

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 77-97

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on February 27, 1997, upon the Board's receipt of the applicant's application for correction.<sup>1</sup>

The final decision, dated February 13, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a lieutenant (LT) at the time he filed his application, asked the Board to correct his record to show that he was entitled to VHA (variable housing allowance) at the rate designated for the ██████████ housing area.

**EXCERPTS FROM THE RECORD AND SUBMISSIONS**

The applicant stated that on July 22, 1996, he reported on PCS (permanent change of station) orders to a unit in ██████████. He purchased a house based on the ██████████ permanent duty station (PDS) VHA rate. The monthly payments were approximately \$232.00. The house purchased by the applicant was not physically located in the ██████████ housing area.

The applicant stated that he accepted orders to a new duty station, the Personnel Support Training Center (PSU TRACEN), ██████████ located in ██████████. In a letter dated August 15, 1996, the Commandant recommended the applicant to fill the lieutenant's position at the ██████████ PSU TRACEN because the applicant's background and experience were critical to ensuring the success of the new PSU TRACEN.

The applicant stated that his VHA allowance was immediately reduced to the ██████████ VHA rate of \$31.00 per month, when he reported for duty on September 20, 1996.

<sup>1</sup> A final decision is due in this case on February 22, 1998.

The applicant stated that his new [REDACTED] duty station is closer to his home than was his former [REDACTED] duty station. According to the applicant, although his PCS orders authorized the movement of his household goods, his family still lives in the residence he purchased upon reporting to his former [REDACTED] duty station.

On October 15, 1996, the applicant asked the Commandant to reinstate his VHA at the [REDACTED] military housing area rate. In that letter, he cited Chapter 8, Section U8005B.2, of the Joint Federal Travel Regulations (JFTR) as the basis of his request for reinstating the higher VHA rate. The applicant highlighted the following portions of that regulation:

a. General. A member assigned to a PDS in the United States is entitled to VHA at the rate applicable to the location where the dependents maintain a permanent residence in the United States if the Secretary concerned, or the Secretary's designated representative, issues a determination it is necessary for the dependents to maintain a permanent residence in a military housing area other than the one in which PDS is located. A determination may be issued when the member is:

\* \* \*

(5) disadvantaged as a result of reassignment for reasons of improving mission capability and readiness of the unit, in receipt of PCS orders between duty stations located in the same proximity, and disallowed movement of HHG . . . . (The Secretary concerned or the Secretary's designated representative must issue a determination that a decision to implement this policy is in the interest of correcting an inequity incurred due to movement of the individual for purposes of improving mission capability and unit readiness).

On November 20, 1996, the Commandant disapproved the applicant's request for the higher VHA rate. The Commandant stated that the JFTR specifies that VHA rates will be based on the location of the member's permanent duty station. The Commandant stated in cases where a member is permanently reassigned and disallowed local movement of household goods, VHA can be authorized at the rate where the dependents reside. The Commandant told the applicant that the VHA rate for his new PDS was higher than the rate where his family resided. The Commandant stated that there was no provision in law or regulation that would allow the Coast Guard to authorize payment of VHA for a location other than where a member's family resides or the member's current PDS.

### Views of the Coast Guard

On April 30, 1997, the Coast Guard recommended that the applicant's request be denied for lack of proof.

The Coast Guard stated that to award the applicant VHA based on his former PDS would be a violation of the JFTR. This regulation, according to the Coast Guard mandates that VHA be based on the location where the servicemember's dependents permanently reside or the servicemember's current PDS.

The Coast Guard stated that under the JFTR, the applicant's VHA rate would either be that based on his new PDS [REDACTED] or that where his dependents reside, neither of which is the [REDACTED] area (the rate the applicant wants). The Service argued that even if another interpretation could be given to this provision of the JFTR, the Coast Guard's interpretation should be given deference. See the decision of the Deputy General Counsel, CGBCMR Docket No. 167-94 at 2, citing Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-4 (1984) (Deference must be paid to implementing agency's rules and interpretations).

The Coast Guard commented that while one may sympathize with the plight of a member who receives PCS orders to a lower cost area shortly after buying a house, the Coast Guard cannot circumvent the JFTR.

### Applicant's Rebuttal to the Views of the Coast Guard

The applicant argued that the Coast Guard committed an error by failing to advise him that his new PCS orders would entitle him a lesser amount of VHA. He stated that he did not know that his new PDS was not in the [REDACTED] area until he reported to his new duty station.

The applicant stated that he was denied a Secretarial review of his situation as required by the JFTR. He stated that his request to the Commandant for VHA based on the [REDACTED] rate was decided by a division chief on the Commandant's staff. He asked that his request be forwarded to the Secretary of Transportation for review.

The applicant argued that his request is not unusual and that there is precedent in the Coast Guard for granting similar requests. He does not, however, know how to obtain the evidence needed to prove this contention.

The applicant concluded his comments by stating as follows:

- \* My record reflects a commitment to professionalism and duty. I am seeking restoration of approximately \$200.00 per month in VHA abruptly taken away from my family and me simply because I now drive 40 miles west to work rather than 40 miles east. I go where the Coast Guard sends me . . . this situation is unfair. The Coast Guard's

refusal to grant relief is procedurally flawed, is an injustice to a loyal officer, and is not within the spirit of the JFTR or Commandant "work-life" initiatives.

### FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of this matter pursuant to section 1552(b) of title 10, United States Code. The application was timely.

2. The applicant challenged the authority of the Commandant to act for the Secretary on his request for an exception to the JFTR that would allow him to receive VHA at a rate based on a location other than where his family resides or his current PDS.

3. This challenge is without merit. The Secretary has delegated his authority over Coast Guard personnel and his regulatory authority to the Commandant. 33 CFR § 1.01-5 and 49 CFR 1.45 & 1.46. The Commandant properly exercised his authority, as delegated by the Secretary of Transportation, in acting on the applicant's request for an exception to the VHA rules as outlined in the JFTR.

4. The applicant has not demonstrated an error or injustice in his military record. The JFTR states the manner in which VHA rates are to be applied. This regulation states that VHA rates are either based on the location of the servicemember's permanent duty station or the servicemember's family's permanent residence, as permitted by the Secretary (this authority has been delegated to the Commandant). See sections U8000, U8005A and U8005B.2, JFTR. The VHA rate that the applicant wants is based on neither of these locations. In cases of local PCS transfers, that do not authorize the shipment of household goods, the Commandant can approve VHA based on the location of the family's residence. In this case, the amount that the applicant is currently receiving is higher than that he would receive based on the location of his family's residence. Moreover, the applicant's PCS orders contained authorization for the shipment of household goods. He could move his family to his current PDS, if he wanted to do so. The Coast Guard acted in accordance with the regulation in this case.

5. The applicant alleged that he was not notified of the change in his VHA payment until he reported to his current duty station. However, he has failed to show whether notice, in this case, would have made a difference. There is no evidence that if he had known of the change in VHA payments that he could have refused orders. The needs of the Service dictate assignments. Thus, if the Coast Guard determined that the applicant was needed in the [REDACTED] assignment, he

would have been ordered to fill the job with or without his consent. In either situation the application would be the same.

6. The applicant has failed to support his claim that other individuals in the Coast Guard have been permitted to receive VHA rates based on the rates of military housing rates other than where their families reside or their current PDSs. The applicant has not submitted any proof, except for the applicant's own statement, that he is being treated differently than other members of the Coast Guard.

7. Accordingly, the applicant's request should be denied.

**ORDER**

The application of  
correction of his military record is denied.

USCG, for

