

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-047

FINAL DECISION

ANDREWS, Attorney-Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was docketed upon its completion on January 13, 1999.

This final decision, dated November 18, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxxx, asked the Board to correct his "Home of Record" from xxxxxxxx, to xxxx. The correction would entitle him to travel and moving expenses from his place of discharge to his post-service home in xxxx.

APPLICANT'S ALLEGATIONS

The applicant alleged that, when he filled out his enlistment forms, he was on vacation in xxxxxxxx and wrote down the address where he was staying as his Home of Record. He alleged that his permanent address at the time was xxxx, and he was not informed that the address he wrote down as his Home of Record would have any affect on his post-discharge travel allowance. He argued that the Coast Guard should have told him the implications of his Home of Record. He alleged that, if he had known its effect, he would have written down his home address in xxxx as his Home of Record.

The applicant stated that his family lived in xxxxxxxx from 1978 to 1990, but in 1990, his family moved to xxxx. He submitted with his application copies

of his income tax returns and his leave and earning statements showing that he had been paying income tax to the State of xxxx for seven years. He also submitted an affidavit from a resident of xxxx, who stated that the applicant's family had been neighbors of his since 1990. The owner of a construction company in xxxx, also submitted an affidavit indicating that he had offered a job to the applicant and expected the applicant to begin working for him as soon as he was discharged from the Coast Guard.

VIEWS OF THE COAST GUARD

On September 1, 1999, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request.

The Chief Counsel argued that the Joint Federal Travel Regulations (JFTR) prohibit the applicant's requested change. Under the JFTR, the Home of Record is defined as "the place *recorded* as the home of the individual when commissioned, appointed, enlisted, inducted, or ordered into the relevant tour of active duty." The Chief Counsel explained that the purpose of having a Home of Record is "to determine the extent of the member's entitlement to travel and transportation allowances upon separation from service." He stated that the JFTR requires any change of the Home of Record to be "fully justified" and that the member must show that "through a bona fide error, the place originally named at the time of current entry into the Service was not in fact the actual home ... and not a different place selected for the member's convenience."

The Chief Counsel alleged that the applicant's enlistment documents fully support the Coast Guard's position that xxxxxxxx, is his correct Home of Record. The Chief Counsel also stated that the applicant failed to provide any evidence that he lived in xxxx immediately prior to his enlistment in 1991. In fact, he alleged, the applicant's W-2 indicates he was working in xxxxxxxx when he enlisted in 1991.

The Chief Counsel further alleged that a Home of Record is not necessarily a member's State of Legal Residence or Domicile. *Morton v. United States*, No. 290-77, 1981 Ct. Cl. LEXIS 1546, at *16 (Cl. Ct. Dec. 14, 1981).

Finally, the Chief Counsel alleged that "even assuming, *arguendo*, that Applicant could prove that his Home of Record was erroneous, he has not proven that the Coast Guard committed error or injustice and is therefore not entitled to a correction before the Board. Under the Statute of Frauds, the Coast Guard was certainly entitled to rely on Applicant's certification of this matter in his enlistment contract. If there was error in this contract, it was the result of Applicant's own certification of facts that were not true."

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On September 1, 1999, the Chairman sent the applicant a copy of the views of the Coast Guard and invited him to respond. The applicant did not respond.¹

SUMMARY OF THE RECORD

Applicant's Personnel Data Record

The applicant enlisted in the Coast Guard for a term of four years on February 14, 1991, at the Coast Guard recruiting office in xxxxxxxx. He was 24 years old.

In block A.3. of the Enlistment/Reenlistment Document (DD Form 4/1) he signed and certified, his Home of Record is listed as xxxxxxxx.

On April 4, 1991, the applicant signed a Record of Military Processing (DD Form 1966/1), certifying that he had reviewed it and that all the information in it was true. In block 4 on the form, his current address is listed as the xxxxxxxx address. In block 5, his Home of Record address is listed as "SAME AS #4." His place of birth is listed as xxxxxxxx, in block 17. Block 23 shows that he attended high school in xxxxxxxx, and xxxxxxxx, where he graduated in 1984.

On March 22, 1994, the applicant extended his enlistment for two years in order to accept orders for a permanent change of station. On February 16, 1995, the applicant was discharged and immediately reenlisted for a term of four years. Block 9 on the Discharge and Reenlistment Contract he signed indicates that his Home of Record is xxxxxxxx.

On February 15, 1999, the applicant was discharged from his unit in xxxxxxxxxxxx.

Applicant's Tax and Pay Records

The applicant submitted copies of his xxxx state tax returns for the years 1993 through 1997. He also submitted Leave and Earning Statements from

¹ The copy of the Chief Counsel's advisory opinion was sent to the applicant's address in xxxxxxxx, shown on his application. At the time he applied, the applicant was informed in writing that he must advise the Board of any change of address. He did not do so.

August 1997 through November 1998, which show that money was deducted from his pay for the purpose of paying xxxx state income tax.

The applicant also submitted two 1991 W-2 forms he received from employers. On the first, the employer shown is the xxxxxxxx of xxxxxxxxxx. The W-2 lists the applicant's address as xxxx, but shows that money was deducted to pay income taxes to the state of xxxxxxxx. On the second, the employer shown is the Coast Guard. It lists his address as a Coast Guard cutter and shows that money was deducted to pay income taxes to the state of xxxx.

APPLICABLE LAWS

Section U(A)-7 of the Joint Federal Travel Regulations define Home of Record as follows:

The place recorded as the home of the individual when commissioned, appointed, enlisted, inducted, or ordered into the relevant tour of active duty. The place recorded as the home of the individual when ... reenlisted remains the same as that recorded when ... enlisted ... into the relevant tour of active duty unless there is a break in service of more than one full day. ... Travel and transportation allowances are based on the officially corrected recording in those instances when, through a bona fide error, the place originally named at time of current entry into the Service wasn't in fact the actual home. Any such correction must be fully justified and the home, as corrected, must be the actual home of the member upon entering the Service, and not a different place selected for the member's convenience. ...

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The applicant alleged that he was a resident of xxxx and merely on vacation in xxxxxxxxxx when he enlisted in the Coast Guard in 1991. However, the W-2 form he received from his civilian employer shows that he was employed in xxxxxxxxxx, and paying income taxes to xxxxxxxxxx prior to his enlistment. The record also indicates that he went to high school in xxxxxxxx and that his family lived in xxxxxxxxxx until 1990, the year before he enlisted. The applicant did not submit any proof that he lived or worked in xxxx on a per-

manent basis prior to his enlistment. The affidavit submitted by a neighbor indicates merely that the applicant's "family," presumably his parents, moved to xxxx the year before he enlisted. Furthermore, the applicant signed two enlistment documents certifying that his Home of Record was in xxxxxxxx. Therefore, the Board finds that the applicant's actual Home of Record at the time of his enlistment was in xxxxxxxx.

3. The applicant alleged that no one told him the significance of the Home of Record and that, had he been told, he would have listed his parents' address in xxxx as his home address. However, the DD Form 1966/1 signed by the applicant clearly indicates that a person may have a Home of Record distinct from his or her "Current Address." Despite this distinction, the applicant apparently did not inquire into the meaning of the Home of Record and certified that his Home of Record was the "same as" his current address in xxxxxxxx. Moreover, in light of the applicant's long-standing residence and employment in xxxxxxxx, the Board is not convinced that he would have listed xxxx, as his Home of Record even if he had known of the effects on his post-discharge travel allowance. At the time he enlisted, the applicant could not know for certain where he would be stationed at the time of his discharge, when he would be discharged, where his parents would live at the time of his discharge, or where he would find employment.

4. The applicant alleged that the fact that he paid income taxes to xxxx while he was in the Coast Guard proves that xxxx is his Home of Record. However, an individual's legal domicile for purposes of paying state income tax need not be the same as his Home of Record.

5. The applicant has not proved that a correction of his Home of Record is "fully justified" in accordance with the terms of Section U(A)-7 of the Joint Federal Travel Regulations or that the Coast Guard committed any error or injustice in refusing to change his Home of Record from xxxxxxxx, to xxxx.

6. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of former XXXXXXXX, USCG, is hereby denied.

George Kuehnle, Jr.

Gareth W. Rosenau

Coleman R. Sachs