



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

TRG
Docket No: 7738-02
18 October 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 commissioned officer in the Marine Corps Reserve filed an application with this Board requesting that nine retirement points be moved from the anniversary year ending 10 February 1997 into the anniversary year ending 10 February 1998.

2. The Board, consisting of Mr. Pfeiffer, Mr. Tew and Ms. Hare, reviewed Petitioner's allegations of error and injustice on 16 October 1992 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. In 1999, Petitioner was notified that since he had twice failed of selection, his discharge would normally be required upon completion of 20 years of commissioned service. However, since he had 18 qualifying years towards reserve retirement he would be placed in the "Safety Zone" which allowed him three years to meet the qualifications for reserve retirement. At that time, an individual had to attain 20 years of qualifying service in order to qualify for reserve retirement, the last six of which had to be in the reserve component.

d. On 22 July 2002, Headquarters Marine Corps (HQMC) informed him that at the end of his anniversary year on 10 February 2002 he had earned 19 qualifying years and the last six

of those years were in the reserve component. However, on 31 December 2001 the law changed and now required that the last eight years of qualifying service be in the reserve component. Therefore, since he could not qualify for retirement by the end of the Safety Zone period his discharge was required. The HQMC letter states that discharge was required on 1 September 2002. However, HQMC has confirmed that the required discharge date is actually 1 September 2003.

e. Petitioner's Career Retirement Credit Report (CRCR) shows that he was released from active duty during the anniversary year ending 10 February 1993. At that time, he had completed 14 consecutive qualifying years for reserve retirement, 13 years of which were on active duty. During the next four years, he participated in the reserve program and earned qualifying years. In the anniversary year ending 10 February 1998, he has only been credited with 41 of the required 50 retirement points for a qualifying year. He then has three consecutive nonqualifying years during which he only earned membership points. The anniversary year ending 10 February 2002 is qualifying for reserve retirement, and he has already earned sufficient retirement points in the anniversary year which will end on 10 February 2003 to make that year qualifying for reserve retirement. Therefore, on 10 February 2003 he will be credited with 20 years of qualifying service with the last seven of those years in the reserve component. He cannot earn the eighth qualifying year needed for retirement because his discharge is required on 1 September 2003.

d. When an individual is in the safety zone, retirement is required as soon as eligibility for retirement is achieved. The Board is 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 would have been able to qualify for retirement prior to his mandatory discharge if the law had not changed to require that the last eight qualifying years be in the reserve component. Since Petitioner can qualify for retirement if the record is corrected to show one additional qualifying year, the Board concludes that Petitioner's record should be corrected by moving nine retirement points from the excess over 50 in the anniversary year ending 10 February 1997 into the anniversary year ending 10 February 1998.

With this correction, Petitioner will have 20 qualifying years

with the last eight of those years in the reserve component at the end of the anniversary year on 10 February 2003. Since his retirement is required at that time and given the requirements of the Uniform Retirement Date Act, he should be transferred to the Retired Reserve effective on 1 March 2003.

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 nine retirement points from the anniversary ending 10 February 1997 into the anniversary year ending 10 February 1998.
- b. Petitioner's naval record should be further corrected to show that he the Retired Reserve effective on 1 March 2003.
- 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