



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

██████████
Docket No. 3684-24
Ref: Signature Date

████████████████████
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████████████████████

Dear ██████████

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 26 September 2024. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

On 9 September 2008, you entered active duty. On 16 June 2013, you were advanced to AD2/E-5.

On 19 February 2015, you were issued official change duty orders (BUPERS order: 0505) while stationed in ██████████, ██████████, ██████████ with an effective date of departure of June 2015. Your intermediate (01) activity was ██████████, ██████████, ██████████ for temporary duty under instruction with an effective date of arrival of 18 July 2015. Your ultimate activity was ██████████, ██████████, ██████████ for duty with an effective date of arrival of 9 August 2015 with a projected rotation date of August 2019.

On 12 June 2015, you got married. On 18 June 2015, you transferred from ██████████, and arrived to ██████████ on 10 August 2015 for duty.

On 18 July 2017, you got divorced. On 16 June 2018, you were advanced to AD1/E-6.

On 23 July 2018, the United States Naval Criminal Investigative Service (NCIS) notified CDR [M] that, "I understood from previous conversations with RLSO [Region Legal Service Office] that this was unlikely to go to Court Martial. There was the potential for NJP [Non-Judicial Punishment], and even if there are not criminal larceny charges there is also the administrative matter of the overpayment. We have ██████████ and his ex-spouse on record saying ██████████ did not provide support after their Aug 2015 separation. ██████████ also stated in is interview he was willing to repay the overpayment. In order for me to close the case I need to know the final disposition, which can be that command decided against NJP. Also, since our investigation discovered an overpayment made by the USN, I need to document the efforts taken to recover the overpayment and indicate the amount recovered."

On 30 July 2018, NCIS notified Personnel Support Detachment (PSD) ██████████, ██████████ that, "[p]er our phone conversation, attached are the relevant Investigative actions regarding the overpayment of housing allowance benefits. We have a DVD of the interrogation we can make a copy of if you need to see the interrogation."

On 1 August 2018, PSD ██████████, ██████████ notified NPPSC ██████████ and NCIS, among others, that, "... Yes, we will be taking action on collecting these monies to include the Family Separation Allowance due to non-support of dependents based on your email and respective statements by spouse for non-support during NCIS interview summary dated 1/18/2018 and members results of NCIS interrogation dated 1/18/2018."

On 21 August 2018, Disbursing Officer, PSD Naval Base ██████████ notified you that, "[t]his is to inform you that you were overpaid for the period ending 8/1/2015. The gross amount of your overpayment (including pay, taxes, benefits and other deductions) is \$57,108.15. Your debt may have been adjusted for any previous payments made and offset taken through pay adjustments. The overpayment is a result of BAH [Basic Allowance for Housing] and FSA [Family Separation Allowance] pay adjustment."

On 26 March 2019, Commanding Officer, ██████████ notified Commanding Officer, Navy Pay and Personnel Support Center via Officer in Charge, PSD ██████████ that, "1. Respectfully request for an audit to be completed on [██████████] master military pay account. Perceived overpayment of [██████████] pay is currently being collected through an indebtedness procedure initiated by [PSD] ██████████. Through our internal audit at ██████████ (██████████) of the service member's pay account. I have come to the conclusion that the member is not at fault and the indebtedness was processed erroneously by PSD ██████████."

On 12 August 2019, you transferred from ██████████, and arrived to ██████████ on 29 August 2019 for temporary duty. On 20 September 2019, you transferred from ██████████, and arrived to ██████████ on 20 September 2019 for duty.

On 23 March 2022, you were issued official separation orders (BUPERS order: 0822) while stationed in ██████████, ██████████, ██████████ with an effective date of departure of September 2022. Place elected for travel: ██████████, ██████████ with an actual date of separation of 12 September 2022.

You were discharged with an honorable character of service and was issued a DD Form 214, Certificate of Release or Discharge from Active Duty for the period of 9 September 2008 to 12 September 2022 upon completion of required active service.

The Defense Finance and Accounting Service (DFAS)-IN/Debt and Claims notified you with a billing date of 6 January 2023 that Previous balance was \$33,972.52, and Interest Charged was \$28.43. Furthermore, “[d]ebt is due to the remaining balance of a debt that posted to your account for collection prior to the month you separated. The debt remaining on your account is as follows: basic allowance for quarters debt.”

You requested relief of debt due to BAH and FSA pay adjustment, the Board in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You assert that “[b]ecause I was married and entitled to dependent BAH from the 12th of June 2015 until the 18th of July 2017, the debt resulting from the BAH and FSA pay adjustment is invalid.” However, the Board concluded that in accordance with the Joint Travel Regulations,¹ a member who fails to support a dependent on whose behalf a housing allowance is received is not authorized a housing allowance on that dependent’s behalf. Recoupment is directed for nonsupport or inadequate support periods. The emails you submitted in support of your claim detail the actions taken by NCIS and PSD North Island to collect the overpayment. NCIS stated that they have you and your ex-spouse on the record admitting that you did not provide support after your August 2015 separation. Without documentation showing if you were living in government quarters or off base, the Board cannot determine if you would have been entitled to BAH at the without dependents rate during that period. The Board determined that your debt is valid, that you were well aware of the requirement to repay the BAH and FSA, and that you told NCIS that you would repay the overpayment. Therefore, no change to your record is warranted.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in

¹ The statutory purpose of a housing allowance on behalf of a dependent is to at least partially reimburse a member for the expense of providing a private sector residence for the dependents when Government Quarters are not furnished, and not to pay a housing allowance for a dependent as a bonus merely for the technical status of being married or a parent. Proof of support of a lawful spouse or unmarried, minor, legitimate child of a member is generally not required. However, when evidence (e.g., special investigation reports; record reviews; fraud, waste and abuse complaints; sworn testimony of individuals; statement by member) or complaints from dependents of nonsupport or inadequate support are received, proof of adequate support as stated in par. 10106-E is required.

A member who fails to support a dependent on whose behalf a housing allowance is received is not authorized a housing allowance on that dependent’s behalf. Recoup for nonsupport or inadequate support periods.

mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

10/8/2024

