



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

WJH
Docket No. 2361-10
21 June 2010

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

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) CNO memo 7220 Ser N130C1/10U0199 of 10 Mar 2010
(3) Excerpts from Subject's naval record and papers related to this application

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to allow reimbursement of travel expenses while in Jacksonville Florida under orders to support earthquake relief efforts in Haiti (Operation Unified Response).

2. The Board, consisting of Messrs. Pfeiffer, Zsalmán and George, reviewed Petitioner's allegations of error and injustice on 4 June 2010 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, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. At all times relevant to this application, Petitioner was a member of VP-26, a Navy maritime aviation Patrol Squadron with a worldwide theater of operations.

b. Pursuant to decisions made by the Base Realignment and Closure Commission, VP-26 was directed to change homeports from Brunswick, ME to Jacksonville, FL effective 30 November 2009.

c. At about the same time that the homeport change was to be effective, VP-26 was scheduled to commence an extended deployment. Accordingly, Petitioner elected to maintain a household in Brunswick until after the squadron returned from the deployment.

d. In December 2009, Petitioner deployed with VP-26 to El Salvador.

e. On 12 January 2010, while VP 26 was deployed to El Salvador, a catastrophic magnitude 7.0 earthquake struck Haiti with an epicenter near the capital of Port-au-Prince. The Haitian Government reported that an estimated 230,000 people died, 300,000 were injured and 1,000,000 became homeless.

f. VP-26 was ordered to immediately provide aerial reconnaissance over Haiti, to recover at Jacksonville and to continue earthquake relief efforts, from Jacksonville, for the next few weeks as part of Operation Unified Response.

g. Petitioner incurred travel expenses while in Jacksonville between 20 Jan 2010 - 16 Feb 2010 while supporting Operation Unified Response.

h. Because the home-port change from Brunswick to Jacksonville was already effective, Jacksonville was Petitioner's official permanent duty station (even though Petitioner had not yet moved to Jacksonville).

i. Except in circumstances that are not applicable here, the Joint Federal Travel regulations prohibit the reimbursement of travel expenses for travel and lodging within the boundaries of a member's permanent duty station.

j. Once the mission to support Operation Unified Response was complete, Petitioner returned to VP-26 (deployed) and presented a claim for the travel expenses incurred in Jacksonville. However, Petitioner was advised that, because the Joint Federal Travel regulations prohibit reimbursement of travel expenses for travel and lodging within the boundaries of a member's permanent duty station, the claim would not be allowed.

k. Thereafter, Petitioner submitted the instant application to this Board. Petitioner seeks to have the naval record corrected to allow reimbursement of the travel expenses incurred while in Jacksonville under orders to support Operation

Unified Response. In enclosure (1), Petitioner explains the steps taken to minimize travel costs to the government and steps taken to avoid excessive costs while in Jacksonville.

1. In correspondence attached as enclosure (2), the Chief of Naval Operations, Code N130, has recommended the request be denied. CNO N130 explains that when Operation Unified Response commenced, the commanding officer of VP 26 was advised that per diem expenses could not be authorized, but he "disregarded" that advice. Per CNO N130C1: "Although advisories were provided on several occasions in this matter, the commanding officer VP-26 advised (Petitioner) to obtain commercial lodging. The commanding officer has stated that he was concerned that the aircrew would not meet safety rest requirements." In N130C1's view, it was error for the commanding officer to advise Petitioner to obtain commercial lodging. Because of the well established principle that the government is not bound by the erroneous advice of its agents, Petitioner's travel expenses should not be allowed. To do otherwise would ignore well established precedent.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board carefully weighed the observations made in enclosure (2) regarding warnings that were given to the commanding officer of VP-26. However, the Board found that the following factors militated in favor of relief: The earthquake support operation was not foreseen, was emergency in nature, and happened very quickly. Petitioner, for good cause, had not yet established a household in Jacksonville and thus had no available accommodations or transportation. Petitioner had little choice but to support the operation/mission as ordered. Petitioner showed some effort to minimize the costs to the government. Based on these factors, the Board concluded that Petitioner's request warrants favorable action.

RECOMMENDATION:

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


a. For purposes of determining travel, lodging and transportation entitlements only, during the period 20 Jan 2010 - 16 Feb 2010 Petitioner's permanent duty station was Brunswick ME (vice Jacksonville FL).

Note: The above change is intended to allow standard reimbursement of travel, lodging and transportation using the normal and accepted method of calculation for Petitioner's duty in Jacksonville FL in support of Operation Unified Response.

Petitioner should have the nearest facility that can compute travel vouchers perform such computation for this action. Petitioner will present to the agency computing the reimbursement due a copy of the travel voucher, all supporting documentation and a copy of this action. **The Agency making the computation will not make the actual payment.** Once the computation is completed, Petitioner will forward same, with all supporting documents, including this letter, to the DFAS-IN, 8899 East 56th Street, Department 3300 (ATTN COR/CLAIMS), Indianapolis, IN 46249-3300 for payment of any funds Petitioner may be entitled to.

4. It is certified that 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 entitled matter.

ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and Approved



7/1/10

ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000