



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

TRG
Docket No: 3808-02
19 July 2002

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, an enlisted member of the Marine Corps Reserve, filed an application with this Board requesting that his record be corrected to show that the anniversary years ending on 12 December 1993 and 12 December 1995 are qualifying for reserve retirement.

2. The Board, consisting of Ms. Davies, Mr. Nofziger and Ms. LeBlanc, reviewed Petitioner's allegations of error and injustice on 9 July 2002 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 voluntarily discharged from the Marine Corps on 8 January 1993 under the provisions of a program that authorized his early release with separation pay. At that time, he had completed 15 years, 6 months and 1 day of active duty. The program under which he was discharged required a three year enlistment in the Marine Corps Reserve. He has remained a member of the Marine Corps Reserve and the expiration of his current contract is 31 August 2003. While a member of the Marine Corps Reserve he was promoted to gunnery sergeant (GYSGT; E-7).

d. Attached to enclosure (1) is a Career Retirement Credit Report (CRCR) that shows in the first three anniversary years as a member of the Marine Corps Reserve, ending in 1993, 1994 and 1995, he earned 41, 15, and 46 points, respectively. Fifty retirement points are needed to make a year qualifying for retirement. Subsequently, his anniversary year was changed, apparently because he was placed in the standby reserve when he did not earn sufficient retirement points. In the anniversary year ending 8 January 1999 he has been credited with 36 retirement points. Since then, he has earned consecutive qualifying years and at the end of his anniversary year on 8 January 2003, he will have 20 qualifying years for reserve retirement. However, he is not eligible for reserve retirement because of the requirement that the last eight years of qualifying service must be in the reserve component. A review of the CRCR reveals that on 8 January 2003, he will only have six qualifying years in the reserve component.

e. Petitioner states in his application that he was initially unaware of the requirement to qualify for reserve retirement. Accordingly, he failed to earn a qualifying years in 1993 and 1994. When he did find out and started drilling his employer made him choose between keeping his job or serving in the reserves. Presented with this choice, he then transferred back to the individual ready reserve (IRR). He states that he is now a Federal employee and has earned qualifying years since then. Petitioner points out that he has been transferred back to the IRR because he has twice failed of selection to pay grade E-8. He is also concerned that since he is approaching service limitations as a GYSGT, he will have to either be promoted or go through a waiver process in order to perform further service. He is requesting that sufficient points from the excess over 50 in his qualifying years be moved into the anniversary years ending 12 December 1993 and 1995 to make those years qualifying for reserve retirement.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority, consisting of Ms. Davies and Ms. Nofziger, concludes that Petitioner's request warrants favorable action. The majority notes that Petitioner will have 20 qualifying years and would be eligible for retirement except for the requirement that the last eight years of qualifying service be in the reserve component. The majority is also aware that he may not have been initially aware of the requirement to earn 50 points each year, and of the difficulties he had with an employer. Further, he has failed of selection for promotion and is approaching service limitations. Given the circumstances, the majority concludes that no useful purpose is served by making Petitioner continue in

the IRR to earn retirement. Therefore, the record should be corrected by moving, from the excess over 50 in subsequent qualifying years, nine retirement points into the anniversary year ending 12 December 1993 and four points into the anniversary year ending 12 December 1995. With this correction Petitioner will be eligible to request retirement.

The majority further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the change in the number of qualifying years.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected by moving from the excess over 50 in subsequent qualifying years, nine retirement points into the anniversary year ending 12 December 1993 and four retirement points into the anniversary year ending 12 December 1995.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

MINORITY CONCLUSION:

Ms. LeBlanc disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. She notes that there is no evidence that Petitioner will not be allowed to continue in the Marine Corps Reserve and earn his retirement. She does not believe an error or injustice will occur until he is denied further service. Further, she does not believe that any problem he had in determining the requirements for a qualifying year and with an uncooperative employer are sufficient to warrant relief. In view of the foregoing, the minority finds no injustice warranting corrective action at this time.

MINORITY RECOMMENDATION:

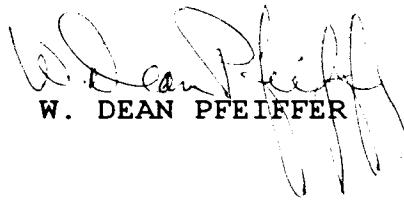
That Petitioner's request be denied.

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.

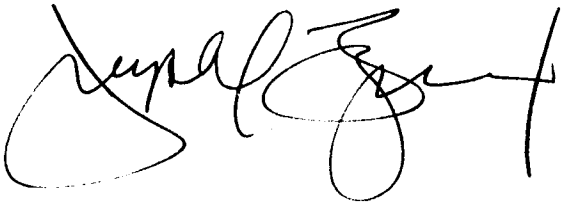
ROBERT D. ZSALMAN
Recorder


ALAN E. GOLDSMITH
Acting Recorder

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


W. DEAN PFEIFFER

MAJORITY REPORT: SEP 10 1952
Reviewed and approved:



~~MINORITY REPORT:
Reviewed and approved:~~

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