



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

WJH
Docket: 10205-09
15 Feb 2011

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

Subj: [REDACTED]

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

Encl: (1) NPC ltr 1070 PERS 312A of 13 Aug 2010
(2) Naval Supply Systems Command ltr 4050 Ser 53E/072
of 14 Jun 2010
(3) NPC ltr 1430 Ser 811/441 of 16 Aug 2010
(4) CNO ltr 5420 Ser N133D/000534 of 9 Nov 2010

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 following corrections be made to the applicable naval record: (a) that block 17 on the DD 214 be changed from "yes" to "no", (b) that Petitioner be authorized a shipment of household goods from San Diego CA to Ajo AZ, (c) that the method of calculating Petitioner's gross monthly retired pay be modified, (d) that Petitioner be reimbursed for excess transportation costs of \$1237.00, (e), that Petitioner receive retroactive advancement to E-8, (f) retroactive advancement to E9, and (g) payment of submarine pay and career sea pay for the period after transfer from the USS Emory Land.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George reviewed Petitioner's allegations of error and injustice on 31 January 2011 and, pursuant to its regulations, determined that only 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. Also, the Board members considered the request for a personal appearance, however they found that the issues in the case were adequately documented and that a personal appearance with or without counsel would not materially add to the Board's

understanding of the issues involved. Thus, the request for a personal appearance has been denied.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. The portion of the application extending to block 17 on the DD 214 has been resolved administratively without the need for action by this Board as evidenced by enclosure (1).

b. The portion of the application extending to shipment of household goods from San Diego CA to Ajo AZ has been resolved administratively without the need for action by this Board as evidenced by enclosure (2).

c. The portion of the application extending to the method of calculating gross monthly retired pay is being resolved administratively by the Defense Finance and Accounting Service (DFAS) without the need for action by this Board. DFAS is in the process of changing the method of calculation to take into account the pay rates applicable between 2002 and 2008.

d. Regarding the portion of the application extending to reimbursement for excess transportation costs of \$1237.00, by enclosure (2), the office having cognizance over household good shipments has commented to the effect that the request has merit and warrants favorable action.

e. Regarding the portions of the application extending to retroactive advancement to E-8, retroactive advancement to E9, and payment of submarine pay and career sea pay, by enclosures (3) and (4), the offices within the Navy having cognizance over those matters have recommended no relief.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds as follows:

The requests described in paragraphs 3a through 3c can be resolved without the need for action by this Board. Accordingly, no further action should be taken at this time.

The request described in paragraph 3d above has merit and warrants favorable action in light of the comments reflected in enclosure (2). Review of the matter reveals the existence of an injustice warranting the corrective action identified below.

The requests described in paragraphs 3e do not have merit and, in the Board's view, no corrective action is warranted. In drawing this conclusion, the Board gave thorough consideration to Petitioner's claims. However, after careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice regarding promotions and special pays. In this regard, the Board substantially concurred with the comments contained in enclosures (3) and (4). The Board well understood that the findings of guilty associated with Charge 2 were set aside and that the sentence for the finding of guilty on Charge 1 was "no punishment." However, the Board found that Petitioner's conviction on Charge 1, as approved by the convening authority, was itself a very serious breach of expected standards.¹ The behavior for which Petitioner was convicted alone may very likely have resulted in his transfer from the USS Emory Land and impacted negatively on his special pays and subsequent promotion opportunity. The Board could not agree with Petitioner's claim that, but for the "erroneous" convictions, it is probable that he would have remained onboard the ship, earned the special pays and received later promotions (at the earliest eligible opportunity). In fact, the Board found the contrary to be more probable, namely that the misconduct for which he was convicted in Charge 1 was sufficiently serious that it alone would likely have resulted in his transfer from the USS Emory Land and impacted negatively on his special pays and subsequent promotion opportunities. Accordingly, the Board concluded that this portion of the request should be denied.

RECOMMENDATION:

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

a. Petitioner is entitled to reimbursement of \$1237.00 in excess transportation costs for shipment of household goods from Norfolk VA to Ajo AZ. The PLEAD on Petitioner's original discharge orders will read "Ajo AZ" vice any other place. The following funding citation may be used: AA 1711804.12TL 420 00013 H 068892 2D 1BCNRC 000131BCNRCX N0001311MPBCNRC.

¹ Charge 1 alleged a violation of a general regulation by engaging in the following behaviors: wrongfully and repeatedly making comments of a sexual nature towards, putting (his) arm around, and attempting to grab the buttocks of a female sailor who was junior to Petitioner by three pay grades.

b. That so much of Petitioner's request for corrective action as exceeds the foregoing be denied for the reasons identified above.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

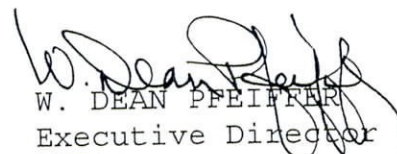
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (c) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings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

15 Feb 2011


W. DEAN PFEIFFER
Executive Director