



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

TRG
Docket No: 848-01
6 December 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
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, the widow of a retired commissioned officer in the Marine Corps Reserve filed an application with this Board requesting that her late husband's record be corrected to show that he became entitled to retired pay at age 60 and made a Survivor Benefit Plan (SBP) election for her.

2. The Board, consisting of Mr. Mackey, Mr. Cooper and Ms. Hare, reviewed Petitioner's allegations of error and injustice on 27 November 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. Subject enlisted in the Naval Reserve on 12 May 1942 and reported for primary flight training on 11 June 1942. He was commissioned a second lieutenant in the Marine Corps Reserve on 17 April 1943. He then served in an excellent manner throughout the remainder of World War II. After the war he retained his reserve commission. Title 10 U.S.C. 1331 (now 10 U.S.C. 12732) provides that all reserve service prior to 1 July 1949 is creditable for reserve retirement purposes. Therefore, as of 1

July 1949, he was credited with 7 years, 1 month and 19 days of service for reserve retirement purposes.

d. In the four anniversary years beginning on 1 July 1949 and ending on 30 June 1953, Subject earned no further qualifying years. However, in the first year he was credited with 16 points from annual training and in the third year he was credited with eight drills. Beginning on 1 July 1953 and continuing through 31 May 1963, he earned consecutive qualifying years totaling 9 years and 11 months. He was also promoted to Major. On 1 June 1963, he transferred to the Retired Reserve. This was an honorary status because he did not have 20 qualifying years for reserve retirement. Subject became 60 years of age on 23 April 1982 and died on 3 April 1999.

e. Apparently, Petitioner then attempted to find out what benefits she was entitled to based on Subject's military service. On 13 December 2000, Headquarters Marine Corps informed Subject's son, that no benefits were due. However, it was recommended that the widow petition this Board because it appeared that Subject had 19 years and 11 months of qualifying service, and his transfer to the honorary retired list was probably in error.

f. Attached to enclosure (1) is an advisory opinion from Headquarters Marine Corps which now states that Subject has only been credited with 17 years and 19 days of qualifying service for reserve retirement and not the 19 years and 11 months, as previously represented to the family. The advisory opinion states, in part, as follows:

.... Our review appears to indicate that (Subject) was not aware of the change in policy after 1 July 1949, to restrict retirement credit to only the points earned in support of various activities such as: Inactive Duty Training (IDT), Correspondence Courses, Active Duty Training (ADT), and the 15 membership points.

... The four anniversary years (1 July 1949 to 30 June 1953 immediately following the change in policy are all non-qualifying years of service for (him). It appears sometime after 1 July 1953, (he) was made fully aware of his situation. For that time on, (he) took prudent steps to ensure he earned the required fifty points necessary to obtain qualifying years of service until his honorary retirement on 31 May 1963.

... It is reasonable to assume any major change in policy such as this change represented would require a

period of adjustment and reeducation. (His) string of qualifying years of service immediately following the four non-qualifying years ... seem to indicate the word got passed, albeit a little late. ...

... We recommend the following:

a. The Board for Correction of Naval Records (BCNR) direct Headquarters Marine Corps (MMSR-5) to redistribute retirement points in such a way as to ensure (he) satisfies the minimum retirement point requirement for twenty qualifying years of service.

b. (That BCNR) direct (MMSR-5) to provide the surviving spouse with the opportunity to make an election for Reserve Component Survivors Benefit Plan (RCSBP) under the provisions in force at the time of (his) having obtain twenty qualifying years of service.

c. (That BCNR) direct (MMSR-5) to transfer (him) to the Retired Reserve Awaiting Pay at Age Sixty vice his transfer to the Retired Reserve without pay, with the same effective date of transfer of 31 May 1963.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes HQMC's position that Subject must not been aware of the requirement to earn retirement points. However, the Board is also aware that the recording of points in the first years after 1 July 1949 was not very accurate. In this case, he has actually been credited with 16 retirement points in the first year and eight points in the third year. The Board believes that he would not have performed annual training and been credited with drills if he had not been in a status to earn additional points. This suggests that there may very well have been other points that were not credited. Further, even if only one of the years had been qualifying, Petitioner would have had 18 qualifying years and would have been retained and given an opportunity to qualify for reserve retirement. Given the circumstances, the Board agrees with the recommendation contained in the advisory opinion that Subject's naval record should be corrected to show entitlement to retired pay at age 60. The record should be further corrected to show that at that time of his transfer to the Retired List on 23 April 1982, he made an SBP election based on the full amount of his retired pay with his

wife as beneficiary.

The corrective action can be accomplished by transferring sufficient points from the excess over 50 in the qualifying years to raise the total to 50 retirement points in three of the years which are not qualifying for reserve retirement. With this correction, Petitioner will have 20 qualifying years and at the time of his transfer to the Retired Reserve on 1 June 1963 would have been eligible for retired pay at 60. The record should then be corrected to show that he transferred to the Retired List on 23 April 1982 his 60th birthday.

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 on the Retired List.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by transferring sufficient points from qualifying years for reserve retirement to raise the total to 50 retirement points in three of the years which are not qualifying years. With this correction Petitioner would have been eligible for reserve retirement on transfer to the Retired Reserve effective 1 June 1963. The record should be further corrected to show that he transferred to the Retired List on 23 April 1982 his 60th birthday.

b. That Petitioner's naval record be further corrected to show that on 23 April 1982 he made a Survivor Benefits Plan election based on the full amount of his Retired Pay with his wife as beneficiary.

c. 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