



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

TRG
Docket No: 2490-01
31 July 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) 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 was transferred to the Retired Reserve vice being discharged on 31 December 1991.

2. The Board, consisting of Mr. Adams, Mr. Chapman and Ms. Hare, reviewed Petitioner's allegations of error and injustice on 24 July 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 reenlisted in the Marine Corps on 13 April 1988 in the grade of SSGT (E-6). Although the record is incomplete he apparently extended that enlistment on several occasions. The record shows that he was recalled to active duty in support of Operation Desert Shield/Storm. While in Southwest Asia, he hurt his back and was evacuated back to the United States. On 19 November 1991 the Physical Evaluation Board found

him unfit for duty and directed his discharge with severance pay. On 18 December 1991 he was issued a Notification of Eligibility for Retired Pay at Age 60. He was honorably discharged by reason of physical disability with severance pay on 31 December 1991.

d. Petitioner states in his application that he was erroneously informed that he had to take severance pay rather than retirement. He now desires retirement which will establish his eligibility for "Gray Area" benefits.

e. The Board is aware that although Petitioner has been discharged he will be eligible for retired pay as a former member when he reaches age 60. The Board did not request an advisory opinion in this case. However, the Board is aware that Headquarters Marine Corps has routinely recommended corrective action in other cases when an individual is eligible for reserve retirement and was discharged and not retired.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner was in good standing in the Marine Corps Reserve and would have been retired if he had requested it rather than accepting discharge with severance pay. Since he is eligible for retired pay as a former member at age 60, the Board believes that no useful purpose is served by the discharge. The Board is aware that his severance pay will be recouped when he starts receiving his retired pay at age 60. Therefore, the Board concludes that Petitioner's record should be corrected to show that he transferred to the Retired Reserve in the grade of SSGT (E-6) on 31 December 1991 vice being discharged on that date.

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 he transferred to the retired review on 31 December 1991 in the grade of SSGT vice being discharged on that date.

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