



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

TRG

Docket No: 5889-08  
31 July 2008

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 of the Navy 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 25 January 2007.
2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 29 July 2008 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 was recalled to active duty on 10 September 2005. At that time, he was serving as a petty officer second class (GM2; paygrade E-5). At the end of his anniversary year on 3 April 2006 he was credited with 22 years of qualifying service for reserve retirement purposes. On 18 September 2006 he was released from active duty with a recommendation for reenlistment. The DD Form 214 issued at that time shows that he was a petty officer first class, but the pay grade was entered as E-5.
  - d. On release from active duty, Petitioner did not report to his reserve unit. Since he was not attending drills, he was processed for an administrative discharge. On 24 January 2007, the commanding officer of the Navy Operational Support Center, El

Paso, Texas indicated that he was being discharged due to unsatisfactory participation in the Navy Reserve. There is an entry in his record showing that on 24 January 2007 he was issued a general discharge.

e. Petitioner states in his application that he submitted a request for retirement but that request was lost by the command. He further indicates in his application that he was a petty officer first class.

f. The Board did not request an advisory opinion in this case. However, the Board is aware that the Navy Personnel Command has routinely recommended corrective action when an individual is qualified for reserve retirement and the circumstances resulted in discharge rather than 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. Petitioner was in good standing in the Navy Reserve at the time of his release from active duty on 18 September 2006 and he had over 22 years of qualifying service at that time. It is clear that he would have been retired after that date if he had requested it in sufficient time to allow proper processing. Therefore, the Board concludes that Petitioner's record should be corrected to show that he transferred to the Retired Reserve. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 January 2007. The retirement action means that any entries in the record concerning separation by reason of unsatisfactory participation after that date are without force or effect.

There is no documentation in the record showing that Petitioner was advanced to petty officer first class and the entry on the DD Form 214 may be a typographical error. However, since there is conflicting information as to his grade on retirement, the decision as to his grade on retirement should be made by the Navy Personnel Command (NPC).

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 record be corrected to show that he transferred to the Retired Reserve effective on 1 January 2007, vice the discharge of 24 January 2007 now of record.

b. That the determination as to his grade on retirement should be made by NPC.


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

  
BRIAN J. GEORGE  
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