



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

BJG

Docket No: 11934-09

8 December 2009

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 10 Nov 09 w/attachment

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected to show that he transferred to the Retired Reserve vice being discharged on 6 November 2009.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED], reviewed allegations of error and injustice on 3 December 2009, and pursuant to its regulations, determined that relief should be granted. 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 which were available under existing law and regulations within the Department of the Navy.

b. At the end of Petitioner's anniversary year which ended on 4 August 2009, he was credited with 20 qualifying years for reserve retirement purposes. He was honorably discharged on 6 November 2009 at the expiration of his enlistment.

c. The Board did not request an advisory opinion in this case. However, it is aware that Headquarters Marine Corps has routinely recommended corrective action when an individual is

qualified for reserve retirement and was discharged prior to requesting transfer to the Retired Reserve.

d. The Uniform Retirement Date Act, title 5, United States Code, section 8301, requires that the effective date of any retirement be the first of the month.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting favorable action. Petitioner was in good standing in the Marine Corps 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 grade of staff sergeant, pay grade E-6.

The Board finds that application of the Uniform Retirement Date Act would require Petitioner's retirement on the first of December 2009. The Board further concludes that this Report of Proceedings should be filed in his naval record so that all future reviewers will understand his status in the Retired Reserve.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Retired Reserve effective 1 December 2009 in the grade of staff sergeant, vice being discharged on 6 November 2009.


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