



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 843-99

6 April 1999

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps Reserve filed enclosure (1) with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve vice being discharged on 5 January 1994.

2. The Board, consisting of Mr. Zsalman, Mr. Milner and Ms. Madison, reviewed Petitioner's allegations of error and injustice on 23 March 1999 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. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner was issued a Notification of Eligibility for Retired Pay at Age 60 on 6 May 1987. Subsequently, on 6 June 1988 he reenlisted for six years. During this enlistment, on 1 December 1988 he was promoted to MGYSGT (E-9) and participated in Operation Desert Shield/Storm. He then continued to drill in an outstanding manner until he transferred to the Individual Ready Reserve (IRR) on 3 February 1994. He was honorably discharged on 5 June 1994 at the expiration of his enlistment.

d. The Board did not request an advisory opinion in this case. However, the Board is aware that Headquarters Marine Corps

has routinely recommended favorable action in similar cases when an individual was in good standing in the Marine Corps Reserve and there is no explanation in the record why an individual was discharged and not retired. In this case it may be that Petitioner was unaware that retirement was not automatic but had to be requested.

e. The Board is aware that the Uniform Retirement Date Act, 5 U.S.C. 8301 requires that the effective date of any retirement be the first day of the month.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Since he was in good standing in the Marine Corps Reserve and would have been retired if he had requested it, the Board concludes that the record should show that he transferred to the Retired Reserve in the grade of MGYSGT vice being discharged. Given the requirements of the Uniform Retirement Date Act the effective date of the retirement should be 1 June 1994.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status in the Retired Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that the transferred to the Retired Reserve on 1 June 1994 in the grade of MGYSGT vice being discharged on 5 June 1994.

b. That this Report of Proceedings be filed in 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.

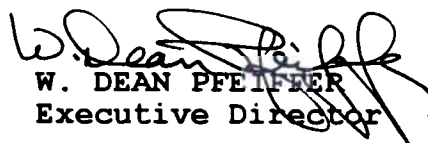
ROBERT D. ZSALMAN
Recorder



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