Government of Canada Gouvernement du Canada

eBULLETIN - July 2016

Contents

See our **Case Summaries List** or **Systemic Recommendations** for further information about recent and past MGERC (Military Grievances External Review Committee) cases.

Highlights

Operation AUGURAL – Authorized Meal Rate (case no. 2014-061)

The grievor contested the Director Compensation and Benefits Administration's decision to direct a recovery from his meal claim made while serving in Khartoum during Operation AUGURAL. He argued that he should be able to rely on the Joining Instructions which stated that the daily meal rate was 75% of the published Treasury Board daily meal rate and that the austere and demanding conditions that existed in Khartoum at that time also justify the said rate.

Allowances while on Deployment Abroad (case no. 2014-118)

The grievor, a Canadian Armed Forces member without dependents, stated that he was given wrong advice regarding the allowances to which he was entitled while posted overseas. He argued that the information he received led him to sell his car at a loss and prevented him from storing his furniture at public expense.

Post Living Differential Entitlement (case no. 2015-214)

The grievor transferred from the Regular Force to the Reserve Force in order to accept a Class B term of service at another location. Upon transfer, he purchased a residence at his new place of duty, but in the same time frame, he also elected to take an Intended Place of Residence (IPR (Intended Place of Residence)) move to another location. He began collecting Post Living Differential (PLD (Post Living Differential)). Six years later, it was discovered that because the grievor had taken an IPR (Intended Place of Residence) move, he was not entitled to PLD (Post Living Differential) and recovery action was initiated to have him repay more than $90,000.

Case Summaries

Operation AUGURAL – Authorized Meal Rate

Committee Findings and Recommendations

The Standing Orders for Operation (OP (Operation)) AUGURAL Khartoum stated in May 2006 that the meal rate was 60% of the published Treasury Board (TB (Treasury Board)) daily meal rate. The Joining Instructions, however, stated that the daily meal allowance was 75% of the published TB (Treasury Board) rate. Additionally, various Military Foreign Service Instructions (MFSI (Military Foreign Service Instructions)s) published over the course of the mission also authorized different rates.

Nonetheless, the Canadian Armed Forces (CAF (Canadian Armed Forces)) members who served in OP (Operation) AUGURAL Khartoum were initially paid at the 75% rate. However, in June 2010, the grievor was advised that the Director Compensation and Benefits Administration (DCBA (Director Compensation and Benefits Administration)) had directed a recovery from him on the basis that the 75% rate paid was incorrect, and that 60% was the authorized rate. Recovery was subsequently initiated against all CAF (Canadian Armed Forces) members who served in OP (Operation) AUGURAL Khartoum on the grounds that they were all overpaid for their meal claims.

The Committee acknowledged that the CAF (Canadian Armed Forces) members deployed to Khartoum during OP (Operation) AUGURAL were called upon to make a considerable commitment and self-sacrifice under difficult living and working conditions and found that the daily meal rate of

75% originally paid to these CAF (Canadian Armed Forces) members had merit based upon the evidence gathered. The Committee also noted that the intent of the allowances and benefits under the MFSI (Military Foreign Service Instructions)s is to recognize and facilitate a CAF (Canadian Armed Forces) member's service outside Canada and to ensure that they should be neither better nor worse off than their counterparts serving in Canada. The Committee found that reducing the 75% meal rate and recovering substantial sums of money from CAF (Canadian Armed Forces) members who served in OP (Operation) AUGURAL Khartoum was unjust because it made them worse off than CAF (Canadian Armed Forces) members serving in Canada, and caused them financial harm by requiring they absorb the out-of-pocket cost of their meals while on assignment overseas when that is clearly not the intent of the policy.

The Committee found it unreasonable for the DCBA (Director Compensation and Benefits Administration) to arbitrarily reduce the meal rate and initiate recovery action without first making a concerted effort to determine whether the original 75% rate, paid from 2004 to 2010, had any merit. The Committee concluded that, under the MFSI (Military Foreign Service Instructions)s policy, it remains open to the Chief of the Defence Staff (CDS (Chief of the Defence Staff)) to restore the rate to the original 75% based on the evidence provided, and that this action would permit the CAF (Canadian Armed Forces) to correct the injustice of recovering monies from the members of OP (Operation) AUGURAL Khartoum.

Final Authority Decision

The final authority (FA (Final Authority)) did not agree with the Committee's recommendation that the daily meal rate for OP (Operation) AUGURAL Khartoum be retroactively increased. The FA (Final Authority) found that because of the passing of time and the differences of opinions and statements by various task force commanders and other members of OP (Operation) AUGURAL deployed in this time period, there was no sufficient evidence to confirm that a formal request was ever made for a rate increase from 60% to 75%. As for changes to have the meal rate increased, it is not disputed that the cost of food in Khartoum is quite high, but the FA (Final Authority) was of the view that the daily meal allowance is intended to defray some of those higher costs, not that the cost of food be fully covered by the CAF (Canadian Armed Forces). Since there was no information to suggest the cost place an additional financial burden on CAF (Canadian Armed Forces) members, the FA (Final Authority) determined that the entitlement must remain at 60% per day for OP (Operation) AUGURAL for the dates indicated in CDS (Chief of the Defence Staff) Order 037/13.

Allowances while on Deployment Abroad

Committee Findings and Recommendations

The grievor, a Canadian Armed Forces (CAF (Canadian Armed Forces)) member without dependants, stated that he was given wrong advice regarding the allowances to which he was entitled while posted overseas. He argued that the information he received led him to sell his car at a loss and prevented him from storing his furniture at public expense. More than a year after he was granted the meal allowance, an audit revealed that the allowance had been granted in error on the basis of the belief that he was married and had a dependant. The grievor claimed reimbursement of the meal allowance, to which he contends that he is entitled in accordance with the Military Foreign Service Instructions (MFSI (Military Foreign Service Instructions)), and he requested compensation for the financial losses he incurred as a result of his posting.

Acting as initial authority (IA (initial authority)), the Chief of Staff, Vice Chief of the Defence Staff, determined that the grievor was in fact entitled to store his property at public expense notwithstanding the prohibition on movement and storage of household goods and effects (HG and E (household goods and effects)) clearly set out in the grievor's posting instruction. The IA (initial authority) concluded that the grievor was not entitled to the meal allowance since he was entitled to storage of his goods at taxpayer expense. Noting as well that the grievor had divorced shortly before his posting, the IA (initial authority) acknowledged that this situation had been administered erroneously and that the errors could have been avoided if all parties have been duly informed in a timely manner of the change to his marital status.

The Committee noted that the posting instruction clearly indicated that the grievor had no dependants and prohibited both the shipping and the storage of his HG and E (household goods and effects). The Committee found that the grievor was entitled to the meal allowance during his deployment overseas because his situation fully met the eligibility criteria set out in Chapter 10 of the MFSI (Military Foreign Service Instructions). The Committee also found that by forbidding the grievor to move and store his HG and E (household goods and effects), he had been treated unfairly and differently from other CAF (Canadian Armed Forces) members, in that reasonable expenses incurred by him in connection with, or resulting from, his posting to Haiti were not repaid to him.

The Committee recommended that the Chief of the Defence Staff (CDS (Chief of the Defence Staff))

grant the meal allowance to the grievor for the duration of his posting abroad and, in addition, review his situation with a view to reimbursing eligible and reasonable expenses incurred by him as a result of his posting. Regarding the loss incurred through the sale of his personal vehicle, the Committee recommended that the CDS (Chief of the Defence Staff) forward the file to the Director Claims and Civil Litigation (DCCL (Director Claims and Civil Litigation)), for assessment purposes in accordance with Treasury Board's Directive on Claims and *Ex Gratia* Payments.

Final Authority Decision

The CDS (Chief of the Defence Staff) partly upheld the Committee's conclusions and recommendations. Regarding the meal allowance, he agreed with the Committee's conclusion that the grievor's posting message prohibited both the shipment and storage of his HG and E (household goods and effects) and that, as a result, he was eligible for this allowance under the MFSI (Military Foreign Service Instructions). The CDS (Chief of the Defence Staff) did not agree with the Committee's conclusion regarding the sale of the grievor's vehicle: it was a personal decision and the case contained no elements demonstrating that the grievor had lost money during this transaction. Thus the CDS (Chief of the Defence Staff) disagreed with the Committee's recommendation that the case be transferred to DCCL (Director Claims and Civil Litigation) for evaluation.

Post Living Differential Entitlement

Committee Findings and Recommendations

The grievor transferred from the Regular Force to the Reserve Force in order to accept a Class B term of service at another location. Upon transfer, he purchased a residence at his new place of duty, but in the same time frame, he also elected to take an Intended Place of Residence (IPR (Intended Place of Residence)) move to another location, based on erroneous information provided by Canadian Armed Forces (CAF (Canadian Armed Forces)) personnel. He moved part of his furniture to each location. Because he had been authorized a move at Crown expense to his place of duty residence, he was also entitled to, and began collecting, Post Living Differential (PLD (Post Living Differential)). Six years later, it was discovered that because the grievor had taken an IPR (Intended Place of Residence) move, he was not entitled to PLD (Post Living Differential) and recovery action was initiated to have him repay more than $90,000.

The grievor maintained that eligibility for PLD (Post Living Differential) was a critical part of his decision to accept the Class B position. He claimed that he would never have elected his IPR (Intended Place of Residence) move had he known that it would affect his PLD (Post Living Differential) entitlement; or, that he could have delayed it until after completion of his Class B service. As redress, the grievor requested that his IPR (Intended Place of Residence) move be revoked in order to retain entitlement to PLD (Post Living Differential). As such, the grievor sought to repay his IPR (Intended Place of Residence) move expenses and waive any future claims for IPR (Intended Place of Residence) in lieu of repaying the substantial PLD (Post Living Differential) recovery.

The initial authority (IA (initial authority)) found that the grievor's entitlement to PLD (Post Living Differential) was outlined in *Compensation and Benefits Instruction* (CBI (Compensation and Benefits Instruction)) 205.45(5). However, the IA (initial authority) determined that once the grievor elected his IPR (Intended Place of Residence), his entitlement to PLD (Post Living Differential) ceased, in accordance with *Addendum* 8 (Early Move to Intended Place of Residence on Release) to the 2006 Canadian Forces Integrated Relocation Program (CF IRP (Canadian Forces Integrated Relocation Program)) Directive. Although the IA (initial authority) found it regrettable that the grievor incurred such a significant overpayment, he determined that there was no administrative mechanism to revoke an IPR (Intended Place of Residence), or to reinstate it, and he was unable to grant the requested redress.

The Committee found that the grievor's situation originally met the conditions set out in CBI (Compensation and Benefits Instruction) 205.45(5) necessary for entitlement to PLD (Post Living Differential) in that, the grievor's place of duty was within a PLD (Post Living Differential) area and his principal residence was located within that PLD (Post Living Differential) area. Accordingly, the Committee found that the grievor was entitled to PLD (Post Living Differential) at the time of his posting for Class B employment.

Further, the Committee found that in accordance with CBI (Compensation and Benefits Instruction) 205.45(9), election of an IPR (Intended Place of Residence) could effectively bar entitlement to PLD (Post Living Differential) if the IPR (Intended Place of Residence) was an “early” IPR (Intended Place of Residence) and, the “early” move to an IPR (Intended Place of Residence) was granted prior to the CAF (Canadian Armed Forces) member's release. However, the Committee found that the grievor's entitlement to PLD (Post Living Differential) was not barred by CBI (Compensation and Benefits Instruction) 205.45(9) as his situation was an IPR (Intended Place of Residence) on release

(2006 CF IRP (Canadian Forces Integrated Relocation Program) *Addendum* 3) and not an early move to IPR (Intended Place of Residence) prior to release (2006 CF IRP (Canadian Forces Integrated Relocation Program) *Addendum* 8).

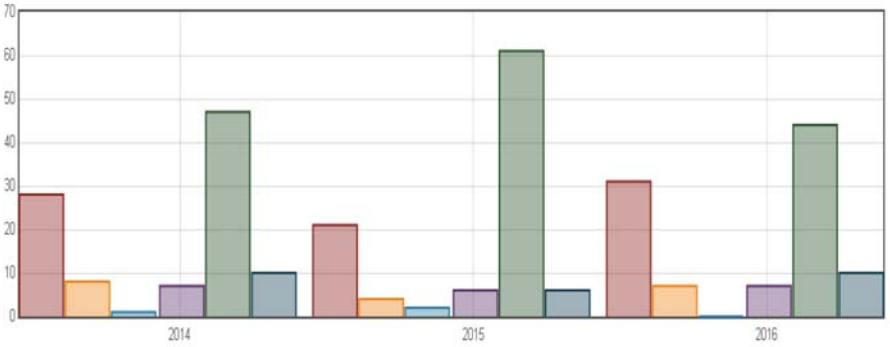
The Committee therefore recommended that the grievor be granted PLD (Post Living Differential) from the date of his purchase of his residence at the duty location until the date of its sale.

Final Authority Decision

The Chief of the Defence Staff agreed with the Committee's findings and recommendation that the grievor be granted PLD (Post Living Differential) for the period from November 2006 to the date he sold his principal residence in Toronto.

Statistics

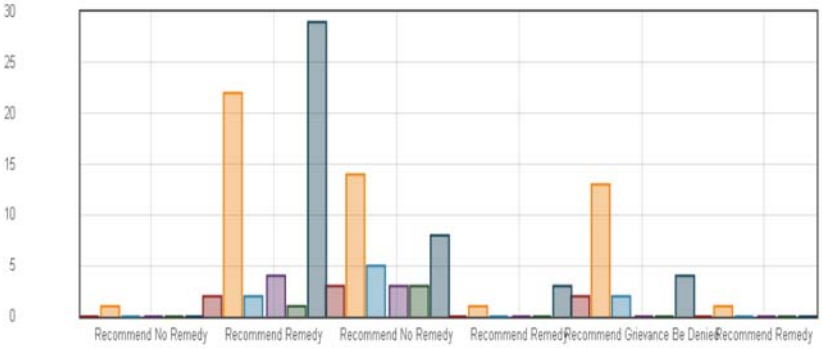
Category of grievances received since 2014 as of June 30, 2016



Careers
Harassment
Medical and Dental Care
Other
Pay and Benefits
Release

▸ **Category of grievances received since 2014 as of June 30, 2016** - Table

Distribution of the Findings and Recommendations (F&R (Findings and Recommendations)) by category of grievance for the period between January 1, 2016 and June 30, 2016



Release
Pay and Benefits
Other
Medical and Dental Care
Harassment
Careers

▸ **Distribution of the Findings and Recommendations (F&R (Findings and Recommendations)) by category of grievance for the period between January 1, 2016 and June 30, 2016** - Table

Chief of the Defence Staff (CDS (Chief of the Defence Staff)) decisions received between January 1, 2016 and June 30, 2016

- CDS agrees with Committee's F&R
- CDS partially agrees with Committee's F&R
- CDS does not agree with Committee's F&R
- Grievances resolved by CAF Informal Resolution

▸ **Chief of the Defence Staff (CDS (Chief of the Defence Staff)) decisions received between January 1, 2016 and June 30, 2016** - Table

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