



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

AEG
Docket No: 2168-01
21 March 2001

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Pers-001 Memo to CNP of 1Dec00
(3) Subject's naval records (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, the sister of a former officer in the Naval Reserve, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was not a deserter but died while serving on active duty.

2. The Board, consisting of Messrs. Pfeiffer, Zs Salman and Ruskin, reviewed Petitioner's allegations of error and injustice on 21 March 2001 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. Enclosure (1) was filed in a timely manner.

c. Evidence of record made available to the Board reflects that Subject was commissioned an ensign in the Supply Corps of the Naval Reserve and then began a period of extended active duty. On 26 December 1967 he reported aboard USS CACAPON (AO-52) and, on 7 January 1968, was assigned duties as disbursing officer.

d. On 17 January 1968 Subject failed to report for muster while CACAPON was moored at Naval Station, Subic Bay, Philippine Islands. Subsequently, it was discovered that the safe in the

disbursing office was unsecured and about \$8600 in cash was missing.

e. On 18 January 1968 the commanding officer notified naval authorities by message that Subject had become an unauthorized absentee. On 23 January 1968 a DD Form 553 was submitted which reported that Subject was a deserter. Subsequent investigations by the Naval Investigative Service (NIS) and the Judge Advocate General failed to locate Subject or the money, and the case was closed in NIS files as "unresolved."

f. During the course of the investigations, one individual interviewed was a Disbursing Clerk Second Class (DK2; E-5) who worked for Subject. At that time, DK2 denied any involvement in Subject's disappearance. However, he admitted that Subject and he had worked on the ship's payroll in the disbursing office the night before Subject disappeared. During the course of the investigations, he submitted to a polygraph examination and was deemed "non-deceptive."

g. In 1976, a civil court declared Subject legally dead, however, such action had no effect on the entries in his record reflecting unauthorized absence and desertion.

h. In February 1993 administrative action was initiated to drop Subject from the rolls of the Navy which was approved by the Acting Secretary of the Navy. A reserve officer may be dropped from the rolls if he is absent without authority for at least three months. No discharge certificate is issued and the individual's service is not characterized. For the purpose of any federal benefit programs, dropping from the rolls is equivalent to a discharge under other than honorable conditions.

i. In March 1998 Petitioner contacted the Naval Criminal Investigative Service (NCIS) and advised that Subject had not been seen or heard from since his disappearance. Upon review, NCIS identified additional leads and determined that the investigation should be reopened.

j. On 20 November 1999, during the NCIS investigation, ex-DK2 LeB submitted to a second polygraph examination. The NCIS interim report of investigation sets the results of that examination as follows:

. . . SA (Special Agent) (C) opined [redacted] was deceptive to the relevant questions regarding the causing of (Subject's) disappearance, harming (Subject) and the stealing of the money . . . During the interrogation, [redacted] acknowledged he is likely responsible for (Subject's) death; however, he could not recall it and advised he likely repressed the memory. (Subject) stated he "pictured" himself with a body

over his shoulder and could see himself and another USN member lowering the body into one of the oil tanks aboard the USS CACAPON. () stated (Subject) may have confronted him about the missing money and a confrontation may have occurred resulting in (Subject's) death. () stated he likely would have had help with disposing (of Subject's) body . . .

Because of Mr. () comments to the effect that he had help in disposing of Subject's body, several other former members of CACAPON's crew were interviewed. However, no one else has specifically admitted to culpability in the incident.

k. The NCIS report states as follows regarding another interview with Mr. () on 21 September 2000:

During the interrogation, . . . () admitted to the theft of the disbursing office funds and the murder of (Subject). () maintained he was stealing money from the safe when (Subject) walked into the office door. (Subject) allegedly told () he was going to report him and a confrontation occurred. According to (), (Subject) fell to the ground and he beat (Subject's) head against the deck. () advised he then choked (Subject) until he was lifeless. (LeB) stated he subsequently disposed of (Subject's) body into the oil tank located within close proximity to the disbursing office. () maintained he acted alone and never told anyone of his actions.

1. In a memorandum of 1 December 2000 the Legal Counsel to the Chief of Naval Personnel (CNP) set forth the foregoing facts and noted that legal action against Mr. () and/or anyone else is a matter for civil authorities since "the military has no jurisdiction over any of the suspects." Counsel recommended that the Navy "not wait for any results of a possible trial" prior to taking action to "remove the deserter mark from our records to reflect (Subject) was killed while on active duty vice deserted."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. It is now abundantly clear that Subject was never an unauthorized absentee or a deserter, but was killed by then-DK2 () when Subject caught him stealing money from the safe in the disbursing office. Accordingly, the Board agrees with CNP's legal counsel that the record should no longer show that Subject deserted, and should be corrected to show that he died on 17 January 1968 while serving on active duty. The Board also believes the record should be corrected by removing all evidence pertaining to the 1993 action dropping Subject from the rolls of the Navy.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all references to his unauthorized absence or desertion. This corrective action should include, but not necessarily be limited to, removal of the message and DD Form 553 of 18 and 23 January 1968, respectively.

b. That Petitioner's naval record be further corrected to show that he died on 17 January 1968 while serving on active duty.

c. That the record be further corrected by removing all documentation pertaining to the administrative action dropping Petitioner from the rolls of the Naval Reserve. This corrective action should include, but not necessarily be limited to, removal of the letters dated 18 February and 6 and 12 April 1993.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

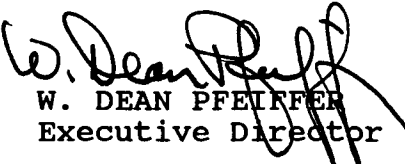
e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a 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


ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 5e of the Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6[e]), and having ensured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the provisions of reference (a) has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director