



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S COURTHOUSE RD SUITE 1001
ARLINGTON VA 22204-2490

BAN
Docket No. NR09351-13
16 September 2014

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

Subj: [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Headquarters Marine Corps (HQMC) memo 1331 RCT undated
(3) Honorable Discharge Certificate dated 9 Jan 2003
(4) Retirement Navy Reserve Inactive Duty Point Spreadsheet
(5) Annual Retirement Credit Record
(6) DD Form 4/1 Enlistment/Reenlistment Document dated 10 Jan 1999
(7) Petitioner's reference letters
(8) Petitioner's reference letters for Toys for Tots

1. Pursuant to the provisions of reference (a) Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that he qualified for a non-regular Marine Corps Reserve retirement after 20 years of service on 13 March 2003.

2. The Board, consisting of Messrs. Exnicios, George and Ruskin, reviewed Petitioner's allegations of error and injustice on 18 August 2014 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 it appears that 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. In September 2013, Petitioner submitted a request to BCNR to show that he completed 20 years of service in the Marine Corps Reserve and to receive a non-regular retirement at age 60, enclosure (1).

d. On 19 March 1983, Petitioner joined the Marine Corps Reserve with no break in service until the expiration of his contract on 9 January 2003. He maintained satisfactory participation except for his final anniversary year, which was incomplete due to his separation on 9 January 2003, approximately three months shy of reaching his retirement date, enclosures (3) and (4).

e. Petitioner needed 50 points to complete a satisfactory year in 2003, but only received 14 points. However, in February 2003, after his separation, Petitioner contacted his career planner to request retention/extension of his contract (which was expired) to reach his 20 years of satisfactory service for retirement.

f. Petitioner claims that he thought that when he was separated in 9 January 2003, that he reached the required amount of service for a non-regular retirement, enclosure (5). Further, Petitioner states that the error occurred when he re-enlisted on 10 January 1999, enclosure (6), approximately three months early due to his career planner's advice and recommendation. This caused a three month shortage necessary to complete his 20 year reserve retirement from the date of his Pay Entry Base Date of 19 March 1983.¹

g. Petitioner claims that he noticed the error in February 2003, and that he made several attempts to contact the Marine Corps Reserve Support Command (MCRSC) who had authority over all Individual Ready Reserve (IRR) Marine personnel issues, including retention. However, there were e-mail errors and therefore, his correspondence to MCRSC were never answered or addressed, and he subsequently was discharge.

¹ Petitioner does provide reference letters from former members of his unit who support his claims that he made efforts to correct the error in 2003; however, in 2014, the unit is now dis-banned and the only official documentation that supports his claims are the letters of support, enclosure (7).

h. Finally, Petitioner claims that he recently found out about this Board to address his concerns. He is asking that his service with the Toys for Tots be used to accumulate the required 50 point threshold for a satisfactory year, enclosure (8), and ultimately receive a non-regular Marine Corps Reserve retirement.

i. Enclosure (2) provided an unfavorable advisory opinion stating that Petitioner failed to obtain the required points to have a satisfactory year to be eligible for retirement, and "...although it is regrettable that [Petitioner's] contract lapsed it is not in accordance with directives and regulations to extend a contract that has ended or back date an extension of a contract that has ended". Additionally, the advisory opinion added that since Petitioner does have a course of action available to him; he may request a 12 month reenlistment from Reserve Affairs-Reserve Continuation and Transition (RA-RCT) directly. Petitioner can be screened for retention as an Off Contract Accession Ready Reserve, allowing him time to acquire the required points for retirement.

CONCLUSION:

Upon review and consideration of all the evidence of record, and despite the unfavorable advisory opinion, the Board concludes that Petitioner's request warrants favorable action. The Board believes that Petitioner presented sufficient evidence to show that he believed that he had a satisfactory year when he was released from his contract in 2003, and that his post service time in the Toys for Tots program suffices for credible service toward a qualifying year in 2003. Therefore, the Board finds that in light of these circumstances, there is no significant disadvantage to the Marine Corps in honoring the request. Accordingly, the Board concludes that the record should be corrected to show that Petitioner had a satisfactory year in 2003 for retirement in the Marine Corps Reserve and was eligible for a non-regular Marine Corps Reserve Retirement without pay on 1 April 2003 with 20 years of satisfactory service.

RECOMMENDATION:

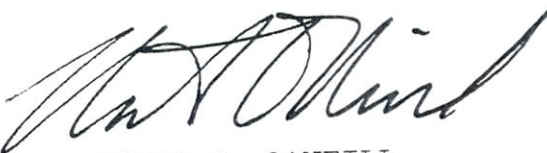
That Petitioner's naval record be corrected, where appropriate, to show that:

a. Effective 1 April 2003, Petitioner had 20 years of satisfactory service in the Marine Corps Reserve and is eligible for a non-regular Marine Corps Reserve retirement with pay at age 60.

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 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.


DAVID J. CASH
Acting Recorder

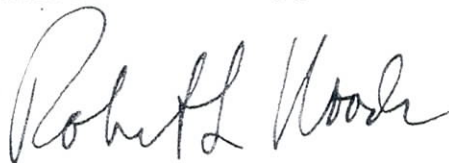
5. The foregoing report of the Board is submitted for your review and action.


ROBERT J. O'NEILL
Executive Director

Reviewed and Approved:

~~Reviewed and Disapproved:~~ *RBW*

10/30/14



ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000