

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-059

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application on January 11, 2008, upon receipt of the applicant's completed application and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated September 11, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his military record to "authorize a civilian clothing monetary allowance." The applicant stated that he is assigned to an overseas OCONUS (outside the continental United States) billet with the Department of Justice in Anchorage, Alaska, where he is required to wear civilian clothing 100% of the time in the performance of his duties.

The applicant stated that he believes that the Coast Guard's May 3, 2007 denial of his request for the civilian clothing allowance is unjust. In denying the applicant's request, the Commandant informed the applicant that Alaska was considered OCONUS for travel and transportation purposes, but was not deemed outside of the United States for the purpose of authorizing the civilian clothing allowance. The Commandant further stated: "By law, an officer is only authorized a civilian clothing allowance when their permanent duty station is located outside the United States. This includes a Special Temporary Duty Civilian Clothing Monetary Allowance when performing TDY travel in either the United States or in a foreign country."

The applicant requested that the Board use its equity powers to correct the alleged injustice. He states that it is unfair to have extensive procedure and policy requirements to qualify for an OCONUS PCS transfer, but then penalize the member by saying Alaska is not an Overseas OCONUS transfer for the purpose of the civilian clothing allowance. In this regard the applicant further stated:

In order to be approved for an Overseas . . . (OCONUS) assignment, I was required to go through a rigorous process that included reviewing both myself and my family's financial, medical and mental status. I was required to seek entry permission to go Overseas after being educated on the hardships and tribulations of an OCONUS Permanent Change of Station (PCS) transfer. For pay purposes, travel and transportation purposes, and medical purposes, the Coast Guard manuals and regulations consider Alaska to be an Oversea OCONUS location. The Coast Guard has a very thorough process to complete in order to be able to transfer OCONUS. Indeed, other federal agencies also classify Alaska as an overseas billet and give it hardship designation.

APPLICABLE LAW

United States Code

Section 419 of title 37 of the United States Codes states, in pertinent part, that under regulations prescribed by the Secretary of Defense, an officer of an armed force who is assigned to a permanent duty station at a location outside the United States may be paid a civilian clothing allowance if the officer is required to wear civilian clothing all or a substantial portion of the time in the performance of the officer's official duties.

DOD Financial Management Regulation

Paragraph 290403 of the DOD Financial Management Regulation states that an officer is authorized a Civilian Clothing Allowance if directed by competent authority to dress in civilian clothing more than half the time when performing official duty and if his or her permanent duty station is outside the United States.

Coast Guard Pay Manual

Chapter 3.I.5. of the Pay Manual states that under pertinent law, officers assigned to a permanent duty station outside the United States may be paid a civilian clothing allowance if the officer is required to wear civilian clothing in the performance of the officer's official duties 50% or more of the time.

VIEWS OF THE COAST GUARD

On May 20, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief, as recommended by the Commander, Coast Guard Personnel Command (CGPC) in a memorandum attached to the views of the Coast Guard.

CGPC stated that while Alaska is classified outside of the continental United States, it is a state of the United States. Therefore the civilian clothing allowance is not authorized for officers assigned to duty in Alaska. CGPC further stated:

The applicant has not substantiated that the denial of his request was erroneous or unjust. The statute of 37 USC § 419 . . . clearly defines the requirement that the permanent duty station must be outside the United States.

The Coast Guard fairly and equitably applied the provision of policy and statute with regard to the Applicant's request. If the BCMR in fact deems merit to the applicant's case, such would represent a significant policy/legislative change requiring DHS Chief Counsel review.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 24, 2008, the Board received the applicant's reply to the views of the Coast Guard. The applicant stated the following:

The myriad different applications of the term OCONUS and overseas is perplexing. I recognize that for many different reasons it had different meanings, and it requires a substantial amount of work to apply it across the board. I am requesting that somehow a clear definition or application as to its use be maintained and that the Board use its equity powers to grant me the Civilian Clothing Monetary Allowance as it is the right thing to do. Certainly the spirit of the law was to provide for those servicemembers who are required to wear civilian clothes while stationed in expensive, high cost OCONUS locales. While the letter of the law states it is for those outside of the United States, the use of OCONUS was likely more appropriate as in many other laws, regulations and manuals Overseas and OCONUS are synonymous. The terms are often intertwined and interchangeable, and not often do you run across the actual phrase "outside of the United States."

I hope that a [Coast Guard] member is not denied the fullest possible benefits provided merely because it might require further "review" at the DHS Chief Counsel level. Additionally, the advisory review was one sentence and can be summed up by the one word "concur." It seems to me that such a significant issue in the wording of the regulations may merit study and correction and that could be accomplished if the BCMR grants relief.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. There is a controlling statutory definition of the term “United States” as used in 37 U.S.C. § 419. Section 101(1)(A) of title 37 provides that, for purposes of title 37 of the U.S. Code, “[t]he term ‘United States’, in a geographic sense, means the States and the District of Columbia.” Section 419 uses the term “United States” in a geographic sense and it is undisputed that Alaska is a State. Therefore, a duty station “outside the United States” by definition cannot include a duty station in Alaska. We note as well that Congress has provided a separate title 37 definition of the term ‘continental United States’ as meaning “the 48 contiguous States and the District of Columbia”. 37 U.S.C. § 101(1)(B). In addition, the DOD Financial Management Regulation defines the United States as “[t]he contiguous states, the District of Columbia, and the states of Alaska and Hawaii” and the Joint Federal Travel Regulations defines the United States as “the 50 states and the District of Columbia.” If Congress had intended civilian clothing allowances to be provided to officers stationed in Alaska, it would have used that term in section 419.

4. Moreover, injustice is defined as “treatment by military authorities that ‘shocks the sense of justice.’” *Sawyer v. United States*, 18 Cl. Ct. 860, 869 (Cl. Ct. 1989) (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (Ct. Cl. 1976), *cert denied*, 429 U.S. 854 (1976)). The applicant has presented no evidence that he was treated differently than any other officer who has been in the same or a similar situation. The denial of the applicant’s request for a civilian clothing allowance is not an injustice. Under the Statute and regulation, he was not entitled to it.

5. Accordingly, the applicant’s request should be denied.

ORDER

The application of XXXXXXXXXXXXXXXX, USCG, for correction of his military record is denied.



