



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX  
WASHINGTON DC 20370-5100

TRG  
Docket No: 10453-08  
14 May 2009

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 May 2009. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

Your record shows that you were promoted to colonel (COL; O-6) on 1 August 1993. The law requires that you earn three qualifying years in order to retire in that grade. On 22 February 1996 you received nonjudicial punishment (NJP) for violations of Articles 92, 128 and 133 of the Uniform Code of Military Justice. The punishment imposed was a punitive letter of reprimand.

In his letter reporting the NJP the Commander, Marine Forces Reserve stated as follows:

...After the imposition of [NJP, you] submitted an application for transfer to the retired reserve without pay effective 1 October 1996...

...After careful consideration of all the evidence in this case, I recommend that [your] retirement request be accepted. I believe [your] expeditious retirement will best serve the interest of the Marine Corps.

...I recommend that a show cause determination be held in abeyance and [you] not be required to appear before a Board of Inquiry to show cause as to whether [you] should be retired at his present grade or the next

inferior grade. Should [you] withdraw [your] request for voluntary retirement, then I recommend [you] be made to show cause to determine whether [you] should be retired at [your] present grade or the next inferior grade...

If you had retired at that time, you would have met the requirement of three qualifying years in grade.

However, you did not retire. Your record shows that on 4 April 1997 you requested transfer to the Retired Reserve. It states in an endorsement to this request as follows:

..[You] received Article 25 [NJP] from the Commander, Marine Forces Reserve and has been held in this unit until all pending actions were complete. Although actions have been complete for months, [you] did not submit [your] request for retirement in a timely fashion, probably in order to further delay [your] retirement. It does not serve the needs of this Command nor the Marine Corps to delay [your] retirement further...

Your retirement from the Marine Corps Reserve was effective on 1 August 1997.

In your last full anniversary year which ended on 8 June 1997 you have only been credited with 45 of the required 50 retirement points to make that complete anniversary year qualifying. The only way a partial anniversary year can be credited is if there is a discharge or retirement during that year. Since this did not occur the entire anniversary year which began on 9 June 1996 is not qualifying. Since you had to have qualifying service until 1 August 1996 to complete the three years in grade requirement, you were retired in the grade of lieutenant colonel.

You state in your application that it was the intent of the Marine Corps to retire you as a colonel effective on 1 October 1996. You contend that the Marine Corps' failure to process your retirement on 1 October 1996 caused you to accrue another anniversary year which is not qualifying. You point out, in effect, that you only needed to earn sufficient retirement points to make the period from 9 June 1996 until 1 October 1996 qualifying and you earned 45 retirement points. You further state that when the Marine Corps discovered that they had not retired you on 1 October 1996 they then processed your retirement at the lower grade of lieutenant colonel.

As indicated the record shows that you had an agreement with the Commander, Marine Forces Reserve to retire on 1 October 1996 in order to avoid a Board of Inquiry. The Board believed that if

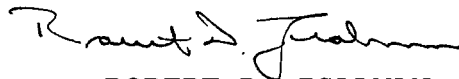
that Board had been held you would have been retired in the grade of lieutenant colonel.

You did not retire on 1 October 1996 and the endorsement to your later retirement request indicates that you were deliberately delaying your retirement. The Board believed that you had an obligation to ensure that you were retired on 1 October 1996 and the record suggests that your failure to do so was deliberate. Since you agreed to retire on 1 October 1996 and did not, the Board concludes that the record should not be corrected to show that you retired as a colonel on 1 August 1997.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,



ROBERT D. ZSALMAN  
Acting Executive Director