



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

REC  
Docket No: 02258-10  
28 May 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) PERS-912 memo dtd 19 Apr 10  
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a retired enlisted member of the Navy Reserve, filed enclosure (1) with this Board requesting, in effect, that his record be corrected to show that he continued serving on active duty which would credit him with 61 days. He also requested that he be paid for 12 drill periods after 1 January 2009, which would change his retirement date from 1 January 2009 to 1 June 2009.

2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 May 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, and enclosures (1) through (4).

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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy and began a period of honorable service on 20 November 1986. He accumulated over 22 qualifying years, serving both on active duty and in the reserve

component. He submitted a request to be transferred to the Retired Reserve List effective his 60<sup>th</sup> birthday which was 26 May 2009. On 28 July 2009, his request was approved; however, he was officially placed on the retired list on 1 January 2009. However, after 1 January 2009, he was still participating until 3 May 2009. Per enclosure (3), which states that there was a recent change to 10 U.S.C. which authorizes members to receive retired pay prior to their 60<sup>th</sup> birthday, he received such pay while still participating, but did not receive the credit for the time served.

d. With his application, Petitioner forwarded a copy of his statement of service showing over 20 years of qualifying service.

e. Naval regulations state in part, the eligibility requirements for non-regular retirement, per title 10, U.S.C., section 12731, have historically included earning 20 years of qualifying service and requiring that the last six years be served in a reserve component. The change to his military records will allow Petitioner to gain credit for the following time served: 85 days active duty, and 12 drills performed 14-15 March, 4-5 April, and 2-3 May 2009. In addition, the change will reflect his retirement date to 1 June 2009 vice 1 January 2009.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants full relief. Petitioner was in good standing in the Navy Reserve and credited with over 20 years of qualifying service. Therefore, the Board concludes that Petitioner's record should show that he transferred to the Retired Reserve in the rate of SKCS on 1 June 2009 with credit of the additional 85 active duty days and 12 drill periods. He is fully aware that there will be a required recoupment involved with his retired pay and is willing to accept this recoupment of payment for 61 days of active duty performed after 1 January 2009.


#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Retired Reserve effective 1 June 2009, in the rate of SKCS, vice 1 January 2009.

b. That this Report of Proceedings be filed in the 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 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.

  
FOR W. DEAN PFEIFFER  
Executive Director