



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

TRG
Docket No: 7010-02
26 September 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, a former commissioned officer in the Marine Corps Reserve, filed an application with this Board requesting, in effect, that his record be corrected to show that he transferred to the Retired Reserve vice being discharged on 1 June 2002.

2. The Board, consisting of Mr. Pfeiffer, Mr. Frankfurt and Mr. Tew, reviewed Petitioner's allegations of error and injustice on 24 September 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. Petitioner's application was filed in a timely manner.

c. Petitioner served in the Marine Corps and Marine Corps Reserve as an enlisted member from 28 December 1962 until 27 December 1968. During this period he was on active duty for four years. He was subsequently commissioned in the Marine Corps Reserve and then earned 15 consecutive qualifying years for reserve retirement. During this period he was promoted to MAJ (O-4). Consequently, at the end of his anniversary year on 24 October 1993 he was credited with 19 years of qualifying service. He had some participation in the next seven anniversary years but never earned 50 points in any one year. In the last of those years, ending on 24 October 2000, he was credited with 45 of the 50 retirement points needed for a qualifying year. He only earned membership points after that date and was honorably

discharged on 1 June 2002.

d. Petitioner's discharge was required by law because he had twice failed of selection to LTCOL (O-5) and had reached 20 years of commissioned service. However, since he had 19 years of qualifying service he was placed in the "safety zone" in order to qualify for reserve retirement. As indicated, he earned no further qualifying years after his 19th year and was honorably discharged at the end of the safety zone period.

e. Petitioner states in his application, in effect, that he did not realize that his safety zone period had expired and thought he had additional time to earn a qualifying year. He is requesting that five retirement points be moved into the anniversary year in which he has 45 retirement points.

f. Although Board did not request an advisory opinion in this case it is aware that Headquarters Marine Corps has routinely recommended corrective action in similar cases when an individual is eligible for reserve retirement and errors have occurred which resulted in discharge and not retirement.

g. 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 bases its recommendation on the fact that he has 19 qualifying years and is only five retirement points short of the 20th year. After weighing all the facts, the Board concludes that since he was so close, the record should be corrected to establish his eligibility for reserve retired pay at age 60. This can be accomplished by moving five retirement points from the anniversary year ending 24 October 1999 into the anniversary year ending 24 October 2000.

With this correction Petitioner will have 20 qualifying years and, since he was otherwise in good standing in the Marine Corps Reserve, the Board concludes that he should be transferred to the Retired Reserve in the grade MAJ. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 June 2002, vice the discharge of that date now of record.

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:

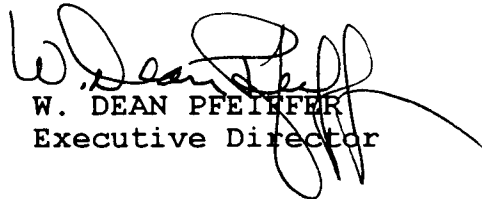
- a. That Petitioner's naval record be corrected by moving five retirement points from the anniversary year ending 24 October 1999 into the anniversary year ending 24 October 2000.
- b. Petitioner's record should be further corrected to show that he transferred to the Retired Reserve effective 1 June 2002 in the grade of MAJ, vice being discharged on that date.
- 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