



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

TRG
Docket No: 2697-01
1 November 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, a former warrant officer in the Marine Corps Reserve filed an application with this Board requesting that his record be corrected to show that he was not discharged on 1 January 2001 but continued to serve in the Marine Corps Reserve. In addition he requests removal of a failure of selection to CWO4 and missed pay and/or retirement points from 19 December 2000 to the present.

2. The Board, consisting of Mr. Pauling, Mr. Taylor and Ms. Gilbert, reviewed Petitioner's allegations of error and injustice on 23 October 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. Petitioner's application was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps on 5 April 1976 and accepted an appointment as a warrant officer on 29 June 1990. He was subsequently promoted to CWO3. From the date of his enlistment through the anniversary year ending 4 April 1993 he earned 17 consecutive years of qualifying service for reserve retirement. However, in the next seven anniversary years, from 5 April 1993 to 4 April 2000, he earned only one satisfactory year, in 1998-99.

d. Petitioner was placed on the inactive status list (ISL) on 11 July 2000, apparently because he had not been participating in the reserve program. He then located a billet and requested restatement to an active status, which was accomplished on 19 December 2000. However, he was honorably discharged on 1 January 2001 because of his failures of selection to CWO4.

e. At enclosure (2) is an advisory opinion from Headquarters Marine Corps (HQMC) which provides a corrected Career Retirement Credit Report (CRCR). The CRCR shows that he has 16 years of qualifying service and the required years in the reserve component. The advisory opinion points out that if the corrected CRCR, had been available he would have been eligible to request continuation to 24 years of service and to qualify for reserve retirement. The advisory opinion states concerning the failure of selection issue, in part, as follows:

The Marine Corps Reserve Support command (MCRSC) notified (Petitioner) via letter dated 11 May 2000 that he had failed to maintain the required twenty-seven points per anniversary year. As a result of his inactivity, (he) had thirty days from the receipt to show cause or he would be transferred to the Inactive Status List (ISL). When no further comment was provided, MCRSC transferred (him) to the ISL on 12 July 2000. On the convening date for the fiscal year 2001 (FY01) Chief Warrant Officer Select Board, (he) was a member of the Individual Ready Reserve and rightly reviewed for promotion consideration. Headquarters Marine Corps (CMT) provided (the reference) and recommended the removal of the pass from (his) records. We do not agree with their assessment. Their advisory opinion indicates (he) took the first step to request transfer to the (ISL) on 5 April 2000 and MCRSC's files do not bear that out. (He) has provided no evidence that he did in fact initiate any voluntary action on 5 April 2000.

... (His) assertion that he has lost out on a billet opportunity and the pay/points associated with it, rests squarely on his shoulders. The proper validation and certification of the CRCR was clearly his responsibility. When (he) provided additional information contrary to what he had previously certified as correct, (HQMC) (MMSR-5) was able to obtain the necessary paperwork and clear up the discrepancies.

The advisory opinion recommends that Petitioner's discharge be canceled and he be reinstated in the Marine Corps Reserve, and that the Board direct that he be accepted for continuation during the year 2000, to ensure he will become retirement eligible. It is recommended that the failure of selection not be removed and that he not be credited with any missed pay or retirement points from 19 December 2000 to the present.

f. In his rebuttal to the foregoing adversary opinion, Petitioner states, in effect, that he attempted to correct the errors in the CRCR many times and the incorrect CRCR should not be held against him. In addition, he contends that the CRCR is still erroneous because it should show that he has 18 vice 16 qualifying years for reserve retirement. If so, he would not have been discharged but placed in the "Safety Zone" to earn additional qualifying years for retirement. He points out that he will not be able to earn a qualifying year in the time remaining in his current anniversary year unless the Board credits him with retirement points he would have earned if he had not been discharged.

g. After reviewing Petitioner's rebuttal, HQMC further corrected the CRCR to show 18 qualifying years. Individuals who are placed in the safety zone have three years to earn the two qualifying years needed to qualify for retirement. However, those individuals are no longer eligible for continuation and that part of the advisory opinion concerning continuation has been overtaken by events.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. The Board notes that if Petitioner's CRCR had reflected 18 years of qualifying service he would have placed in the safety zone and not discharged. Therefore, the Board agrees with the recommendation contained in the advisory opinion that the discharge of 1 January 2001 should be canceled and he should be reinstated in the Marine Corps Reserve and placed in the safety zone to earn retirement.

The advisory opinion recommends denial of his request for removal of his failure of selection. It notes that he was properly considered for promotion because he was a member of the IRR when the promotion board convened, and there is no evidence to show that he requested transfer to the ISL prior to the convening of the Board. In the absence of such evidence, the Board agrees with the comments and recommendation contained in the advisory opinion on this issue.

Concerning his request for pay or nonpay retirement points from the period after his discharge until resolution of his case, the Board notes the seven year period from 5 April 1993 through 4 April 2000 in which he only earned one qualifying year for retirement. The Board could not conclude from this record, that he would have earned retirement points in future years. Since his problems were at least partially of his own making, the Board concludes that his request for retirement points from the date of his discharge until resolution of his case is not warranted. However, the Board is aware that he can reapply on this issue in the future if he is in a situation in which he is precluded from earning reserve retirement because there are insufficient retirement points in 2001.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged on 1 January 2001 but remained a member of the Marine Corps Reserve. The record should be further corrected to show that he was placed in the Safety Zone either on 1 January 2001 or later in 2001 if authorized by regulations.

b. That the remainder of his requests be denied.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

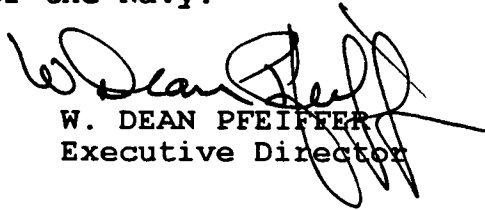
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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