



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

██████████
Docket No. 1395-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO ██████████, USN, XXX-XX ██████████

Ref: (a) Title 10 U.S.C. § 1552
(b) DoD 7000.14-R FMR Volume 7A, Chapter 26

Encl: (1) DD Form 149 w/attachments
(2) Advisory opinion by OCNO 7431 Ser N130C2/24U0786, 3 Sep 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 her naval record be corrected to show that she received basic allowance for housing (BAH) at the with dependent rate from 15 May 2012 to 11 March 2014.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 24 September 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 ██████████, Petitioner's first child was born, and second child was born on ██████████.

b. On 11 March 2008, Final Order of Support (Civil) was issued by Juvenile and Domestic Relations District Court in the ██████████ ██████████. The Court found that Petitioner's children were determined to be the children of Respondent father (██████████). Furthermore, the children were entitled to support from the Respondent in the amount of \$564.69 per month, payable on the first day of each month beginning on 1 April 2008. Payments may be made in intervals of \$130.31 per week beginning 21 March 2008.

c. On 10 March 2009, ██████████ ██████████ Order for custody/visitation granted to both Petitioner and father (██████████) for both children. Each order states, "[t]he parties are in

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agreement on the arrangement for the child's custody and visitation as set forth below: Joint legal custody to parents with physical custody to [Petitioner]; visitation to father every other weekend with pickup at 3:30 pm on Saturday and return on Sunday 5 pm beginning 21 March 2009."

d. On 15 May 2012, Petitioner entered active duty.

e. On 23 May 2012, Dependency Application/Record of Emergency Data (NAVPERS 1070/602) listing both children residing at [REDACTED], [REDACTED] with Petitioner's mother. Furthermore, Petitioner was paying support for her older daughter in the amount of \$250.00 per month. No support was listed under the second daughter's information. Also listing: "Children's birth certificates & court orders cited. Children's legal guardian not serving on active duty. Member will provide \$250.00 in support. [REDACTED]."

f. On 21 June 2012, Petitioner was issued official change duty orders 1732 while stationed in [REDACTED], [REDACTED], [REDACTED] with an effective date of departure of July 2012. Petitioner's intermediate (01) activity was [REDACTED], [REDACTED], [REDACTED] for temporary duty with an effective date of arrival of 6 July 2012, intermediate (01) activity was [REDACTED], [REDACTED], [REDACTED] for temporary duty under instruction with an effective date of arrival of 30 July 2012, and an ultimate activity was [REDACTED], [REDACTED], [REDACTED] for duty with an effective date of arrival of 20 August 2012 with a projected rotation date of September 2014. Which also stated, "[t]his transfer funded for member and authorized dependents as reflected on service record page two and other supporting documents."

g. On 7 September 2012, Petitioner transferred from [REDACTED] and arrived at [REDACTED] on 19 September 2012 for duty.

h. On 24 September 2012, Master Military Pay Account (MMPA) shows that Petitioner was authorized BAH Differential effective 19 September 2012.

i. On 26 September 2012, NAVPERS 1070/602 listed both children residing at [REDACTED], [REDACTED] with Petitioner's mother. Furthermore, Petitioner was paying support for her older daughter in the amount of \$250.00 per month. No support was listed under the second daughter's information. Also listing: "Children's birth certificates & court orders cited. Children's legal guardian not serving on active duty. Member will provide \$250.00 in support. [REDACTED] NAVPERS 1070/602 updated due to new check in: [REDACTED]...BAH Type: Partial."

j. On 1 January 2013, MMPA shows that Petitioner was authorized BAH Differential effective 1 January 2013.

k. On 5 February 2013, Commonwealth of [REDACTED] for custody/visitation granted to both Petitioner and father for both children. The hearing was held on 8 January 2013 and both orders state, "[t]he parties are in agreement on the arrangement for the child's custody and visitation as set forth below: Sole legal and physical custody to the [Petitioner]. Reasonable visitation to the father, [REDACTED]."

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- l. On 8 March 2014, Petitioner transferred from [REDACTED] and arrived at [REDACTED] on 9 March 2014 for duty.
- m. On 28 March 2014, MMPA shows that Petitioner was authorized BAH at the with dependents rate for [REDACTED], [REDACTED] effective 12 March 2014.
- n. 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 partial favorable action.
- o. On 18 September 2024, Petitioner notified this Board that she had always had physical custody of her children and provided the two custody orders from the Juvenile Court dated 10 March 2009 as evidence.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the comments contained in enclosure (2) and Petitioner’s response of 18 September 2024, the Board finds the existence of an injustice warranting the following corrective action. The Board concluded that on 10 March 2009, Petitioner and father ([REDACTED]) were awarded joint legal custody of their daughters and Petitioner was awarded physical custody. On 15 May 2012, Petitioner entered active duty. In accordance with reference (b), a member who is awarded primary physical custody of a dependent child or whose dependent child resides with the Service member for at least half of a calendar year is considered a “custodial parent” for housing allowance purposes. The Board determined that Petitioner provided proper documentation showing that she was awarded physical custody of her children prior to her entry to the Navy and is entitled to BAH at the with dependents rate effective the date Petitioner entered active duty until the day before Petitioner’s BAH started at [REDACTED], [REDACTED].

RECOMMENDATION

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

Petitioner was authorized BAH at the with dependents rate for [REDACTED], [REDACTED] from 15 May 2012 to 18 September 2012.

Petitioner was authorized BAH at the with dependents rate for [REDACTED], [REDACTED] from 19 September 2012 to 8 March 2014.

Petitioner was authorized BAH at the with dependents rate for [REDACTED], [REDACTED] from 9 March 2014 to 11 March 2014.

Note: The Defense Finance and Accounting Service 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.

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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.

10/11/2024

