

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-087

██████████ ██████████ ██████████

SNSK

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 June 17, 2021, 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 July 28, 2023, 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 former Seaman Storekeeper (SNSK/E-3), who received an Under Other Than Honorable Conditions¹ discharge on July 31, 2019, pursuant to an administrative discharge for misconduct, asked the Board to correct his record by reducing the amount of debt he owes for overpayments of Basic Allowance for Housing (BAH) that he received for the period of January 14, 2015, through January 25, 2018.

The applicant alleged that the Coast Guard has erroneously charged him for BAH overpayments for the period of January 14, 2015, through July 1, 2016. He argued that under 37 U.S.C. § 401 he was entitled to receive a CONUS (Continental U.S.) Cost-of-Living Allowance (COLA) at the rate based on whatever location his dependent was living in. According to the applicant, from January 14, 2015, through July 1, 2016, his wife continued to live in the higher BAH (BAH1) area where they had previously lived and he was therefore entitled to the higher BAH and COLA rates authorized for that area. Accordingly, the applicant claimed that his overpayment of BAH1 actually began to accrue on July 1, 2016, when his wife joined him at his

¹ There are five types of discharge: three administrative and two punitive. The three administrative discharges are honorable, general under honorable conditions, and under other than honorable (OTH) conditions. The two punitive discharges may be awarded only as part of the sentence of a conviction by a special or general court-martial. A special court-martial may award a bad conduct discharge (BCD), and a general court-martial may award a BCD or a dishonorable discharge.

new unit located in another state with a lower BAH rate (BAH2), contrary to the government's claim in its collection letter dated February 3, 2021.²

The applicant explained that in January 2015, he was transferred from a shore unit in a BAH1 area to a large cutter homeported in a BAH2 area. The applicant further explained that since his wife was still employed in the BAH1 area and because he anticipated that he would be deployed for an extended period of time, his wife remained in the BAH1 area while he moved to the BAH2 area. The applicant stated that upon reporting to the BAH2 area, he submitted a BAH Rate Protection for Previous Duty Station memorandum, wherein he requested protection for his BAH1 rate while his wife remained living and working in the BAH1 area.

According to the applicant, his wife joined him in the BAH2 area in July 2016, but he failed to immediately submit the required documentation to terminate the BAH and COLA rates for BAH1. The applicant stated that he continued to receive the BAH and COLA for the BAH1 area for about 19 months, from July 1, 2016, through January 25, 2018, and this overpayment was revealed during an investigation into his misconduct. The applicant alleged that in preparation for his defense, his defense team discovered evidence that he was in fact legally entitled to receive BAH1 for the period of January 2015 through July 2016. The applicant further alleged that this evidence was presented to the government and the General Court-Martial Convening Authority, who then entered into a Stipulation of Fact and a Pretrial Agreement with him, wherein he was found guilty of the wrongful receipt of BAH and COLA for the period of July 1, 2016, through January 25, 2018.

The applicant alleged that between April 15, 2018, and February 28, 2019, he repaid approximately \$4,500 toward the debt through payroll deductions. The applicant claimed that in preparation for his pending discharge, he attempted to continue making payments toward the \$36,302 he owed. The applicant further claimed that he and his wife emailed several individuals to attempt to set up a payment plan but did not receive any responses about how they could begin to repay the debt. The applicant explained that on July 22, 2019, he was discharged from the Coast Guard, and when he filled out his DD-214, he included his new home mailing address, which was near the BAH2 area. However, the applicant alleged, despite providing the Coast Guard with his new mailing address, on September 19, 2019, the Treasury Department mailed a letter of indebtedness to the wrong address. According to the applicant, the Treasury Department mailed this letter to the home address he had provided to the Coast Guard when he first enlisted seventeen years earlier. The applicant stated that no one affiliated with him resides at that address anymore, and as a result he never received the Treasury Department's letters. The applicant alleged that on October 21, 2019, a second letter was mailed to the same address, which again resulted in him not receiving the letter. The applicant contended that because he never received the official notices,

² The BAH rate difference for BAH1 and BAH2 for the applicable years are as follows:

	BAH1	BAH2	COLA1	COLA2
2015	\$3,840	\$1,959	\$102	\$0
2016	\$4,116	\$2,238	\$140	\$0
2017	\$4,197	\$2,559	\$216	\$0
2018	\$4,329	\$2,559	\$180	\$0

he could not respond. The applicant claimed that had he received the notices, he and his wife would have begun paying the debt, while trying to correct the amount owed.

The applicant explained that he wants to repay the BAH1 he erroneously collected, which totals \$36,302, not the \$71,242.54 alleged by the debt collectors.

To support his application, the applicant submitted the following documents:

- An October 22, 2020, collection letter from a collection company assigned to collect the applicant's debt by the Treasury Department. The collection letter outlined the following balances:

Principal Balance:	\$66,871.80
Interest:	\$644.81
Penalty:	\$2,858.08
Fees:	\$21,159.20
Current Debt Balance:	\$91,533.89

- A June 10 (year unknown) declaration from the applicant's wife wherein she declared under penalty of perjury that from September 2011 and June 30, 2016, she worked as a Project Coordinator for a Cancer Prevention Institute in a city located about 39 miles from their home in the BAH1 area. The applicant's wife stated that this clinic closed in 2018 due to a lack of funding. According to the applicant's wife, after her husband was transferred to the BAH2 area, she remained in the BAH1 area because the Cancer Prevention Institute still had a year and a half of funding left, and had she left, they would have been short staffed. In addition, she stated that she knew her husband was going to be deployed most of the time, so there was no point in her immediately moving with him to the BAH2 area. The applicant's wife claimed that she remained in the BAH1 area until the end of June 2016, except to occasionally travel to the BAH2 area to visit with the applicant when he was not deployed. The applicant's wife stated that she submitted evidence to defense counsel proving that she remained behind in the BAH1 area, and upon submitting the evidence to the Court-Martial Convening Authority and prosecutors, both agreed to "delete" that portion of the debt from January 2015 through June 2016, thereby reducing the amount of their BAH overpayment to \$36,302. Based upon these changes, the applicant's wife alleged, her husband agreed to sign the plea deal, wherein he pled guilty to wrongfully obtaining BAH in the amount of \$36,302. Between April 15, 2018, and February 28, 2019, the applicant had paid approximately \$4,500 toward the debt owed. After this, the applicant's wife stated. she and her husband began emailing the USCG to figure out a way to continue paying the debt and to make sure the total debt amount was in fact \$36,302. Like the applicant, the wife stated that several of the letters that were initially sent to the applicant were sent to the wrong address, which caused the matter to be referred to a collection agency.

With her sworn statement, the applicant's wife also submitted a sworn statement from the coworker she lived with, wherein the coworker stated under oath that the applicant's wife resided with her from January 2015 through June 2016. The address provided by the coworker for their

residence from January 2015 through June 2016 was located outside of BAH1, in a different Military Housing Area (MHA).

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 19, 2004. He trained as a Storekeeper and advanced to the rank of E-5.

From July 14, 2011, through January 1, 2015, the applicant was stationed at a unit in a BAH1, area with a high cost of living.

On October 28, 2014, the applicant received transfer orders to report for duty aboard a cutter homeported in BAH2 as of January 14, 2015.

On January 8, 2015, the applicant applied for BAH and COLA rate protection in order for his wife to remain behind in BAH1.

On January 14, 2015, the applicant's request for BAH rate protection was approved. The contents of the approval are as follows:

1. Your request in reference (a) is approved to receive BAH and CONUS COLA with dependents based on the rate for your previous duty station, CG AIRSTA [BAH1 area], due to receipt of a PCS order to CGC [redacted cutter in BAH2 area]. The designated place of your dependents is [applicant's BAH1 residential address]. By law CONUS COLA will be based on the location of your dependents, who reside in the [BAH1] Military Housing Area (MHA).
2. Payment at the applicable rates are authorized until you execute a Permanent Change of Station, retire, are discharged, divorce (if currently married), or you experience a dependency status change. ***If your dependents relocate their residence out of the approved MHA boundary area, submit a CG-2025A to this office immediately.*** Additional information regarding BAH rate protection can be found in reference (b), section 3.C. A copy of this memorandum was sent to your Servicing Personnel Office (SPO) as authority for the payment of BAH and station allowances as indicated above and for filing in part 3 .of your SPO Personnel Data Record (PDR). Maintain this memo in your SPO PDR until one of the above action provisions is executed. [Emphasis added.]

On January 25, 2018, the applicant's BAH rate protection was cancelled after a 2017 investigation revealed that the applicant improperly received BAH and COLA payments for BAH1 for years 2015, 2016, and 2017. The total amount of BAH1 the applicant received for these years was \$160,306.80. The amount the applicant should have received for BAH2 was \$88,177.60. This left the applicant with a debt of \$72,129.20.

On February 26, 2018, the applicant was issued a memorandum, "Notice of Overpayment," wherein he was notified of the following:

1. Recently processed pay-related transactions have resulted in a \$72,129.20 overpayment. Enclosure (1) provides a breakdown of this overpayment.
2. Coast Guard policy in reference (a) permits collection of this debt in installments through deduction from your pay. Under the statutes, the maximum monthly amount collected cannot exceed 15% of disposable pay.

If repaid by installment, 31 U.S.C. 3717 requires interest and administrative charges assessed on all debts unless waived. We have waived these charges in your case, per paragraph 11-B-5 of reference (a).³

3. Repayment from your pay will begin at 15% installments of your available pay per month beginning 1 May 2018. The monthly amount could fluctuate based on your disposable income. Please notify your Command if you want to propose a different repayment schedule based upon your financial situation. ... Repayment schedules for less than 10% of disposable pay will only be approved in cases of legitimate financial hardship. For these situations, you must provide a financial statement, Form CG-5489B. See enclosure (1) of reference (b). For lump sum repayment options, please see Chapter 9.A of reference (b): <http://www.dcms.uscg.mil/Portals/10/CG-1/PPC/pppm/CHAP09.pdf>. When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

4. You have the right to inspect and copy government records and review all decisions related to the debt. For copies of government records and/or an explanation of the nature of the debt, contact your servicing SPO. You have the right to ask for a waiver or remission of the debt in accordance with sections 11-F and 11-G of reference (a) and chapter 9 of reference (b). If separated early, we will collect any debt remaining at separation in lump sum from your final pay and allowances.

5. This is notice under 11 U.S.C. 342 should you contemplate relief under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Should you file litigation, including action under Title 11, U.S. Code, you must include your Employee ID Number (cited on the attached Summary of Overpayment) on such filing. You must also provide notification of such filing to the following address: Commanding Officer (LGL), USCG Pay & Personnel Center, 444 SE Quincy Street, Topeka, KS 66683-3591.

On February 6, 2019, the applicant signed a Plea Agreement and a Stipulation of Fact. In his Stipulation of Fact, regarding his larceny charges, the applicant stipulated to the following:

12. Prior to my transfer, I used form CG-2025A, Housing Allowance Protection Worksheet, to request the Coast Guard maintain my Basic Allowance for Housing (BAH) and Coast of Living Adjustment (COLA) at the rate for members stationed at USCG Air Station [BAH1]. I requested this because, as I stated on the form, my wife would not be moving to [BAH2] with me as she was going to remain in the [BAH1] area where she would continue working fulltime with her then employer. We made this decision knowing that my assignment on the USCG [redacted] would require me to be at sea for extended periods. On the form, I stated that she would be living at [applicant's previous BAH1 residence].

13. Despite my statement on CG-2025A, my wife did not reside at [applicant's previous BAH1 residence]. However, she did reside with a coworker at another address [BAH3 area]. When I signed the CG-2025A I knew my wife never had and never would live at [applicant's previous BAH1 residence].

14. I knew that BAH and COLA in [BAH1 area] was much higher than the BAH and COLA in [BAH2 area]. When my wife finally moved to [BAH2 area] on or about July 1, 2016, I knew I no longer rated BAH and COLA at the [BAH1] rate. However, I never submitted the appropriate paperwork to stop the BAH and COLA at the [BAH1] rate. From on or about July 1, 2016, through January 25, 2018, I continued to apply for BAH rate protection and provided my wife's address as [applicant's previous BAH1 residence] for the sole purpose of maintaining my BAH and COLA [BAH1] rates.

...

17. From 1 July 2016 through 24 January 2018, while stationed onboard the USCGC [redacted] homeported in [BAH2 area] I wrongfully obtained BAH and COLA from the USCG at the rate from my previous duty station, [in BAH1 area]. I wrongfully received \$36,302 in BAH and COLA.

³ Personnel and Pay Procedures Manual, PPCINST M1000.2.

On February 26, 2019, the applicant was tried and convicted by court-martial, wherein he received the following sentence:

Forfeiture of all pay and allowances, reduction to the paygrade of E-3, and confinement for six months.

On July 31, 2019, the applicant was administratively discharged due to misconduct. The applicant received an Under Other than Honorable Conditions (OTH) characterization of service.

On September 16, 2019, the Coast Guard mailed the applicant a “Bill for Collection” to the address the applicant provided upon his entry into the Coast Guard. This address was not the mailing address the applicant provided the Coast Guard upon his discharge and not the address listed on his DD-214. The applicant was given an October 16, 2019, due date. The amount owed on this letter was \$66,871.80 for BAH back payments, and an additional \$4,371.74 for COLA back payments, bringing the total amount of the debt owed to \$71,243.54.

On October 21, 2019, the Coast Guard sent the applicant a second letter to the same, wrong address, wherein he was informed that his debt was now considered overdue and that in accordance with 31 U.S.C. § 3717, administrative and interest charges would be added to his total debt, which would continue to accrue until the debt was fully paid. The letter also informed the applicant that his prompt attention was critical, and that if payment was not received within sixty days from the date of the letter, his debt would be forwarded to the United States Treasury for further collection action, who would then add an additional collection fee, interest, penalties, and administrative costs. The total balance provided in this letter was \$66,871.80.

On January 14, 2020, the Coast Guard referred the applicant’s debt to the Department of the Treasury. The Coast Guard listed the total amount of the applicant’s debt as \$66,871.80, plus a \$36.00 administrative cost and a \$128.16 interest and late fee charge. This letter indicated that administrative fees were waived in the applicant’s original debt.

On October 16, 2020, an email was sent from within the Coast Guard regarding the applicant’s debt.⁴ This email stated that the applicant’s debts were valid and that the applicant was given due process because letters were sent to the applicant on September 19, 2019, and again on October 21, 2019. The address relied upon by the Coast Guard to support its claim that the applicant was given due process was the address the applicant provided upon his enlistment into the Coast Guard—i.e., his pre-enlistment “home of record”—which no longer had any connection to him, rather than the mailing address that he provided at his discharge and that is shown on his DD-214.

On December 15, 2020, the applicant formally disputed his debt with the U.S. Department of the Treasury.

On December 17, 2020, the Department of Treasury responded to the applicant’s dispute and informed him that his debt was valid and that collection on the debt would continue.

⁴ This letter was provided by the applicant and was redacted. Accordingly there is no way of knowing who this email was addressed to. All that is clear is that the email was sent from within the Coast Guard, but the Coast Guard did not submit an unredacted copy of the email.

On February 3, 2021, the Chief of Legal Services for the Coast Guard sent the applicant a letter in response to his request for an Indebtedness Review. The content of this letter are as follows:

This letter responds to your request for review and revision of the overpayment indebtedness amount that you incurred as a result of the overpayment of basic allowance for housing (BAH) and Continental United States Cost of Living Allowances (CONUS COLA) with dependents that you received from January 14, 2015, to January 25, 2018. You indicated that the debt amount should be amended (reduced) to include only the time period from July 1, 2016, to January 25, 2018, because these were the time periods for which you pled and were found guilty at trial for court-martial held on or about February 26, 2019. We have determined that your indebtedness was properly calculated and, as a result, your request is denied.

Your court-martial results, including the dates amended at trial, are not determinative on the administrative actions that the Coast Guard must take to recover any improperly or erroneously paid funds. Specifically, upon your request when you received permanent change of station orders to Coast Guard Cutter [redacted] in [BAH2], you were authorized BAH and CONUS COLA (both at the with-dependent rate) rate protection for your previous [BAH1] duty location. Your rate protection approval memorandum specifically directed you to report any changes of your dependent's residence. You failed to comply with the rate protection memorandum and on January 25, 2018, your previous BAH rate protection was revoked with an effective date of January 14, 2015.

Administratively, not based on the criminal determinations made at court-martial, you were correctly paid [BAH2] amounts once your [BAH1] rate protection was retroactively revoked as a result of your failure to comply with BAH rate protection instructions. We have determined that we properly calculated your overpayment and have properly transferred your indebtedness to the Department of Treasury because you are no longer in the Coast Guard.

This letter was coordinated with Coast Guard Headquarters and is the Coast Guard's final response to your request to amend the debt. If you disagree with the Coast Guard's determination of your debt amount, you may seek correction of your military record from the Department of Homeland Security Board for Correction of Military Records (BCMR). Additional information about the BCMR is available at <https://www.u.sc.mil/resources/leQal/bcmr/>.

I recommend you speak to your attorney if you have further questions about your indebtedness or about submitting an application to the BCMR.

On March 22, 2021, the applicant again disputed his debt, which was denied because the applicant's claims had been previously decided.

On May 28, 2021, the applicant received a letter from a collection agency, on behalf of the Department of Treasury, wherein he was informed that the new balance on his COLA debt was \$6,284.98. This included the original amount of \$4,371.74, interest of \$70.41, and penalties and administrative costs of \$1,842.83.

On July 1, 2021, the applicant received a letter from a collection agency, on behalf of the Department of the Treasury, wherein he was informed that the new balance of his BAH debt was \$93,483.84. This included the original amount of \$66,871.80, plus interest in the amount of \$1,144.98 and penalties and administrative costs in the amount of \$25,467.06.

VIEWS OF THE COAST GUARD

On January 10, 2022, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center.

The JAG stated that the applicant concedes the debt from July 1, 2016, and after was proper, but payments received prior to that date were proper because his wife remained in the BAH1 area, where she resided and worked. However, the JAG argued that the applicant's allegations are not supported by the evidence or policy. The JAG explained that the applicant was not entitled to the BAH rate protection that he received for his wife simply because she remained near the BAH1 area. The JAG argued that in order for the applicant to have been entitled to the payments the applicant received, the applicant's wife was required to maintain a residence within BAH1's Military Housing Area (MHA). The JAG stated that the evidence from the applicant's General Court-Martial, in addition to the evidence submitted by the applicant himself, shows that the applicant's wife did not maintain a residence within the BAH1 MHA. The JAG argued that in the applicant's Stipulation of Fact, used in the General Court-Martial to support the applicant's guilty pleas, the applicant admitted in paragraph 13 that his wife did not reside in the BAH1 residence and that she never had and never would resided at that address. Instead, the applicant admitted, his wife resided with a coworker at an address located outside of the BAH1 MHA.

Furthermore, the JAG argued that in her sworn statement, submitted with the applicant's application for relief, the applicant's wife stated that she remained in the BAH1 area, but later in the same sworn statement she stated that she lived in the BAH1 city. However, the sworn statement of the coworker with whom the applicant's wife lived, stated that the applicant's wife lived with her at her home from January 2015 through June 2016. The address provided by the wife's coworker was not in the BAH1 MHA and was located in a different city and MHA, which has a lower BAH than BAH1 or BAH2. The JAG explained that moving outside of BAH1's MHA was specifically outlined as a situation that would affect the BAH rate protection authorization. The fact that the applicant's wife moved to a lower costing MHA and yet the applicant continued to receive BAH and COLA payments for the BAH1 MHA, demonstrates that the applicant's receipt of the higher rate payments was improper and that the total amount assessed against the applicant should be collected. The JAG stated that the BAH authorization letter specifically required the applicant to inform the Coast Guard of a change in residence outside of the BAH1 MHA. In addition, the JAG stated that specific guidance in the applicant's Form 2025A, supports the Coast Guard's position that the applicant is liable for the total amount assessed.

The JAG argued that at the applicant's court-martial, the applicant was charged with BAH-related larceny, in addition to other charges, for the period of January 15, 2015, through January 25, 2018. However, at trial, the applicant pled guilty to an amended larceny charge for the period of July 1, 2016, through January 25, 2018. The JAG argued that there was no agreement during the trial regarding the collection and reduction of the applicant's BAH debt. According to the JAG, the applicant's court-martial results, including the amended dates, are not binding on the administrative actions that the Coast Guard must take to recover improperly or erroneously paid funds.

The JAG noted that prior to the applicant's application for relief, the applicant sought and received a Coast Guard review of his debt. In this review, the Coast Guard determined that the applicant's debt was correctly calculated.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 22, 2022, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within thirty days. The Chair received the applicant's response on December 14, 2022.

The applicant alleged that in negotiating his plea agreement during his court-martial, the government agreed that the value of the debt would be \$31,000, not \$72,000. The applicant further alleged that he relied upon the government's stipulation of fact as to the reduction in the assessed value of the debt as part of his plea agreement. According to the applicant, it was only after he completed his part of the agreement that he learned that the government had changed its course and was going to continue pursuing payment for the \$72,000 originally assessed. The applicant stated that he found this to be completely unjust and unfair and that he believes that the government should be required to honor its agreement and reduce the amount of his debt to \$31,000.

The applicant alleged that in February 2019, he and his wife began reaching out to the Coast Guard to see how they could continue making payments on their debt in the amount they agreed to in the plea agreement.⁵ The applicant explained that in July 2019, he returned to BAH2 to be formally discharged, but during this process the Yeoman handling his discharge did not provide him with any information on how to begin making payments. The applicant claimed that despite his best efforts, after he left the Coast Guard, he did not receive any communication from Defense Finance and Accounting Service (DFAS) or the Coast Guard on how he could begin making payments on his debt. The applicant stated that he and his wife wanted to begin making payments on this debt as soon as possible, and that between August and September 2020, they continued to try and find out where they could make payments, while at the same trying to get clarification on the total amount they owed. The applicant explained that in approximately September 2020, he received two collection letters, wherein he was informed that he owed \$97,028.79, which the applicant formally disputed. The applicant stated that in response to his dispute, the government confirmed the amount owed as \$72,840.26, and that the applicant had made a total of \$1,596.72 in payments through payroll deductions, reducing the overall amount owed.

The applicant alleged that the government informed him that they were entitled to charge the penalties and interests because it had given him notice on two separate occasions, but these were the letters the applicant alleged the government erroneously sent to an outdated address. The applicant claimed that even if he still had some affiliation at this previous address, which he did not, the government erroneously transcribed the address with the wrong numbers, so the letters still would not have arrived to him. However, the applicant stated that what was more important is that he provided his correct, updated address, on his official DD-214 upon his discharge, so the

⁵ Prior to February 2019, the applicant made payments on this debt via payroll deductions. However, after February 2019, the applicant no longer received pay from the Coast Guard. This is what prompted the applicant and his wife to reach out to the Coast Guard to get instructions on payments moving forward.

government was aware of his new address and should have mailed the letters to the address he provided upon his discharge, not to the address he provided upon his entry nearly seventeen years prior. The applicant alleged that had he received these letters, he would have begun making payments immediately. The applicant explained that since June 2021, he has consistently made payments, but the interest and penalties combined are now over \$25,000. According to the applicant, in addition to the 15% the government garnishes from his social security and Veterans Affairs (VA) disability payments, the government has also withheld his COVID stimulus payments and tax refunds to help retrieve the amount owed. The applicant stated that despite making thousands of dollars in payments, he has yet to receive a true and accurate accounting of his debt or an itemized report of the payments that have been applied to the debt. The applicant alleged that he has never received any bills or updated statements regarding the remaining balance.

The applicant requested that the amount of his debt be reduced to \$31,000, which was what he and the government agreed to, and that all fees, penalties and interest be waived because he was never given proper notice by the Coast Guard before the debt was transferred to the Department of the Treasury. Finally, the applicant requested that the garnishment of his VA disability and Social Security checks cease and that he be provided with a formal accounting of his debt, including an itemized accounting of the payments that have been made and applied to his debt.

To support his response, the applicant submitted the following documents:

- Fourteen paystubs reflecting payments made via payroll deductions. Ten of these paystubs were for the April 1, 2018, through August 31, 2018, pay periods. During each of these pay periods, the applicant paid \$229.57, or \$2,295.70, toward his BAH overpayments. The remaining four paystubs were the January 16, 2019, through the March 15, 2019, pay periods. During these four pay periods, the applicant made payments of \$203.51, or \$814.04, toward his BAH overpayments. Therefore, during these fourteen pay periods, the total amount paid toward his BAH debt was \$3,109.74.
- Email correspondence from the applicant and his wife to the Military Pay & Personnel Center (PPC) requesting that his debt be reduced to the amount allegedly agreed upon in his plea agreement. The applicant and his wife also requested updated paperwork confirming the amount agreed upon in the plea agreement.
- Email correspondence from the PPC to the applicant and his wife. The PPC refused to release any information to the applicant's wife, and when the applicant reached out and requested the same information, PPC referred the applicant to his Personnel and Administration (P&A) Office in accordance with Article 1.A.3. the Coast Guard Pay Manual, which requires member to notify their P&A office of any suspected pay discrepancies. The applicant was informed that if his Yeoman cannot assist him, the Yeoman would elevate the issue and concern to the Servicing Personnel Office (SPO), who would then contact the PPC if the issues and concerns could not be resolved at the SPO level.

APPLICABLE LAW AND POLICY

Federal Regulations

Title 37 U.S.C § 403, the governing authority for BAH payments, provides the following guidance pertinent to the applicant's claims:

37 U.S.C. § 403(d)(3) If a member with dependents is assigned to duty in an area that is different from the area in which the member's dependents reside, the member is entitled to a basic allowance for housing as provided in subsection (b) or (c), whichever applies to the member, subject to the following:

(A) If the member's assignment to duty in that area, or the circumstances of that assignment, require the member's dependents to reside in a different area, as determined by the Secretary concerned, the amount of the basic allowance for housing for the member shall be based on the area in which the dependents reside or the member's last duty station, whichever the Secretary concerned determines to be most equitable.

...

(k)(2) The Secretary concerned may make such determinations as may be necessary to administer this section, including determinations of dependency and relationship. When warranted by the circumstances, the Secretary concerned may reconsider and change or modify any such determination. The authority of the Secretary concerned under this subsection may be delegated. Any determination made under this section with regard to a member of the uniformed services is final and is not subject to review by any accounting officer of the United States or a court, unless there is fraud or gross negligence.

Coast Guard Manuals & Instructions

Article 3 of the Coast Guard Pay Manual, COMDTINST M7220.29B, provides the following relevant guidance on BAH allowances:

3.B.2. General. A member on active duty is authorized a housing allowance based on grade, dependency status, and location. Rates are prescribed depending on the member's grade and whether the member has, or does not have, dependents. The location not only determines the rate, but whether the type of allowance is BAH or OHA. The rate of BAH is based on rental housing costs and is paid independent of a member's actual housing costs. It is paid for housing in the United States.

3.B.3.a.3. A Military Housing Area (MHA) is defined geographically by postal zip code within the United States. Major military population areas are further identified by a combination of 2-digit code for the state and a 3-digit numerical designation within the state. For small military population areas, postal zip codes are aggregated into areas of similar housing cost and designated as County Cost Groups.

...

3.C. BAH Rate Protection.

2. Requesting BAH Rate Protection.

a. Members will submit the Housing Allowance Protection Worksheet (CG-2025A) to the Coast Guard Personnel Service Center (CG PSC-psd-fs), Arlington, VA. This worksheet is available in the USCG Adobe Forms System or online at <http://www.uscg.mil/forms/> or <https://cgportal.uscg.mil/delivery/Satellite/CG611/FORMS>. Note: U.S. Public Health Service Officers serving with the U. S. Coast Guard should submit BAH protection

requests to: Chief, Compensation Branch, PHS Commissioned Personnel Division, Room 4-50, 5600 Fishers Lane, Rockville, MD, 20857-0001.

b. The following circumstances are precluded from BAH rate protection consideration to base BAH on the previous duty station location, or a dependents location (if with dependents):

- (1) Maintain continuity in dependent's education or employment.
- (2) Financial burden of relocating dependents, including selling a residence.
- (3) Await assignment to government housing.
- (4) Desire to retire at the previous duty station or return there on next assignment.
- (5) Permanent change of station (PCS) allowances conserved by not relocating dependents.

3. Authorization Provisions.

a. A member issued a memorandum by CG PSC-psd-fs basing BAH on either their previous duty station or dependents location, or OHA on a dependents location, will remain in effect until the member executes a PCS from their permanent duty station, retires, resigns, discharges, divorces (if married) or experiences a dependency status change from with-dependents to without-dependents, the member and dependents (if with dependents) are assigned to government owned or leased family type quarters, or the member and/or their dependents (if with dependents) relocate their residence either out of the Military Housing Area (MHA) boundary area located in, or out of the residence location (if not in an MHA), whichever action occurs first.

...

5. PCS Order; Unusually Arduous Sea Duty. These Coast Guard vessels are designated as unusually arduous sea duty vessels; High Endurance Cutters (WHEC), Medium Endurance Cutters (WMEC), National Security Class Cutters (WMSL) crew (only after crews have been moved aboard commissioned cutters or begun rotational cycles; does not apply to personnel ordered to a hull or crew during a construction phase), and Polar Class Icebreakers (WAGB).

a. Vessel Home Ported In CONUS. Upon receipt of a PCS order to the vessel, members who have no intention of relocating their dependents to the vessel's home port may submit a Housing Allowance Protection Worksheet, CG 2025A, to request the BAH rate for the previous duty station, or BAH or OHA for a designated place of dependents, if higher than the vessel's CONUS home port rate. For BAH to be based on the previous duty station, the consideration factors in section 3-C-4.c apply.

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 is 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 BAH payments he received for the period of January 15, 2015, through June 30, 2016, while his wife still resided in BAH1. The applicant further alleged that the Coast Guard failed to honor its part of his plea agreement wherein the parties agreed that the amount in BAH payments should total \$31,000 and not \$72,000. 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.⁶ 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."⁷

4. **BAH Entitlement.** The applicant alleged that he was legally entitled to BAH1 payments for the period of January 2015, through June 2016, because his dependent remained behind in the BAH1 area. The Board finds the applicant's arguments unpersuasive. The record shows that on October 28, 2014, the applicant received transfer orders from the BAH1 area to the BAH2 area. Because the applicant's new duty station was considered an arduous sea duty vessel, on January 8, 2015, the applicant applied for BAH and COLA rate protection in order for his wife to remain behind in BAH1. The record further shows that the applicant reported for his new duty station on January 14, 2015, and that his wife remained behind to continue working in the BAH1 area. However, the record and the applicant's own evidence show that the applicant's wife did not continue to reside at their previous address in the BAH1 area but instead moved in with a coworker, whose residence was located outside of the BAH1 MHA. The coworker's residence was located in a different MHA area with a BAH allowance of \$1,233 per month (BAH3), which was substantially less than either the BAH1 or BAH2 rate for the same period. While the applicant's wife did not join the applicant in the BAH2 area, she also did not live in the BAH1 area, as evidenced by the wife's coworker's sworn statement and the applicant's Stipulation of Fact at paragraphs 13 and 14. The applicant alleged that he submitted evidence to both the Convening Authority and Prosecutor that proved he was entitled to the BAH1 rate for the period his wife remained behind, but his contentions are not supported by the evidence. Therefore, the preponderance of the evidence shows that the applicant's wife did not continue to reside in the BAH1 MHA but resided in the BAH3 MHA. Accordingly, the preponderance of the evidence shows that the applicant was not entitled to the BAH1 area payments he received for the period January 2015 through June 2016.

5. **Plea Agreement.** The applicant alleged that he entered into a plea agreement with the government that excluded debt for the period of January 2015 through June 2016. According to the applicant, this agreement reduced the amount of BAH1 payments owed from \$72,000 to \$31,000. Again, the Board finds the applicant's arguments unpersuasive. A thorough review of the applicant's plea agreement reveals that the applicant's Stipulation of Fact was to be used "for use by the military judge during the providence inquiry, and during the pre-sentencing proceeding." The plea agreement's use of the applicant's Stipulation of Fact is narrow and does not include language limiting any future debt collections to \$36,302. Furthermore, criminal proceedings and

⁶ 33 C.F.R. § 52.24(b).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

the use of plea agreements are intended to mitigate the criminal charges and consequences a criminal defendant may face and are not binding on administrative and civil remedies, afforded by statutes and regulations, authorizing the government to collect on a debt. As argued by the JAG, the applicant's court-martial results, including the amended dates to which the applicant pled guilty, are not binding on the administrative actions that the Coast Guard and Treasury Department must take to recover the improperly and erroneously paid funds.

The applicant has submitted no evidence proving that his plea agreement was intended to estop the Coast Guard from pursuing collection efforts to recover the full \$72,000 of fraudulently obtained BAH funds. The applicant has admitted to, and the evidence supports a finding, that he did in fact fraudulently obtain approximately \$72,000 in BAH funds. Although the applicant's Stipulation of Fact at paragraph 17 states that he wrongfully received \$36,302 in BAH and COLA for the period July 2016 through December 2018, the evidence supports a finding that the applicant received significantly more than that. If the Board were to accept the applicant's contentions that his plea deal estopped the Coast Guard from collecting the full \$72,000 of BAH funds received by the applicant, it would allow the applicant to retain a benefit and financial windfall to which he is not entitled. Furthermore, it is a well-accepted position that the government cannot be estopped by the action of its agent when that agent acts without authority or contrary to law.⁸ The Coast Guard JAG who accepted the applicant's plea agreement did not have the authority to waive the government's right to collect on the full amount of the applicant's debt and therefore, the government is not bound by the JAG or the Convening Authority's promises, whatever they may have been.

6. **Due Process.** The applicant alleged that despite providing the Coast Guard with an updated address at the time of his discharge, an address which is clearly reflected on his DD-214, the Coast Guard erroneously sent official collection letters to an address that had no relation to him. The Board agrees. The record shows that on September 16, 2019, the Coast Guard sent the applicant a "Bill for Collection" wherein the applicant was informed of the total amount due, \$71,243.54, for his fraudulently obtained BAH and COLA payments. The applicant was given a due date of October 16, 2019, and warned that "administrative charges and penalties will be assessed on all payments not received by the payment due date." In addition, the letter contained contact information for the individual with whom the applicant could dispute his debt with. The record shows, however, that the Coast Guard sent this letter *not* to the mailing address provided by the applicant upon his discharge, but to an out-of-state address across the country—his pre-enlistment "home of record"—that was no longer connected to the applicant. Therefore, the preponderance of the evidence shows that the applicant did not timely receive the letter, as he alleged. The record further shows that on October 21, 2019, the Coast Guard sent the applicant a second letter to the same, wrong address to inform him that his debt was overdue and that, if payment was not received within 60 days from the date of the letter, the Coast Guard would forward the applicant's debt to the Department of Treasury. Again, the record shows that the applicant did not receive this letter because the letter was erroneously sent to his "home of record" instead of to the mailing address he had provided to the Coast Guard. This is further evidenced by an October 16, 2020, email sent by the Coast Guard, which claimed that the applicant was given due process because two letters were sent to him and then attempted to support its claim by providing the erroneous "home of record" address as the address the letters were sent to.

⁸ *United States v. Vonderau*, 837 F.2d 1540, 1541 (11th Cir. 1988).

Therefore, the Board finds that the applicant has proven, by a preponderance of the evidence, that the Coast Guard failed to adequately serve him notice of the collection actions being taken against him or the formal dispute process that the applicant could have pursued. Accordingly, any fees and penalties that resulted from this error should be removed from the applicant's outstanding balance.

Finally, the Board notes that upon applying to the Board for relief, the applicant provided a thorough argument about the Coast Guard's failure to provide him with due process, including supporting documentation to show that the Coast Guard erroneously sent their initial notices to his pre-enlistment "home of record" instead of his actual mailing address. The applicant even submitted an email from the Coast Guard wherein the Coast Guard clearly stated that it sent the letters to the address that was his "home of record"—i.e., the wrong address. These arguments and the applicant's evidence were provided to the Coast Guard upon the Board's request for an advisory opinion. However, despite the applicant's arguments and submitting documentation to support his arguments, the JAG for the Coast Guard failed to acknowledge or address the applicant's claims or the applicant's evidence in his advisory opinion.

7. **Payroll Deductions & Accounting.** The applicant alleged that prior to his discharge, he made approximately \$4,500 in payments toward his debt and that these payments were not reflected in his balance. The evidence submitted by the applicant shows that between April 1, 2018, through August 31, 2018, the applicant had ten payroll deductions in the amount of \$229.57 each, totaling \$2,295.70. The record further shows that between January 16, 2019, through March 15, 2019, the applicant had four payroll deductions in the amount of \$203.51 each, totaling \$814.04. Therefore, the record indicates that the applicant's total payroll deductions prior to his discharge totaled \$3,109.74, not \$4,500 as alleged by the applicant.

8. 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.⁹ He has not proven, by a preponderance of the evidence, that the Coast Guard erroneously charged him for \$72,000 in fraudulently obtained BAH payments. However, the applicant did prove, by a preponderance of the evidence, that the Coast Guard failed to provide him with proper notice of their collection actions, and is therefore entitled to have any late fees, penalties, administrative charges, and interest that resulted from this error removed from his total debt. Accordingly, the applicant's request should be denied, but alternate relief should be granted.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁹ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

The application of former SNSK [REDACTED] [REDACTED] [REDACTED] USCG, for correction of his military record is denied, but alternative relief is granted:

Because the Coast Guard sent the Bill for Collection and invoice to the wrong address in a different State, the Coast Guard shall—

- Return the debt to the Coast Guard for servicing as if the applicant had not defaulted;
- Remove all late fees, penalties, charges and interest accrued on his original debt for overpayment of BAH and COLA until 30 days past the date upon which the Government itself directly provides him with legal notice of the debt, i.e., not through a third-party collector; and
- At the time of the legal notice, provide him with a full accounting of his debt, to include all previous payments made toward the debt plus the removal of the late fees, penalties, administrative charges, and interest as a result of the failure to provide him with proper notice.

July 28, 2023

[REDACTED] [REDACTED] [REDACTED]
Digitally signed by [REDACTED]
Date: 2023.08.09 11:49:15 -04'00'

[REDACTED] [REDACTED] [REDACTED]
Digitally signed by [REDACTED]
Date: 2023.08.09 12:56:58 -04'00'

[REDACTED] [REDACTED] [REDACTED]
Digitally signed by [REDACTED]
Date: 2023.08.09 12:21:47 -04'00'