



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[REDACTED]
Docket No. 10800-23
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN, XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) OPNAVINST 7220.12, 24 Dec 05

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion by OCNO memo 7431 Ser N130C2/24U0564, 24 Jun 24
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to show Petitioner was authorized Basic Allowance for Housing (BAH) at dependents location of [REDACTED] from 9 November 2018 to 30 September 2019 and removal of his debt in the amount of \$9,573.60.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 15 August 2024 and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. On 26 June 2007, Petitioner's dependent child was born.

b. On 22 September 2017, LMG (Notice of Change of Terms), Property Manager notified [REDACTED] and all other in possession of premises: ... [REDACTED] that, "[t]he gross rent amount and utility allowance has changed effective 1/1/2018. The rent for the premises is changed to the new rental amount, payable in advance on the rent due date of each month stated in your lease. The new rental amount is due on the first day of each month, beginning on the new rental due date, and the first of each month thereafter."

c. On 26 February 2018, Petitioner entered active duty.

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d. On 6 March 2018, Petitioner certified a Dependency Application (NAVPERS 1070/602) listing no dependents.

e. On 11 September 2018, Petitioner was issued official modification to change duty orders (BUPERS Order [REDACTED]) while stationed in [REDACTED] with an effective date of departure of April 2018. Petitioner's intermediate (01) activity was [REDACTED] for temporary duty under instruction with an effective date of arrival of 28 April 2018. Petitioner's intermediate (02) activity was [REDACTED] for temporary duty with an effective date of arrival of 23 August 2018. Petitioner's ultimate activity was [REDACTED] for duty with an effective date of arrival of 1 October 2018 with a projected rotation date (PRD) of February 2023.

"Effective date of [REDACTED] homeport change to [REDACTED] is 31 October 2019. Promulgation date was 01 September 2018. Member advised: sailors, including single sailors, reporting to [REDACTED] on or after the promulgation date are directed under these orders to conduct, as applicable, dependent travel, transportation, and shipment of HHG to [REDACTED]. Dependents are not authorized travel to [REDACTED] after the promulgation date. If your HHG have already been shipped, you may re-direct your shipment by working with your personal property office."

"Member advised: a member may request to leave the dependent (s) at their current location or request to move the dependent(s) to a designated place in lieu of the new homeport in connection with this assignment to unusually arduous sea duty (JTR, par. 050907). submit request for OCONUS designated place move to OPNAV N130c, at nxag_n130c@navy.mil (include copy of orders and signed, witnessed, and dated official page 2)."

f. On 14 September 2018, Petitioner transferred from [REDACTED], and arrived to [REDACTED] on 30 September 2018 for duty.

g. In accordance with reference (b), "[w]hen a Service member acquires a dependent, for example, through marriage, birth, or adoption, a with-dependent housing allowance is authorized as of the date the dependent is acquired. When the Service member is assigned to a PDS in the CONUS, the housing allowance is authorized based on the PDS. He or she may request through the Secretarial Process a housing allowance based on the dependent's residence location. Table 26-28 specifies the changes in BAH or OHA when a Service member acquires a dependent while assigned in the CONUS."

Table 26-28. Changes in BAH or OHA When a Service Member Assigned in the CONUS Acquires a Dependent. Rule 3. If the dependent is located in the CONUS, Alaska, or Hawaii (BAH area) and not at or near the PDS, and government quarters are available for the member, then start BAH at the with-dependent rate based on the PDS as of the date the dependent is acquired.

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h. On 9 November 2018, Petitioner got married.

i. On 13 December 2018, [REDACTED] issued an electric bill for the premises:
[REDACTED].

j. On 26 December 2018, Petitioner signed a Dependency Location request with a property address of [REDACTED].

k. On 27 July 2019, Petitioner signed a Waiver/Remission of Indebtedness Application (DD Form 2789) due to debt of erroneous payment of BAH. Petitioner's request was favorably endorsed by cognizant authority.

l. On 2 August 2019, [REDACTED] signed a waiver of indebtedness in case of Petitioner stating that, "[i]n January 2019, a Basic Allowance for Housing (BAH) at Dependent's location request chit was routed by Engineering department directly to the Triad, without going thru the Personnel office. The request was ultimately signed and approved by the Commanding Officer (CO). The signed chit came down to Personnel afterwards and was delivered to the pay clerks for processing. The member had been receiving BAH at the "with dependent" rate for [REDACTED] until July 2019.

Despite attaining the CO's signature, in accordance with (IAW) reference (a) [JTR], the member was ineligible to receive BAH based on his dependent's location as his dependent was considered "acquired." The reason is because the date of marriage (9 November 2018) was after his report date aboard [REDACTED] (30 September 2018).

In July 2019, [Petitioner] came into Personnel to update his NAVPERS 1070 602 (Page 2) after moving his wife to [REDACTED]. IAW reference (a), members must certify established residences in locations other than the new homeport are permanent and dependents will remain until further transportation at government expense is authorized (i.e. next set of orders).

If any member requested and received a BAH rate for a location other than the new homeport and then moved their dependents to the new homeport before receiving their next set of orders, they'd be subject to recoupment of the difference in the rates of the old homeport and the dependent's location. [Petitioner] has a suspended indebtedness on his pay account for this same reason.

Unfortunately, [Petitioner] would still be ineligible to request and or receive BAH at the [REDACTED] rate due to his dependent's "acquired" status without an exception-to-policy from the Head of Military Pay and Compensation (OPNAV N130C); which can be requested if the waiver for indebtedness is approved by the Defense Finance and Accounting Service.

Despite the regulations, I feel it's in the best interest of the Sailor and the service to afford him a waiver of indebtedness. To his knowledge, he was simply requesting BAH,

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and his chain of command felt the need to not follow procedures annotated in enclosure (1). Despite the timing of the email, the same guidance had been provided in previous homeport change and departmental leadership meetings.”

m. On 20 October 2019, Petitioner’s Master Military Pay Account (MMPA) shows that Petitioner was authorized BAH at the with-dependent rate for [REDACTED] effective 1 October 2019.

n. On 16 September 2020, Petitioner was advanced to EM3/E-4.

o. On 28 September 2022, Petitioner was issued official change duty orders (BUPERS Order [REDACTED]) with required obligated service to February 2023, while stationed in [REDACTED] with an effective date of departure of February 2023. Petitioner’s ultimate activity was [REDACTED] for duty with an effective date of arrival of 13 March 2023 with a PRD of March 2026.

p. On 13 February 2023, Petitioner transferred from [REDACTED], and arrived to [REDACTED] on 10 March 2023 for duty.

q. On 16 December 2023, Petitioner was advanced to EM2/E-5.

r. In the advisory opinion, attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner’s application has commented to the effect that the request has merit and warrants favorable action.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an error warranting the following partial corrective action. The Board concluded that when Petitioner married his spouse on 9 November 2018, he became entitled to BAH at the with dependent rate for his PDS at [REDACTED]. However, his dependents were located in [REDACTED] and orders prohibited movement of dependents to [REDACTED] due to the homeport shift of [REDACTED]. Additionally, in accordance with BUPERS Order [REDACTED], Petitioner was eligible to request a designated place for his dependents due to his assignment unusually arduous sea duty. On 26 December 2018, Petitioner signed a dependency location request with a property address of [REDACTED] and it was approved by his CO. The Board concluded that Petitioner is entitled to BAH at the with dependent rate for his dependent’s location in [REDACTED] from the date of marriage on 9 November 2018 to 30 September 2019, the day before he began to receive BAH at the with dependent rate for [REDACTED]. Finally, the Board does not calculate or waive debt. The Defense Finance & Accounting Service (DFAS) will conduct an audit of Petitioner’s pay record to determine entitlement.

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RECOMMENDATION

That Petitioner's naval record be corrected, where appropriate, to show that:

Petitioner was authorized BAH at the with-dependent rate for [REDACTED] from 9 November 2018 to 30 September 2019.

Note: The DFAS will complete an audit of Petitioner's pay records to determine amounts due, if any.

A copy of this report of proceedings will be filed in Petitioner's naval record.

No further changes will be made to Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

8/22/2024

