



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

[REDACTED]
Docket No. 4795-24
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) DoD 7000.14-R FMR Volume 7A, Chapter 26

Encl: (1) DD Form 149 w/attachments
(2) 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 Petitioner received Basic Allowance for Housing (BAH) at the "with dependents rate" vice "without dependents rate" for the period of 1 July 2017 until August 2022.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 October 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 23 October 2010, Petitioner married a U.S. Naval Reserve officer.

b. Petitioner resigned 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 27 May 2005 to 30 June 2016 upon completion of required active service.

c. In accordance with reference (b), in accordance with 37 U.S.C. § 421, a dependent who is on AD in a Uniformed Service and is entitled to basic pay cannot be considered a dependent for housing allowance purposes 4.5.1.2. One Service Member Enters a Non-Pay Status. When one Service member enters a non-pay status, the other Service member may claim the Service member not entitled to pay and allowances as a dependent and be authorized to draw BAH or OHA at the with-dependent rate for the duration of the non-pay status, if otherwise authorized,

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unless a dependent is confined in a penal or correctional institution (see paragraph 4.4). A Service member may claim as a dependent a Service member on inactive duty for training (Reserve drills).

d. On 3 March 2017, Commander, Navy Personnel Command (PERS-911) notified Petitioner that “[y]our request contained in reference (a) [DD Form 368 of 24 January 2017] for a conditional release from the United States Navy Reserve is approved, per references (b) [SECNAVINST 1000.7F of 5 January 2006] and (c) [DOD Directive 1300.4 of 15 November 1996]. If accepted in the United States Navy Active Duty, you will be discharged from the Navy Reserve the day prior to your appointment.

Upon acceptance in the United States Navy Active Duty, you must immediately provide the Commander, Navy Personnel Command (PERS-911D) with a copy of your Oath of Office. The law prohibits membership in more than one service component.”

e. On 24 January 2017, Petitioner signed a Request for Conditional Release (DD Form 368) from the U.S. Naval Reserve acknowledging the following: “I hereby tender my resignation from the USNR (current component); request that it be accepted contingent upon actual appointment or enlistment in the USN (requesting component), and be effective the day preceding the date of my acceptance of appointment or enlistment.” The release was valid until 2 September 2017. Furthermore, it was approved by cognizant authority on 6 March 2017.

f. On 11 July 2017, Petitioner’s child was born.

g. On 24 August 2017, Commander, Navy Personnel Command notified Petitioner that “[r]eference (a) [Petitioner’s request of 24 August 2017], your request for an extension of your conditional release from the United States Navy Reserve is approved. The release is valid until 31 March 2018.

The law prohibits membership in more than one service component. If you do not accept an appointment in the Active-Duty Component of the United States Navy by 31 March 2018, the conditional release granted herein is automatically revoked without further correspondence. In the event additional time is required to affect your appointment, you must notify Navy Personnel Command (PERS-911) prior to the expiration date mentioned above, setting forth the reasons for the delay, and request an extension of time.

This conditional release from the United States Navy Reserve will not affect your discharge, if otherwise required by law.”

h. On 4 October 2017, Petitioner enlisted in the U.S. Navy beginning in pay grade E-7 of which 4 years is considered an Active-Duty Obligation under the Health Services Collegiate Program (HSCP) Medical (MC), Dental (DC), and Medical Service Corps (MSC) Programs (21007/22007/23007).

i. On 5 October 2017, Commander, Navy Recruiting Command notified Petitioner via Commanding Officer, [REDACTED] that “[i]n accordance with

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reference (a), you are hereby ordered to active military service with an effective date of enlistment 4 Oct 2017. You are an enlisted member of the Navy Reserve on active duty in the rate of OC (paygrade E-7) to serve in the Health Services Collegiate Program (HSCP). You are hereby directed to report for active duty to the Commanding Officer, [REDACTED].”

j. On 12 January 2018, Commander, Navy Personnel Command (PERS-9) notified Petitioner that “[y]ou have been honorably discharged from the Navy Reserve, effective 3 October 2017, due to your transfer to the Active Component of the United States Navy.”

k. JUMPS LES [Leave and Earnings Statements] for the period of 1 November 2017 to 31 December 2018 listed the following: Petitioner received BAH at the with dependents rate for [REDACTED], [REDACTED].

l. On 30 April 2021, Petitioner was issued official new appointment orders (BUPERS order: [REDACTED]) while stationed in [REDACTED] with an effective date of departure of June 2021. Petitioner’s ultimate activity was [REDACTED] for duty with an effective date of arrival of December 2023 with a Projected Rotation Date (PRD) of January 2029.

m. On 18 May 2021, Petitioner transferred from [REDACTED] and arrived to [REDACTED] on 20 May 2021 for duty.

n. On 30 November 2021, Petitioner’s Master Military Pay Account (MMPA) shows that Petitioner’s BAH at the without dependents rate for [REDACTED] started on 20 May 2021.

o. On 3 January 2022, Commander, Navy Personnel Command (PERS-9) notified Petitioner’s spouse that “[p]er references (a) [10 U.S.C. § 10154] and (b) [10 U.S.C. § 12774(a)], the Secretary of the Navy approved and authorized your request to transfer to Retired Reserve status effective 1 March 2022.

Navy Personnel Command records indicate that you may be eligible to receive retirement pay prior to your 60th birthday. Notification to submit your application for retired pay will be forwarded to you approximately 10 months prior to the estimated date of eligibility. Upon your submission of application per the guidelines of references (c) and (d), your retired pay benefits will be initiated in accordance with reference (e). Although your pay entitlement is prior to age 60, your medical benefits will commence at age 60.”

p. On 1 June 2022, Petitioner transferred from [REDACTED] and arrived to [REDACTED] on 1 June 2022 for duty under instruction.

q. On 26 June 2023, Petitioner’s MMPA shows that Petitioner’s BAH at the with dependents rate for [REDACTED] started on 1 March 2022.

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CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following partial corrective action. The Board concluded that the LESs that Petitioner provided show that she was in receipt of BAH at the with dependent rate from November 2017 through December 2018. As Petitioner provided no other LESs for the remaining periods, the Board found it reasonable to assume that Petitioner's BAH entitlement did not change until she accepted her appointment in the active component and reported to [REDACTED] on 20 May 2021. Effective 20 May 2021, Petitioner received BAH at the without dependents rate for [REDACTED] until 26 June 2023, when it was corrected and backdated to her spouse's effective date of retirement on 1 March 2022. Because there is no evidence that Petitioner's spouse received BAH at the with dependent rate for their child during that period, the Board determined that Petitioner was eligible to receive BAH at the with dependents rate effective 20 May 2021 until 28 February 2022.

RECOMMENDATION

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

Petitioner was authorized BAH at the with dependents rate for [REDACTED] for the period of 20 May 2021 to 28 February 2022.

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.

That no further changes 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.

10/23/2024

