



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

SJN  
Docket No: 07154-09  
30 March 2010

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy Reserve, filed enclosure (1) with this Board requesting that his record be corrected to show that he transferred to the Navy Retired Reserve and the Retired List vice being discharged on 8 October 1995.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 23 March 2010 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. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy and was honorably released from active duty and transferred to the Navy Reserve where he served until he was discharged on 8 October 1995. At that time, he was credited with 19 years, 2 months and 29 days of qualifying service for reserve retirement.

d. With his application, he forwarded a copy of a letter from Navy Personnel Command dated 18 June 2009, stating that his request for retired pay was denied because he had not completed at least 20 years of qualifying service. He became 60 years old on 1 April 2008.

e. 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 was discharged prior to requesting transfer to the Retired Reserve.

f. 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 following the date of separation.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. He was in good standing in the Navy Reserve and would have been retired if he had 20 qualifying years and had requested it prior to the expiration of his enlistment. Since it appears that he may not have understood all of his options to earn points and his case may have not received sufficient attention, the Board concludes that his record should be corrected to show that he is qualified for reserve retirement and then transferred to the Navy Retired Reserve and to the Navy Retired List in the rate of DT2 (paygrade E-5). Therefore, the Board finds that sufficient retirement points from the excess over 50 points in prior anniversary year beginning on 30 November 1990 and ending 29 November 1991 should be transferred into the anniversary year beginning on 30 November 1991 and ending 29 November 1992, thus make that a qualifying year for reserve retirement. He should then be transferred to the Navy Retired Reserve and the Retired List. Finally, given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 November 1995 vice 8 October 1995, now of record. Since he is now over 60 years old, the record should be further corrected to show that he transferred to the Navy Retired List on 1 April 2008, his 60th birthday.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's Navy record so that all future reviewers will understand his status in the Navy Retired Reserve.

RECOMMENDATION:

a. That 30 retirement points be transferred from the excess over 50 points in prior anniversary year beginning on 30 November 1990 and ending 29 November 1991 into the anniversary year beginning on 30 November 1991 and ending 29 November 1992, to make that a qualifying year for reserve retirement.

b. That Petitioner's naval record be corrected to show that he transferred to the Navy Retired Reserve effective 1 November 1995, in the rate of DT2 (paygrade E-5), vice being discharged on 8 October 1995, now of record.

c. That he be placed on the Navy Reserve Retired List effective 1 April 2008, his 60th birthday.


d. That this Report of Proceedings be filed in his naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c) 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 Regulation, 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