



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

TRG
Docket No: 11052-08
14 January 2009

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 and to the Retired List vice being discharged on 12 February 1997.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 January 2009 and, pursuant to its regulations, determined that the limited 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. Although it appears that Petitioner's application was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and consider the application on its merits.

c. Petitioner reenlisted in the Navy Reserve on 13 August 1988 for six years. Although it is not filed in the record, there may be a 30 month extension to that enlistment or a reenlistment and an extension, since Petitioner states that he was discharged. On 3 September 1995 he completed 20 consecutive qualifying years for reserve retirement purposes and was subsequently issued a Notification of Eligibility for Reserve Retired Pay at age 60. On 31 December 1996 he transferred to the Individual Ready Reserve and remained in that status until he was honorably discharged on 12 February 1997. It appears that

Petitioner's highest grade held was petty officer second class (EM2; paygrade E-5). Petitioner was born in 1955 and will not be eligible for retired pay until 2015.

d. 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 errors occurred which prevented retirement.

e. 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 partial favorable action. Petitioner was in good standing in the Navy Reserve and would have been retired if he had requested it in sufficient time prior to the expiration of his enlistment. Therefore, the Board concludes that Petitioner's record should be corrected to show that he transferred to the Retired Reserve in the rate of EM2. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 February 1997. If service after the end of the six year reenlistment on 12 August 1994 cannot be established then he should be transferred to the Retired Reserve on 1 August 1994 or the first of the last month for which service can be documented.

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 on effective on 1 February 1997 in the rate of EM2 or the first of the last month for which service can be documented, vice the discharge of 12 February 1997 now of record.

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

c. That the remainder of Petitioner's request be denied.


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