DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-043

[redacted]
LCDR (O-4)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on April 27, 2022, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated May 10, 2024, 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 Lieutenant Commander (LCDR/O-4) in the Coast Guard Reserve on Extended Active Duty (EAD), asked the Board to correct his record by paying him the Outside the Continental United States (OCONUS) Cost of Living Allowance (COLA) that he was entitled to after it was incorrectly stopped. The applicant alleged that his Coast Guard district incorrectly determined that he was not entitled to COLA even though its position was not supported by policy.

The applicant explained that on May 29, 2020, he was approved for an early return of dependents from State 1 (OCONUS) to State 2 (CONUS) due to a lack of required medical services for his dependents in State 1. The applicant further explained that on June 10, 2020, his wife traveled to State 2 to secure a job and a house. On June 28, 2020, the applicant escorted his children to the new residence in State 2, but he was assigned to shared-use barracks at his local base in State 1. With the early return of his dependents to State 2, he received a reduced housing allowance based on his family's State 2 address. The applicant stated that he moved his belongings into the shared barracks and maintained a vehicle in State 1 until he received his Permanent Change of Station (PCS) orders on July 7, 2021. The applicant explained that the original plan was for him to split time between State 1 and State 2, but due to COVID restrictions, his home base was shut down and everyone was permitted to telecommute. In addition, the applicant stated that State 1's travel restrictions were severely restricted, so he was permitted to telecommute from his family residence in State 2 rather than from the barracks in State 1. According to the applicant, this was

done with the understanding that he could be recalled to State 1 and if that happened, he would need to travel back to State 1 at his own expense. The applicant claimed that he was in full and open communication with his local administrative staff throughout this timeframe and was advised that with the early return he would only be able to receive State 1's COLA entitlement without any dependents.

The applicant alleged that on November 12, 2020, he was contacted by his administrative staff and told that if he remained out of state for longer than 30 days, the COLA payments would stop. The applicant stated that he responded by informing the administrative staff that it was his understanding that COLA was based on assignment to the Permanent Duty Station (PDS) and not on the actual location of the member. He then requested any policy guidance that stated differently. He was then allegedly told that his concerns would be directed to his assigned District for determination.

The applicant stated that on March 23, 2021, he was informed that his District had determined that he was not entitled to COLA due to his teleworking outside of the state and that his COLA payments dating back to July 28, 2021 (30 days after his initial departure), were required to be paid back. The applicant claimed that he requested several times for the actual policy that supported the District's finding but was denied the supporting documentation. The applicant alleged that on March 25, 2021, the applicant's District Commander ordered the applicant's COLA be stopped starting on April 12, 2021, and that he repay $4,601.35 for overpayments. The applicant argued that in applying the 30 day rule, his commander seemed to be applying the rule on military leave of more than 30 days. However, he was not on leave. The applicant claimed that policy states that COLA is paid until a member departs from his PDS due to PCS orders, which in his case occurred on July 7, 2021. The applicant further claimed that the Districts Commander's determination was contrary to how COLA is treated in the Continental United States, in that it does not matter where you live, only where your PDS is located. The applicant explained that all travel was at his personal expense, while he was still required to maintain a residence in State 1.

SUMMARY OF THE RECORD

The applicant enlisted in the Regular Coast Guard on October 24, 2000. He trained as a Yeoman and advanced to the rank of E-6 after which he transferred to the Coast Guard Reserve where he was commissioned on July 30, 2010.

On June 4, 2017, the applicant was stationed at a unit that qualified for OCONUS COLA payments for himself and his dependents. The applicant's Military Information (MI) Page shows that the applicant remained assigned to this unit until July 26, 2021.[1]

On May 29, 2020, the applicant's command approved an early return of his dependents from State 1 (OCONUS) to State 2 (CONUS) because of a lack of medical services for his dependents.

[1] The dates provided herein were provided by the applicant, however, neither the applicant nor the Coast Guard provided any documentation to support the timeline of events. Accordingly, whatever dates provided are assumed to be correct based on the applicant's claims.

On June 28, 2020, the applicant escorted his children (his wife had already moved on June 10, 2020) from State 1 to State 2. Authorized to telecommute because of the pandemic, the applicant began telecommuting from State 2 although he was assigned a room in the barracks at the Base in State 1, where he was still assigned.

From July 30, 2020, through March 31, 2021, the applicant received OCONUS COLA for State 1 despite having continuously resided in State 2, at a rate of $19.11 per day, resulting in an overpayment of $4,601.35.

On April 19, 2021, the applicant was notified by his command of this overpayment and the applicant's requirement to repay this debt. The applicant was informed that under the statutes, the maximum monthly amount collected cannot exceed 15% of disposable pay and if repaid by installment, 31 U.S.C. § 3717 requires interest and administrative charges assessed on all debts unless waived, which the Coast Guard waived. Finally, the applicant was informed that he had the right to inspect the government's records and to request a waiver or remission of the debt pursuant to Articles 11.F and 11.G of the Coast Guard's Pay Manual, COMDTINST M7229.29, or Article 9 of the Personnel and Pay Procedures Manual, PPCINST M1000.2.

VIEWS OF THE COAST GUARD

On November 15, 2022, a Judge Advocate (JAG) for the Coast Guard submitted a split decision in this case. The JAG's advisory opinion recommended that the Board administratively close the case because the applicant failed to exhaust all of his administrative remedies. The Coast Guard's Personnel Service Center (PSC) recommended that the Board deny relief in this case.

Regarding the applicant's claims that because he maintained a barracks room and privately owned vehicle while teleworking across the country, he incurred higher living expenses, PSC argued that in accordance with Department of Defense (DoD) 7000.14-R Financial Management Regulation Volume 7A, Chapter 68, the purpose of OCONUS (Outside the Continental United States) COLA is a non-taxable allowance that offsets the higher prices of goods and services, *excluding housing*, in foreign countries, U.S. territories, Alaska, and Hawaii. PSC explained the COLA equalizes purchasing power so that a *Service member can purchase the same level of goods and service OCONUS* as he or she could if stationed inside the Continental United States (CONUS). PSC stated, therefore, OCONUS COLA is meant to offset the higher costs of goods and services purchased while OCONUS. PSC argued that because the applicant and all of his dependents were residing in CONUS, he had no higher costs in which he needed to offset, as all the goods and services he purchased were within CONUS.

PSC further argued that the applicant's claims that the Coast Guard had no authority to stop his OCONUS COLA until after he had permanently changed stations, are unsupported by fact. According to PSC, pursuant to Chapter 68 3.4.3 of DoD 7000.14-R Financial Management Regulation Volume 7A, when a member departs on leave with all dependents from the OCONUS PDS for more than 30 days, OCONUS COLA is stopped until their return. PSC stated that it is clear the intent of OCONUS COLA is for purchases made while physically OCONUS, as all members on leave for greater than 30 days have OCONUS COLA stopped without having completed a permanent change of station.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 23, 2022, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

Federal Regulations

Title 37 U.S.C § 405, the governing authority for per diem allowances for members while on duty outside the continental United States, provides the following guidance pertinent to the applicant's claims:

§ 405. Travel and transportation allowances: per diem while on duty outside the continental United States.

(a) Per diem authorized. Without regard to the monetary limitation of this title, the Secretary concerned may pay a per diem to a member of the uniformed services who is on duty outside of the continental United States, whether or not the member is in a travel status. The Secretary may pay the per diem in advance of the accrual of the per diem.

(b) Determination of per diem. In determining the per diem to be paid under this section, the Secretary concerned shall consider all elements of the cost of living to members of the uniformed services under the Secretary's jurisdiction and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses. However, dependents may not be considered in determining the per diem allowance for a member in a travel status.

(c) Treatment of housing cost and allowance. Housing cost and allowance may be disregarded in prescribing a station cost of living allowance under this section.

Military Instructions

Department of Defense (DoD) 7000.14R, Financial Management Regulation, Volume 7A, Chapters 67 provides the following guidance on OCONUS COLA for service members:

Article 2.6. Primary Dependent. A primary dependent is either the Service member's spouse or, for an unmarried Service member, a dependent as defined in Volume 7A…

. . .

Article 2.7. Unaccompanied Status. A Service member is considered to be in an unaccompanied status during any portion of an assignment to a permanent duty station (PDS) OCONUS while a dependent resides in, or returns to, a location in the CONUS to establish a permanent residence.

. . .

Article 3.1.1. Rates Based Upon Location. ***CONUS COLA rates are based on*** the Service member's PDS, his or her home port, a designated place, or ***the primary dependent's location*** when authorized or approved through the Secretarial Process or authorized in this chapter. The CONUS COLA rate paid to the Service member does not change when the Service member is on leave.

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3.1.1.1.2. When a Service member is stationed OCONUS, but the primary dependent is in the CONUS, ***see paragraph 4.7*** for exceptions.

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3.3.2. Dependent Leaves OCONUS Residence. Beginning the day the dependent permanently leaves the OCONUS residence, the Service member may be paid CONUS COLA at the with-dependent rate for the PDS in the CONUS.

. . .

4.4.2. Applicable Rates. If a dependent relocates, the rate for the dependent's location starts on the date the primary dependent arrives at the new residence. If the dependent does not relocate, CONUS COLA is based on the primary dependent's location and continues until the primary dependent departs the authorized or approved location.

. . .

4.7. Service Member Serving in an Unaccompanied Status OCONUS. If a Service member serving in an unaccompanied status OCONUS has dependents in multiple locations, CONUS COLA authority is based on the primary dependent's residence.

. . .

4.7.1.3. The primary dependent establishes a residence in the CONUS due to the Service member's transfer from an accompanied status at a PDS OCONUS to an unaccompanied status.

Department of Defense (DoD) 7000.14R, Financial Management Regulation, Volume 7A, Chapters 67 and 68 provide the following guidance on OCONUS COLA for service members:

Article 1. Purpose. The OCONUS COLA is a non-taxable allowance that offsets the higher prices of goods and services, excluding housing, in foreign countries, U.S. territories, Alaska, and Hawaii. OCONUS COLA equalizes purchasing power so that a Service member can purchase the same level of goods and services OCONUS as he or she could if stationed inside the continental United States (CONUS). In addition to OCONUS COLA, station allowances in Chapter 68 include the TLA. The TLA partially offsets the cost of lodging and meals and incidental expenses incurred while occupying temporary lodgings OCONUS.

Article 3. **OCONUS COLA**. An OCONUS COLA is authorized for a Service member assigned to a PDS OCONUS to help maintain the equivalent purchasing power of the discretionary portion of spendable income as the Service member's counterparts based in the CONUS. This allowance compensates for the higher cost of goods and services OCONUS. To calculate the OCONUS COLA, the goods and services purchased in an area OCONUS, excluding housing, are compared to the cost of goods and services purchased in the CONUS. See paragraph 2.3 for special circumstances affecting OCONUS COLA.

. . .

FINDINGS AND CONCLUSIONS

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33

C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application was timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. The applicant alleged that the Coast Guard committed an error and injustice when it charged him for OCONUS COLA payments he received for the period of July 30, 2020, through March 31, 2021, while he teleworked in State 2, a state not within a OCONUS COLA region, in order to reside with his wife and children. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.[2] 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."[3]

4. **Error**. The applicant alleged that he was legally entitled to the OCONUS COLA payments for the period of July 2020 through March 2021 because he was still permanently stationed in State 1 and did not receive PCS orders to another state until July 7, 2021. According to the applicant, he was entitled to the OCONUS COLA payments because he never technically left State 1, but only resided with his family in State 2 to telework during the pandemic. The applicant claimed that it was his understanding that because he could be recalled to State 1 at any time, he was still entitled to the OCONUS COLA payments. Article 2.7. of DoD 7000.14-R, Volume 7A, Chapter 67, states "A Service member is considered to be in an unaccompanied status during any portion of an assignment to a permanent duty station (PDS) OCONUS while a dependent resides in, or returns to, a location in the CONUS to establish a permanent residence." Article 4.4.2. of the same regulation states, **"**If a dependent relocates, the rate for the dependent's location starts on the date the primary dependent arrives at the new residence." Finally, pursuant to Article 2.6 the applicant's primary dependent was his spouse.

The Board's review of the record shows that on May 29, 2020, the applicant was approved for an early return of dependents from State 1 (OCONUS) to State 2 (CONUS) due to a lack of required medical services for his dependents in State 1. The early return of his dependents from OCONUS to CONUS resulted in the applicant entering into an "unaccompanied" status as defined by Article 2.7 of DoD 7000.14-14, Volume 7A, Chapter 67. The Board's review of the record further shows that on June 10, 2020, the applicant's wife—primary dependent—departed State 1 and moved to State 2. Pursuant to Article 4.4.2., once the applicant's spouse established a permanent residence in the CONUS on June 10, 2020, outside of his OCONUS Permanent Duty Station, the rate for his COLA changed, and despite his contentions, he was no longer entitled to his OCONUS COLA payments. The applicant's claim that he was entitled to the payments because he could be recalled to State 1 at any time is unpersuasive because it was not the applicant's presence in State 2 that rendered him ineligible for the OCONUS COLA payments he received,

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[2] 33 C.F.R. § 52.24(b).

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

but his dependents' permanent change of residence to State 2. Accordingly, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard committed an error by recouping the OCONUS COLA payments he received from July 30, 2020, through March 31, 2021, while he and his family resided in CONUS.

5. **Injustice**. Article 1 of DoD 7000.14-R, Volume 7A, Chapter 68, states that the purpose of the OCONUS COLA is to provide a non-taxable allowance to service members that offsets the higher prices of goods and services, excluding housing, in foreign countries, U.S. territories, Alaska and Hawaii. It is intended to equalize the purchasing power so that the service member can purchase the same level of goods and services OCONUS as he or she could if stationed inside the continental United States. Here, the applicant has admitted that his wife moved to State 2 on June 10, 2020, with his children following soon after on June 28, 2020, which is not included in the OCONUS COLA allowance regions. Accordingly, the applicant's OCONUS COLA payments were unnecessary since he had no need to purchase any goods and/or services within the OCONUS region. The applicant failed to submit any evidence to show that despite his dependents' move to State 2 he was still subjected to the higher price of goods and services in State 1. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard committed an injustice when it determined that he was required to reimburse the Coast Guard for payments he received for OCONUS COLA while his dependents resided in State 2.

6. For the reasons outlined above, the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.[4] He has not proven, by a preponderance of the evidence, that the Coast Guard erroneously charged him for $4,601.35 in OCONUS COLA payments. Accordingly, the applicant's request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

[4] *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

The application of LCDR [redacted] USCG Reserve, for correction of his military record is denied.

May 10, 2024

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