



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

TRG
Docket No: 7232-02
12 December 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 member in the Naval Reserve, filed an application with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve under the provisions of the Reserve Transition Benefit (RTB) program.

2. The Board, consisting of Mr. Carlsen, Mr. Tew and Mr. Taylor, reviewed Petitioner's allegations of error and injustice on 10 December 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 completed seven years of active duty on 12 September 1990. He enlisted in the Naval Reserve on 1 October 1990 and then earned nine consecutive qualifying years for reserve retirement. Petitioner states that the 10th year should also be qualifying because he has not been credited with a 13 day period of annual training. If this is true then at the end of his anniversary year on 30 September 2000 he has been credited with 17 years of qualifying service for reserve retirement. During the next two anniversary years he has been credited with 27 and 30 points respectively. During his service he was advanced to petty officer first class (MN1; E-6).

d. Petitioner states that from November 2000 to July 2001 he had three knee surgeries. On 3 August 2001 he was found

potentially not physically qualified (NPQ) and his case was forwarded to the Bureau of Medicine and Surgery (BUMED) for a determination. The command stated at that time that he had been placed in a temporary NPQ (TNPQ) status pending determination from BUMED and was being allowed to attend drills. The BUMED package was lost and was resubmitted on 20 February 2002. On 11 March 2002 he was found NPQ by BUMED. On 4 April 2002 he requested early retirement under the provision of the RTB program. The RTB program allows for early retirement to individuals with 15 or more years of qualifying service if they were found not physically qualified for retention. This request was denied because he had not submitted an RTB retirement request within 40 days of being found NPQ and BUMED did not have a final determination prior to 31 December 2001. On 9 September 2002 he was inexplicably issued orders transferring him to the Retired Reserve. These orders were then cancelled because they were issued in error. There is no documentation in the record showing that he has actually been discharged from the Naval Reserve.

e. The statutory authorization for the RTB program expired on 31 December 2001 and after that date an individual must have 20 years of qualifying service for reserve retirement. The letter denying his request for RTB retirement appears to provide conflicting information when it states that the RTB application must be made within 40 days after being found NPQ and that BUMED must have made a final determination prior to 31 December 2000. This implies that the RTB request could not be made until the BUMED determination had been made and this was also apparently the belief of the reserve center. It is noted that he was found TNPQ and not NPQ in August 2001 and was retained pending a decision from BUMED. Petitioner contends that there would not have been any problems if the BUMED request had not been lost and the decision made in a timely manner.

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 carried in a TNPQ status by the reserve center until a final determination was made by BUMED. However, the loss of the BUMED package prevented its completion prior to the ending date of the RTB program. Under those circumstances, the Board concludes that the record should be corrected to show RTB retirement. Therefore, Petitioner's record should be corrected to show that on 31 December 2001 he transferred to the Retired Reserve under the provisions of the RTB program in the rate of MN1 vice being retained or discharged after 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 on 31 December 2002 he transferred to the Retired Reserve under the provisions of the RTB program in the rate of MN1, vice being retained or discharged after that date.

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

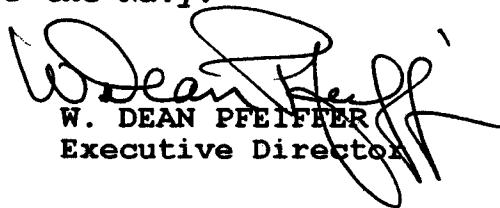
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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