



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

BAN
Docket No. 09140-08
12 August 2009

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) OJAG memo 5420 Ser 13/4BC13392.08 of 4 Dec 08
(3) CNO memo 7220 Ser N130C3/09U0245 of 26 Mar 09
(4) 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 that Petitioner was entitled to base pay and allowances from 30 September 2005 through 1 October 2007 when he was detained by civilian authorities and constrained by court order from leaving the state of Colorado. He also requests reimbursement of his plane ticket from [REDACTED] to [REDACTED].

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Exnicios reviewed Petitioner's allegations of error and injustice on 20 July 2009, and, pursuant to its regulations, determined that the partial 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. In late September 2005, Petitioner was arrested in San Diego based on a warrant from the Douglas County (Colorado) Sheriff's Department on charges of sexual assault and aggravated incest of a relative.

c. Petitioner spent approximately 20 days in custody in [REDACTED] and then was transported to [REDACTED]. Once in [REDACTED] he spent another 20 days in custody before being released pending trial on the condition that he not leave the state of [REDACTED].

d. Petitioner's pay was stopped on, approximately, 30 September 2005. He awaited trial in [REDACTED].

e. In August 2007, Petitioner was ultimately cleared of the charges. On 1 October 2007, he returned to his command at his own expense. His pay was restarted effective 14 August 2007.

f. Petitioner's commanding officer found that Petitioner had "done nothing wrong" and that his absences were unavoidable and were not due to his own misconduct.

g. In correspondence attached as enclosures (2) and (3), the offices having cognizance over the subject matter addressed in Petitioner's application have commented to the effect that Petitioner's request warrants partial relief as described below.

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 partial corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, as follows:

a. Petitioner's absences between September 2005 and October 2007 were unavoidable and were not due to his own misconduct. Accordingly, he is entitled to pay and allowances for the periods between 30 September 2005 and 14 August 2007 (less any pay and allowances already received for that period).

b. Petitioner's request for reimbursement for travel expenses from [REDACTED] to [REDACTED] is denied for the reasons stated in enclosure (3).

c. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

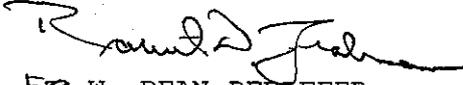
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

5. 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.

12 August 2009


For W. DEAN PFEIFFER
Executive Director