



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

TRG  
Docket No: 9740-02  
24 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 commissioned officer in the Naval Reserve, filed an application with this Board requesting that his record be corrected by transferring retirement points from the excess in a qualifying year into a nonqualifying year, or in the alternative, that he be retroactively transferred to the inactive status list so that he can qualify for reserve retirement in the future.

2. The Board, consisting of Mr. McBride, Mr. George and Mr. Exnicios, reviewed Petitioner's allegations of error and injustice on 17 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. After a brief period of enlisted service, Petitioner was commissioned in the Naval Reserve on 13 January 1984. He then served on active duty until 31 December 1989. Subsequently, he earned three consecutive qualifying years and was promoted to lieutenant commander (LCDR; O-4). Therefore, at the end of his anniversary year on 13 June 1993, he was credited with 10 years of qualifying service for reserve retirement. In the next anniversary year, he only earned 27 of the 50 points required for a qualifying year and has only been credited with 15 membership points in the next four anniversary years. During this period, he apparently failed of selection to commander. In the period

from 14 June 98 until 13 June 02 he has earned four consecutive qualifying years.

d. Petitioner states that he transferred to the Individual Ready Reserve (IRR) in 1993 because his daughter was born prematurely and had severe health problems and he was unaware that he would be considered for promotion while in the IRR. He has now discovered that he will be forced out of the Naval Reserve in 2004 with two failures of selection, at 20 years of commissioned service. He believes there is a possibility that he would be selected for continuation to 24 years of commissioned service if he can qualify for retirement during the continuation period. However, to be considered for continuation at 20 years of commissioned service, he must have 16 qualifying years. Since he already has five nonqualifying years, he will only have 15 years at that time. Therefore, he is requesting that 23 retirement points be transferred, from the excess over 50 in qualifying years, into the 27-point anniversary year ending on 13 June 1994. With this change, the record will show 16 years of qualifying service and he will be eligible for continuation to 24 years of commissioned service.

e. Petitioner has submitted letters from two Naval Reserve captains, attesting to his outstanding performance of duty since he returned to a drilling status and recommending that the record be corrected as requested.

f. If the Board believes that retirement points should not be transferred, Petitioner requests that the record be corrected to show that he transferred to the Inactive Status List (ISL) and remained in that status during the period 1994 to 1997 so that this period will not be counted toward his total years of commissioned service. He contends that he would have requested this transfer if he had been properly advised. Of course, if he had been on the ISL he would not have been considered for promotion.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes Petitioner's excellent record and the circumstances that led to the nonqualifying years. Since he is only asking for the opportunity to qualify for retirement, the Board concludes that no useful purpose is served by forcing him out of the Naval Reserve without the opportunity to qualify for retirement. Therefore, 23 retirement points should be transferred from the excess over 50 in prior anniversary years into the anniversary year ending 13 June 1994. With this change, he will have the required 16 qualifying years and will be

eligible for continuation to 24 years of commissioned service. The Board believes that with this correction, a retroactive transfer to the ISL which could result in a future removal of his failures of selection, is not necessary or warranted by the facts of this case.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reason for the change in his record.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected by transferring 23 retirement points from the excess over 50 in prior qualifying years into the anniversary year ending 13 June 1994.
- b. That his request to be retroactively transferred to the Inactive Status List be denied.
- 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