



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

TRG  
Docket No: 6112-01  
3 October 2002

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) Case Summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed an application with this Board requesting that his record be corrected to show that he was not charged with two periods of lost time in 1999.

2. The Board, consisting of Mr. Brezna, Mr. Kastner and Mr. Pauling, reviewed Petitioner's allegations of error and injustice on 1 October 2002 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's application was filed in a timely manner.

c. Petitioner enlisted in the Navy for four years on 30 January 1996 at age 17. On 31 October 1997, he received nonjudicial punishment for an unauthorized absence of about six days and missing ship's movement.

d. Petitioner subsequently, committed other offenses and it appears that he was placed in pretrial confinement on 11 June 1999. A special court-martial convened on 15 July 1999 and convicted him of unauthorized absences from 11 January 1999 to 26 January 1999, and from 11 March to 11 June 1999. The court sentenced him to a reduction to pay grade E-1, confinement at hard labor for 30 days and a bad conduct discharge. He was released from confinement on 8 August 1999 and began appellate leave on 10 August 1999. The bad conduct discharge was issued on

7 February 2001.

e. Petitioner contends that the period of lost time from 5 to 24 February shown on his DD Form 214 is in error. The record shows that on 26 February 1999, the USS NIMITZ (CVN 68) reported that Petitioner was an unauthorized absentee from 5 February to 25 February 1999. However, the NIMITZ was apparently unaware that on 5 February 1999, the Naval Medical Center, Portsmouth, VA sent a message reporting that Petitioner was on board and retained in the medical holding company for treatment. The record shows that he reported aboard the NIMITZ on 25 February 1999. At the 15 July 1999 special court-martial, Petitioner was initially charged with unauthorized absence from 5 February 1999 to 25 February 1999. However, this charge was dismissed without prejudice.

f. Petitioner is also requesting removal of the lost time from 11 June to 15 July 1999. He contends, in effect, that he should not have been charged with lost time because he was in a restricted status during this period and not in pretrial confinement.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. Concerning the lost time from 5 February to 25 February 1999, it is clear that he was undergoing medical treatment at the Medical Center during that period and the NIMITZ was unaware of this fact until at least 25 February 1999. Additionally, the charge of unauthorized absence for that period was dismissed without prejudice at the 15 July 1999 special court-martial. Therefore, the Board concludes that the record should be corrected by removing that period of lost time from his record.

There is no evidence in the record, and Petitioner has submitted none, to support his contention that he was in a restricted status and not in pretrial confinement during the period 11 June to 15 July 1999. The Board notes that the period 11 June to 15 July 1999 is consistent with a period of pretrial confinement that is properly charged as lost time, given the subsequent court-martial conviction on 15 July 1999. Therefore, the Board concludes that a removal of this period of lost time is not warranted.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing from the record any documentation showing the period of lost time from

5 to 24 February 1999.

b. That his request for removal of the period of lost time from 11 June to 15 July 1999 be denied.

c. 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.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with 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.

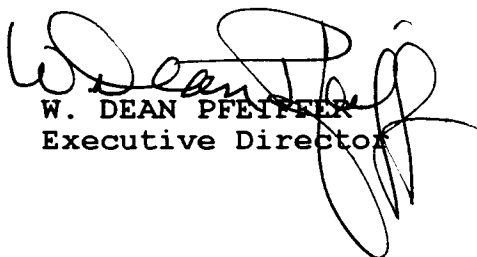
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



ROBERT D. ZSALMAN  
Recorder

ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 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.



W. DEAN PFEIFFER  
Executive Director