

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 August 2025

DOCKET NUMBER: AR20240009677

APPLICANT REQUESTS: payment of any:

- Entitled Backpay
- Overseas Housing Allowance
- Basic Allowance for Housing (BAH)
- Personal appearance before the Board via video/telephone

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

- DD Forms 149 (Application for Correction of Military Record)
- United States Court of Federal Claims Opinion and Order
- Orders HR-1253-00013 Order to Active Duty for Operational Support (ADOS) and amendment
- Referral Office Rental Agreement
- Statements of Nonavailability
- Leave and Earnings Statements
- Photo of Passport

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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:

- Pursuant to the remand order in *Wolfing v. United States* he is respectfully requesting relief
- He was on ADOS orders as an Army Reservist in Fiscal Year 2022
- His pay records are in error as the U.S. Army did not follow regulations regarding Reservists and housing entitlements/benefits per the *Wolfing v. United States* decision

3. The applicant provides and his service record shows:

- On 28 June 2014, he took the oath of office in the Army National Guard (ARNG)
- On 11 March 2017, he completed an Authorization to Start, Stop, or Change Basic Allowance for Quarters, which shows he was single and had no dependents
- On 11 November 2019, he was honorably transferred from the ARNG to the U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve)
- On 12 November 2019, he took the oath of office as a Reserve Commissioned Officer
- On 10 September 2021, orders were published ordering the applicant to ADOS in Kaiserslautern, Germany with a report date of 1 October 2021 for a period of 327 days; on 28 September 2021, the period of duty was amended to 365 days
- On 29 October 2021, a Referral Office Rental Agreement was completed showing he rented a house in Munster, Germany
- On 11 November 2021, a statement of non-availability was completed stating there was no government lodging available
- On 30 September 2022, he was honorably released from active duty as a member of the USAR
- The applicant provides copies of his Leave and Earnings Statement and a copy of his passport
- The applicant provides the United States Court of Federal Claims opinion and order in *Wolfig, et. al., vs. U.S.*, which is available for the Board's review

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found relief is warranted.

2. The Board recommends the payment of two housing allowances to the without-dependent applicants. However, the Board is aware it is unlikely this payment would be executed under the circumstances described in these cases for the reasons provided in the advisory opinion from the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs in *Wolfig v. United States*. In the alternative, the Board found no barriers to exercising Secretarial authority to correct the record to show the applicant was in a TDY status during his service in Germany from 1 October 2021 through 30 September 2022 and therefore authorized per diem during this period in addition to BAH for his permanent residence in the United States, vice BAH and OHA. In view of the foregoing, the Board determined the applicant's orders to duty in Germany should be amended to show his periods of service were in a TDY status. As a result of this correction, the applicant may receive both BAH and per diem at the applicable rates for

the duration of his service in Germany from 1 October 2021 through 30 September 2022.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his orders to duty in Germany to show his periods of service were in a TDY status. As a result of this correction, the applicant should be paid both BAH and per diem at the applicable rates for the duration of his service in Germany from 1 October 2021 to 30 September 2022.
2. In addition, the Board noted that the Defense Finance and Accounting Service complete an audit of his pay record to ensure he does not receive duplicate payments or overpayments during his period in Germany on official orders.

X//signed//

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, U.S. Code, 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. Army Regulation 15-185 (Army Board for Correction of Military Records) 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 (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.
3. ALARACT Message 384/2011 states in paragraph:
 - a. (4). Intent: To ensure continued mission success, and maximize efficiencies while balancing the needs of RC Soldiers and their families and, to implement new policy guidance regarding use of PCS for RC Soldiers serving on active duty in excess of 180 days.
 - b. (5). Policy: Effective 1 June 2011, RC Soldiers will no longer be authorized the option of contingency operations flat rate per diem (Temporary Change of Station-55 percent) tours. PCS travel and transportation allowances must be paid to all RC Soldiers and retiree recall Soldiers on voluntary duty for more than 180 days at any one location.
4. Title 37 USC, section 403c (BAH) Outside the United States, states:
 - a. The Secretary of Defense (SECDEF) may prescribe an overseas BAH for a member of a uniformed service who is on duty outside of the United States. The Secretary shall establish the BAH under this subsection on the basis of housing costs in the overseas area in which the member is assigned.
 - b. So long as a member of a uniformed service retains uninterrupted eligibility to receive a BAH in an overseas area and the actual monthly cost of housing for the member is not reduced, the monthly amount of the allowance in an area outside the United States may not be reduced as a result of changes in housing costs in the area or the promotion of the member.

5. Title 37 USC, section 403(a)(1) states, "a member of a uniformed service who is entitled to basic pay is entitled to a BAH."

6. Title 37 USC, section 403g(1) (Reserve Members) states, a member of a RC without dependents who is called or ordered to active duty in support of a contingency operation, or for a period of more than 30 days under Title 10, USC, section 688(a) in support of a contingency operation or for a period of more than 30 days, may not be denied BAH if, because of that call or order, the member is unable to continue to occupy a residence:

a. which is maintained as the primary residence of the member at the time of the call or order; and

b. which is owned by the member or for which the member is responsible for rental payments.

7. Title 37 USC. section 403g(2) states, the Secretary concerned may provide BAH to a member described in paragraph (1) at a monthly rate equal to the rate of BAH established under subsection (b) or the overseas basic allowance for housing established under subsection (c), whichever applies to the location at which the member is serving, for members in the same grade at that location without dependents. The member may receive both BAH under paragraph (1) and under this paragraph for the same month, but may not receive the portion of the allowance authorized under section 474 (Travel and transportation allowance: general) of this title, if any, for lodging expenses if BAH for housing is provided under this paragraph.

8. Title 37 USC, section 403g(4) states, the rate of BAH to be paid to the following members of a RC shall be equal to the rate in effect for similarly situated members of a Regular Component of the uniformed services:

a. A member who is called or ordered to active duty for a period of more than 30 days.

b. A member who is called or ordered to active duty for a period of 30 days or less in support of a contingency operation.

9. Title 37 USC, section 403g(5) states, The Secretary of Defense shall establish a rate of BAH to be paid to a member of a RC while the member serves on active duty under a call or order to active duty specifying a period of 30 days or less, unless the call or order to active duty is in support of a contingency operation.

10. JTR, Section 1001, Table 10-1 states:

Table 10-1. Types of Housing Allowances

Allowance	Description
BAH	Paid for housing in the United States. The BAH rate is based on median housing costs and is paid independently of a Service member's actual housing costs.
BAH Differential (BAH-Diff)	Paid to a Service member assigned to single-type Government quarters and who qualifies for a BAH solely due to paying sufficient child support.
Partial Housing Allowance (BAH-Partial)	Paid to offset the raise that was reallocated from basic pay to housing between 1980 and 1981. It is paid when a Service member without a dependent is assigned to single-type quarters, or is on either field or sea duty, and not authorized to receive a BAH or an OHA. BAH-Partial is not authorized during proceed time, leave en route, and travel time on a permanent change of station (PCS) move unless the member is assigned to single type Government quarters and not authorized BAH or OHA. The rate is fixed from those years and does not change.
Transit Housing Allowance (BAH-Transit)	Paid while a Service member is in travel or leave status between permanent duty stations (PDS), provided the Service member is not assigned Government quarters. The BAH-Transit rate is paid during proceed time and authorized delays en route, including a TDY en route.
BAH for Reserve Component (RC) Member (BAH-RC)	Paid when authorized for an RC member called or ordered to active duty for 30 or fewer days, except when called to active duty for a contingency. When an RC member is called to active duty for a contingency, even for tours of 30 or fewer days, he or she is authorized the BAH or OHA rate. The Secretary of Defense establishes BAH-RC rates.
OHA	Paid monthly to help offset housing expenses for a Service member or dependent authorized to live in private-sector leased or owned housing at an assigned overseas location outside the United States. OHA is based on cost reimbursement. The amount of OHA paid considers factors, such as whether the housing is shared, the appropriate utilities (see Section 1005), and whether the Service member owns or rents the housing. OHA cannot be paid if there is no rent or purchase expense for housing.
Family Separation Housing (FSH)	Paid to a Service member with a dependent for added housing expenses resulting from one of the following: <ul style="list-style-type: none"> • Separation from the dependent when a Service member is assigned to a PDS OCONUS. • An assignment in the CONUS when dependent travel is delayed or restricted.

11. JTR, Chapter 10, paragraph 1006 (FSH Allowance): Administration of FSH Allowance.

a. Eligibility. For FSH to be payable, all of the following conditions must be met:

- dependent transportation to the PDS is not authorized at Government expense under Title 37 USC, section 476
- dependent does not reside in the PDS vicinity
- government quarters are not available for assignment to the Service member

b. Allowances: There are two types of FSH: FSH-B and FSH-O.

(1) FSH-B is payable for an assignment at a PDS in Alaska or Hawaii or to a PDS in the CONUS to which concurrent travel has been denied. FSH-B is payable in a monthly amount equal to the "without dependent" BAH rate applicable to the Service member's grade and PDS. Payment starts upon submission of proof that Government quarters are not available and that the Service member has obtained private-sector housing.

(2) FSH-O is payable for an assignment at a PDS outside the United States. FSH-O is payable in a monthly amount up to, and under the same conditions as, the "without dependent" OHA rate applicable to the Service member's grade and PDS. OHA rules for determining monthly rent, utility or recurring maintenance allowance, MIHA, and advances apply to FSH-O.

(3) FSH-O or FSH-B is not authorized if all of the Service member's dependents reside in the PDS vicinity. If some, but not all, of the dependents voluntarily reside near the PDS, FSH-O or FSH-B continues.

(4) FSH-O or FSH-B continues uninterrupted while a Service member's dependent visits at or near the Service member's PDS, but not to exceed 90 continuous days. Circumstances must clearly show that the dependent is not changing residence and that the visit is temporary and not intended to exceed 90 days.

12. JTR, chapter 10, section 100906(A)(7) (Called or ordered to Active Duty for Contingency) states:

a. An RC member called or ordered to active duty in support of a contingency operation is authorized BAH or OHA based on the primary residence beginning on the first day of active duty. This rate is authorized even for duty of 30 or fewer days.

b. This rate continues for the duration of the tour unless the RC member is authorized PCS HHG transportation, in which case the rate for the PDS would apply on the day the RC member reports to the PDS."

13. JTR, Appendix A defines primary residence, states, "For an RC member ordered to active duty, the primary residence is the dwelling (e.g., house, townhouse, apartment, condominium, mobile home, houseboat, vessel) where the RC member resides before being ordered to active duty."

//NOTHING FOLLOWS//