

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2016-103**

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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on May 3, 2016, upon receipt of the applicant's completed application, and assigned it to staff attorney ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 27, 2017, 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, a ██████████/E-7) on active duty, asked to be reimbursed for travel during the period of June 25, 2015, through August 20, 2015. This travel includes a round-trip airplane ticket from ██████████, to ██████████, a one-way airplane ticket from ██████████, to ██████████, and costs for driving her vehicle, two dependents, and spouse from ██████████, to ██████████.

The applicant explained that in 2014 she received permanent change of station (PCS) orders to transfer to the USCGC ██████████ with a homeport of ██████████ in 2015. The applicant was required to fly to ██████████ ahead of her move so that the ship could return to ██████████ with her onboard. The previous ██████████ left the cutter to report to his next assignment before the cutter could return to ██████████. Because the cutter was required to have an ██████████ aboard while underway, the Coast Guard directed the applicant to fly to ██████████ to join the CGC ██████████ there so that it could return to ██████████. After arriving back in ██████████ aboard the ██████████ the applicant flew back to ██████████ and drove with her family from her prior unit in ██████████ to ██████████. The applicant claimed that, because of the way the PCS orders were processed, she only received compensation for one day of travel to fly to ██████████ and one day of travel to fly from ██████████ to ██████████. She argued that she is entitled to nine days of travel, per diem, and MALT (monetary allowance in lieu of transportation) for her vehicle for travel from ██████████, to ██████████.

In support of her application, the applicant provided two email chains as evidence of the Coast Guard's mistake in processing her travel entitlements. The first is an email to the applicant's Lieutenant Commander detailing the timeline and events. The email makes note of the following dates and events:

- November 7, 2014: The applicant received two sets of PCS orders to CGC [REDACTED]. The first set authorized one day of travel for the applicant to fly from her current base to [REDACTED]. The second set authorized the remainder of the travel, to include flying back from [REDACTED] MALT for her vehicle, household goods, 9 days of travel time, and per diem.<sup>1</sup>
- November 21, 2014: The applicant listed a report date of July 30, 2015, on her departing worksheet.
- January 26, 2015: The applicant receives an email from the CGC [REDACTED] previous [REDACTED] discussing relief dates so that he could move to his next unit assignment. In the email, he stated, "once the ship gets back [the applicant] would be given the opportunity to do [her] PCS move."
- March 12, 2015: CWO4 emails the applicant stating that the CGC [REDACTED] is "very flexible with providing time off upon [its] return to homeport on 22 July to finish up HHG [household goods] and/or other PCS move type things."
  - The email states that the CWO4 "assumed that CGC [REDACTED] was cutting TDY [temporary duty] orders for [the applicant] to meet cutter [in [REDACTED] with the understanding that upon [return, the applicant] would return to [REDACTED]" and move with her family at that time.
- The email then outlined emails that were sent discussing the applicant's travel entitlements between October 7, 2015, and November 17, 2015, including the following:
  - CDR emailed YNCM requesting a determination on the applicant's travel entitlements. YNCM responded and directed CGC [REDACTED] to pay for the applicant's roundtrip TDY from [REDACTED] to [REDACTED]. He also stated that her PCS orders should be changed to depart [REDACTED] on July 21, 2015, and report on August 19, 2015.
  - YNCM sent a clarification email stating that the original PCS orders were accurate, but that adjustments were required for the applicant's report date. However, he noted that this may be an issue to fix to accurately report the applicant aboard on August 19, 2015, because she had reported earlier in July in [REDACTED]. He stated that the applicant may have a debt, and that she would have the option of putting a waiver or remission package in with her chain of command.
  - YN1 emailed to state that making an amendment in the system to correct the orders would not correct any of the pay associated with the move.
  - CWO states that she was still in discussions as to whether or not this modification could be authorized. She said that from a policy standpoint, she did not see

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<sup>1</sup> Official distance was calculated between [REDACTED], and [REDACTED], to equate to 9 days of travel.

authority to cancel or modify the PCS orders and issue TDY orders. She noted that the policy “states that a PDS [permanent duty station] cannot be changed to a TDY station once travel to the PDS is complete (i.e. the traveler has reported for duty).” Additionally, travel orders may not be revoked or modified retroactively so as to increase or decrease the rights which have accrued and become fixed under the applicable status, regulations and orders for travel already performed.”

- A YNC from ██████ stated that a determination was made that there was no entitlement due to the applicant because her PCS orders had already been executed, meaning she had already arrived at her duty station prior to the move. The PCS orders could not be changed to TDY orders after the fact.
- The applicant’s superiors emailed inquiring as to whether the applicant had completed her PCS claim, and asked a YNC to assist her in completing the claim. The regulations do not allow a PCS order to be changed to a TDY order after the fact, and therefore the applicant was required to submit a PCS claim.
- The CWO again stated that the orders could not be changed retroactively, despite the fact that “unfortunately the TDY orders were issued erroneously.”

The second email chain that the applicant submitted in support of her applicant was largely summarized in the first email. In addition, the email chain included the following excerpts:

- From CWO4: “We are just trying to do the right for the member here. She was very flexible in getting from ██████ to ██████ to meet us on patrol. There were obviously some COMMs & procedure issues on our part and ██████ I suspect, but I hope this can be resolved favorably for the member.”
- From CWO2: “I see there may have been a misunderstanding and incorrect information/counseling was provided however we are bound by policy and there isn’t a valid reason to issue TDY orders other than for personal convenience. We understand that some concern is that ██████ has 2 vehicles in ██████ and her dependents are/were in the vicinity of the old PDS. Dependent travel is still authorized. If 2 POCs are used by the dependent to travel to Mbr’s new PDS they are authorized reimbursement for the use of 2 POCs only if ██████ traveled by other than POC when she traveled to the PCS travel location above. If ██████ travels back to escort dependents to the new PDS it would be at own expense.
- From ██████: “So it wasn’t really personal convenience, it was needs of the service. All I think we are asking for is to have PCS orders cancelled and re-issued with different dates to allow for the PCS move to give us ██████ the privilege of paying for her TAD [temporary] travel to meet the ship to help us accomplish our mission. Had comms worked out better on the front end of this, that is exactly what we would have done the first time.”

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<sup>2</sup> At some point between November 2014, when she received orders that she would be reporting to ██████ and the move, the applicant purchased a second vehicle. This car was also moved across the country with her other vehicle and her family. However, the applicant is not requesting reimbursement for this vehicle.

- From CDR: The above “comments are exactly on track. We needed [the applicant] to report halfway (sic) around the world as without an [REDACTED] we are not permitted to sail. I echo his concerns that we are shorting [REDACTED] and all it takes is a canx and reissue of orders.”
- From YNCM: “CGC [REDACTED] will pay for [the applicant’s] TDY round trip from [REDACTED] to [REDACTED] to meet the cutter due to personnel shortages. This occurred from 25 June 2015 through 20 July 2015. Her PCS orders are from [REDACTED] to [REDACTED] with 2 POV’s departing 21 July 2015 and reporting 19 August 2015.”

### VIEWS OF THE COAST GUARD

On October 3, 2016, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board grant the requested relief.

The JAG adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC). PSC noted that the rules provide that a TDY location may be changed to PCS, but a PCS cannot be changed to a TDY once the member has reported for duty. Additionally, travel orders may not be revoked or modified retroactively so as to increase or decrease the rights under the applicable statute, regulations, and orders for travel already performed.<sup>3</sup> PSC noted that the applicant was issued PCS orders for the period of June 7, 2015, to June 30, 2015, which included travel entitlements for her family, per diem, and transfer of her vehicle and household goods. Due to a personnel shortage on the CGC [REDACTED] the applicant reported on June 30, 2015, while her family remained in [REDACTED]. This change was due to the fact that an [REDACTED] technician is required to be on a cutter for it to deploy. The applicant was issued orders to meet the cutter in [REDACTED] to fulfill this need, with the understanding that upon returning to the homeport in [REDACTED] [REDACTED] the applicant would then fly back [REDACTED] and travel with her family from [REDACTED] to [REDACTED]. However, because permanent PCS orders were issued to get the applicant to [REDACTED] instead of temporary TDY orders, the applicant was not legally entitled to travel benefits once she reported to the CGC [REDACTED]. PSC estimated that the applicant lost travel entitlements totaling \$2,500.

PSC recommended that relief be granted in the interest of justice.. PSC noted that “[i]njustice’, when not also ‘error’, is treatment by the military authorities, that shocks the sense of justice, but is not technically illegal.” *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976). Due to the financial burden on the applicant and the fact that the Coast Guard admitted its mistake, PSC recommended that relief be granted to provide entitlements associated with the transfer of her family to [REDACTED]. PSC further noted that this recommendation is based on the facts of this case only, and does not indicate a shift in policy.

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<sup>3</sup> Article 2205 (A)(2).

## APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 4, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within 30 days. On October 24, 2016, the applicant responded that she concurred with the Coast Guard's recommendation.

### 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 submissions, and applicable law:

1. The Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant alleged that she was unjustly denied travel entitlements for her and her family's move from [REDACTED], to [REDACTED]. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in her record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>4</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>5</sup>

3. According to Article 2205 (A)(1), a travel order may be retroactively corrected to show the original intent. However, a travel order may not be revoked or modified retroactively to create/deny/change an allowance. Furthermore, according to Article 2205 (A)(2), a TDY location may be changed to a permanent duty station (PDS), but a PDS may not be changed to a TDY location once the travel to the PDS is complete. The applicant received two PCS travel orders. One with one day of travel permitted to fly to [REDACTED], and one authorizing the remaining travel entitlements. Both listed an estimated report date of June 30, 2015. The applicant flew to [REDACTED] on June, 26, 2015, therefore arriving at her PDS and completing her travel. Accordingly, the Board agrees with PSC [REDACTED] under applicable [REDACTED] the Coast Guard may not correct the applicant's travel orders so that she will be properly reimbursed.

4. The applicant has shown by a preponderance of the evidence [REDACTED] at her PSC travel order for one day of travel from [REDACTED], to [REDACTED] was issued in error. As evidenced from the email chains provided in the application, the Commanding Officers "assumed that CGC [REDACTED] was cutting TDY orders for [the applicant] to meet cutter with the understanding that upon [return, the applicant] would return to [REDACTED]" and move with her family at that time. The one-day travel order should have been a TDY order, and the 9-day travel order should have been given travel dates of July 20, 2015, to July 30, 2015 and an estimated report date of August 19, 2015.

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<sup>4</sup> 33 C.F.R. § 52.24(b).

[REDACTED] *United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

This is further evidenced by the fact that, after the move, the applicant's superiors emailed back and forth for over a month trying to have the mistake resolved so that the applicant could receive reimbursements for her travel entitlements. It is clear that the applicant did not fly out early for personal convenience. Instead, she followed the orders she was given and reported to [REDACTED] ahead of her move so that she could fly to [REDACTED] and the cutter could return to its homeport. Therefore, the travel reports contained errors and it would be an injustice to the applicant to require that she pay for her family's cross-country travel.

5. The Board agrees with the Coast Guard that denying the applicant her travel benefits for moving her family to [REDACTED] constitutes an injustice. Although the Coast Guard may not correct the applicant's travel orders, the Board has this authority pursuant to 10 U.S.C. § 1552. Accordingly, relief should be granted by correcting the applicant's record to show that she received TDY orders for her trip from [REDACTED], to [REDACTED] where she met the CGC [REDACTED] and for her return trip from [REDACTED], to [REDACTED] and to show that she received PCS orders for moving her household and traveling by her privately owned vehicle with her family from [REDACTED] to [REDACTED] so that she will be properly reimbursed for her travel, including her return flight from [REDACTED], MALT for her vehicle, household goods moving expenses, travel time, and per diem.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

**ORDER**

The application of [REDACTED], USCG, for correction of her military record is granted as follows:

The Coast Guard shall correct her record to show that in the summer of 2015, she received TDY orders for her trip from [REDACTED] to [REDACTED], and from [REDACTED] to [REDACTED] where she met the CGC [REDACTED] and for her return trip from [REDACTED] to [REDACTED] and to show that she then received PCS orders for moving her household and traveling by privately owned vehicle with her family from [REDACTED] to [REDACTED] so that she shall be appropriately reimbursed for her travel, including her return flight from [REDACTED] to [REDACTED] MALT for her vehicle, household goods, travel time, and per diem. The Coast Guard shall pay her any amount due as a result of these corrections.

January 27, 2017

