



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

TRG
Docket No: 6289-01
4 October 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 enlisted member of the United States Marine Corps Reserve filed an application with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve vice being discharged on 21 January 1995.

2. The Board, consisting of Mr. Pfeiffer, Mr. Whitener and Mr. Beckett, reviewed Petitioner's allegations of error and injustice on 2 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. 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 Reserve on 22 May 1989 for four years in the grade of 1STSGT (E-8). In January 1992 he was issued a Notification of Eligibility for Retired Pay at Age 60. The record reflects no further qualifying years for retirement after 27 January 1992. However, he was promoted to MGYSGT (E-9) on 1 January 1993. On 20 May 1993, a 19 month extension became effective to meet the minimum obligated service requirement for promotion. There must have been an additional two month extension because the Career Retirement Credit Report shows that he was discharged on 21 March 1995, which means that

there must have been extensions totaling 21 months.

d. The Board did not request an advisory opinion in this case. However, the Board is aware that Headquarters Marine Corps (HQMC) has routinely recommended corrective action in similar cases when an individual is qualified for reserve retirement and there is no explanation in the record why they were discharged and not retired.

e. The Board is aware that an individual must earn two qualifying years after being promoted in order to retire in the higher grade. As indicated, the record shows that Petitioner did not earn any qualifying years after being promoted.

f. The Board is also 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. The Board notes that Petitioner was in good standing in the Marine Corps Reserve and would have been retired if he had requested it. The Board concludes that he should be transferred to the Retired Reserve. Given the requirements of the Uniform Retirement Date Act, it appears that the retirement should be effective on 1 March 1995 vice the discharge of 21 March 1995 shown on the CRCR.

Concerning the issue of Petitioner's grade on retirement, the Board notes that he has not met the requirement to earn two qualifying years after being promoted. Therefore, the Board concludes that he should be transferred to the Retired Reserve in the grade of 1STSGT (E-8). If he has evidence that he actually earned two qualifying years, then HQMC can correct the retirement point record and retire him as a MSGT. If he cannot establish additional qualifying years but believes that an error or injustice has occurred, he can submit an application to the Board on the issue of his grade on retirement.

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:

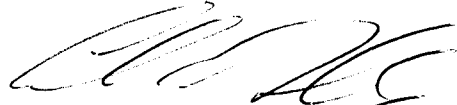
a. That Petitioner's naval record be corrected to show that he transferred to the Retired Reserve on 1 March 1995 in the grade of 1STSGT or higher grade as determined by HQMC, vice being

discharged on 21 March 1995.

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