of his inquiry by the DCS G1 Compensation and Entitlements Division. The Board also considered the recommendation that he was required to submit a claim through the Defense Finance and Accounting Services Debts and Claims office. The record does not include and the applicant did not provide evidence that shows he submitted a claim to DFAS and it was denied. Based on a preponderance of evidence, the Board concluded that the applicant has not exhausted his administrative remedies and therefore find no error or injustice that would warrant relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

4/28/2025

X



CHAIRPERSON



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 7000.14-R (Financial Management Regulation) Volume 7A, Chapter 26 (Basic Allowance for Housing (BAH)) provides that a service member with a dependent who serves an unaccompanied or dependent-restricted tour outside of the Continental U.S. (OCONUS) is authorized a with-dependent housing allowance (BAH or Overseas Housing Allowance) when the dependents are not provided government quarters.

Location rate –

- when the dependent remains at the Service member's old Permanent Duty Station (PDS), the housing allowance is paid based on the old PDS
- when the dependent is not at the Service member's old PDS and is outside the Service member's PDS vicinity and a Secretarial waiver had previously approved a housing allowance based on another location, the allowance continues at the rate approved by waiver
- if the dependent is not at the Service member's old PDS and is outside the Service member's PDS vicinity, and there is no applicable Secretarial waiver designating a particular location rate, the housing allowance is based on the dependent's location on the date the Service member arrives at the new PDS

3. Title 10, USC, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.
4. AR 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 applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

5. The Barring Act, Title 31, USC, section 3702 states that the Secretary of Defense shall settle claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits. A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues. A claim that is not received in the time required under this subsection shall be returned with a copy of this subsection, and no further communication is required.

//NOTHING FOLLOWS//