



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

LCC
Docket No. 3618-10
14 Sep 10

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 N130C1/10U0320
(3) Subject's naval record

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 show Petitioner is entitled to Basic Allowance for Housing (BAH) for the designated location of his dependents. Also, correct the record to show he was assigned to an unaccompanied tour.

2. The Board, consisting of Messrs. George, Pfeiffer, and Zsalman, reviewed Petitioner's allegations of error and injustice on 13 September 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner was reassigned from Norfolk, VA to Stuttgart, Germany in December 2007. His orders authorized his dependent spouse to accompany him.

c. As a result of unexpected events beyond Petitioner's control (spouse hospitalized and house fire) Petitioner's spouse remained in Norfolk. Petitioner failed to request any change in his orders.

d. If Petitioner had requested to change the orders to show "unaccompanied" vice "accompanied", the request would have been approved.

e. Upon arrival in Germany, Petitioner erroneously received BAH at the designated location of his Spouse from 20 December 2007 to 31 March 2008. The payments were erroneous because the orders authorized his spouse to accompany him to Germany. When Petitioner's administrative office noticed the overpayment, they established a debt for the overpayment.

f. Unaccompanied tours are normally two years in length, but may be extended.

g. Petitioner is not scheduled to rotate until December 2010.

h. In correspondence 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 favorable action.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

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

a. Petitioner was reassigned from Norfolk to Germany in December 2007. Orders were "unaccompanied" and he was authorized BAH at the designated location of his spouse effective 20 December 2007. Address of his spouse is [REDACTED]


b. In December 2008 Petitioner requested an extension of the unaccompanied order and Petitioner was authorized BAH at the designated location of his spouse for period 20 December 2007 to present.

(NOTE: No deduction in BAH should be taken based on the square footage of Petitioner's quarters in Germany because the housing office has certified that they are the standard size for officers of his rank.)

Petitioner has already received payment for BAH for designated location of dependent spouse for the period 20 December 2007 through 31 Mar 2008. Petitioner is due payment of BAH commencing 1 April 2008 through the date he reports to his next duty station.)

4. It is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

14 September 2010


For W. DEAN PFEIFFER
Executive Director