



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

TRG
Docket No: 841-01
19 September 2001

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
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a commissioned officer in the United States Naval Reserve filed an application with this Board requesting that his record be corrected to show that he was retired vice being discharged under the provisions of the Special Separation Bonus (SSB) program.
2. The Board, consisting of Mr. Pfeiffer, Mr. Cooper and Mr. Adams, reviewed Petitioner's allegations of error and injustice on 12 September 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. Although it appears that Petitioner's application 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 honorably discharged from enlisted status on 30 June 1983 in the rate of AEC (E-7). He was commissioned an ensign on 1 July 1983. He then served in an outstanding manner for about 10 years and was promoted to LT (O-3). He was honorably discharged on 1 July 1993 under the provisions of the SSB program and was paid \$119,452.32. The SSB program required that Petitioner be issued a reserve commission. Subsequently, while in the Individual Ready Reserve (IRR), he was promoted to LCDR (O-4).

d. Petitioner states in his application that his squadron was being decommissioned in September 1993 and if he had accepted orders, he would have been obligated for an additional two years of active duty. In deciding to be discharged with SSB, he relied on a computation of service which showed that he had completed 19 years and 5 months of active service. In 1999, he was provided with a corrected statement of service which shows 19 years, 11 months and 14 days of active service. Petitioner contends that if had understood that he was only 16 days from being able to retire with 20 years of active service, he would not have accepted the SSB and would have served the 16 days and retired.

e. Attached to enclosure (1) is an advisory opinion from the Officer Retirement Branch in the Navy Personnel Command which states, in part, as follows:

... Although (Petitioner) feels it was the Navy's mistake for miscalculation of his active service, it is the member's responsibility to ensure his DD 214 is accurate before signing.

.. Since (Petitioner) received a lump sum of \$119,452.32 upon separation from active duty and that fact that he was not qualified for retirement effective 1 July 1993, we recommend disapproval of his request.

f. Petitioner states in his rebuttal that he served in the Naval Reserve in the 1960's, which included a period of five months and 10 days active service, which was not included in the computation of his service. There is no documentation concerning this service included in his record. He also states that he questioned the computation of service at the time of his discharge, but the retirement branch insisted that the computation was correct.

g. The Board is aware that the Uniform Retired Date Act 5 U.S.C. 8301 requires that the effective date of any retirement be the first day of the month. In addition, the Board is aware that if the record is corrected to show retirement vice discharge, the SSB payment must be recouped from Petitioner's retired pay.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board believes that had Petitioner's length of service been properly computed and had he been properly advised, he would have remained on active duty to qualify for retirement. Accordingly, the Board believes he was unjustly discharged with

SSB instead of being permitted to remain on active duty for the 16 days necessary for retirement. Therefore, the Board concludes that the record should be corrected to show that he retired from the Navy vice being discharged with SSB. This can be accomplished by correcting the record to show that he was not discharged with an SSB payment on 1 July 1993 but continued to serve until he retired from the Navy. Since the Uniform Retirement Date Act requires retirement on the first of the month, he should be retired on 1 August 1993. Since he was not promoted to LCDR until after that date he should be retired in the grade of LT.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged with an SSB payment on 1 July 1993 but continued to serve on active duty until he retired on 1 August 1993 in the grade of LT.

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



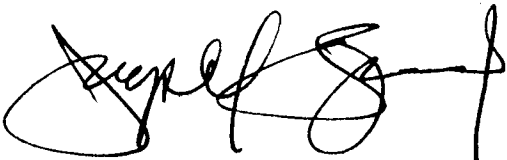
ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and approved:



JOSEPH G. LYNCH
Assistant General Counsel
(Manpower And Reserve Affairs)

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