



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 2912-97

24 March 1999

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 commissioned officer in the United States Naval Reserve filed an application with this Board requesting that he be credited with additional qualifying years for reserve retirement.

2. The Board, consisting of Mr. Brezna, Mr. Cali, Ms. Hare, reviewed Petitioner's allegations of error and injustice on 2 March 1999 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 the application 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, a Medical Corps officer, has served in the Naval Reserve since 19 December 1974. The record shows that in each of the four anniversary years beginning on 19 December 1980 and ending on 18 December 1984 he has been credited with only 20 of the 50 retirement points necessary for a creditable year for reserve retirement purposes. In the next anniversary year he transferred to the Inactive Status List and remained in that status until sometime in the anniversary year ending 18 December 1988. While in the ISL an individual cannot be credited with retirement points. A partial year may be credited if the status changes during an anniversary year. Petitioner apparently returned to an active status in 1988 and has been credited with a

partial year. The record shows that in the anniversary year ending 18 December 1988 he has been credited with 33 retirement points and 6 months and 17 days of qualifying service. Since then he has earned 10 consecutive qualifying years. As of 18 December 1998 he has been credited with 15 years, 6 months and 17 days of qualifying service. He was 60 years old on 15 January 1999. The Board has been informed that he has been granted a waiver and is continuing to earn retirement points.

d. Petitioner states in his application, in part, as follows:

Since 1977, I was drilling at Naval Reserve Center, Tampa, Florida, but in late 1979, my medical practice expanded and less time was available for other activities including my Naval Reserve participation. I informed my Unit Commanding Officer ... that I may not be able to continue drilling. He stated he would try to seek a solution and would talk to the Center Commanding Officer for direction. The Center Commanding Officer responded with this proposal. Keep drilling with Continuing Medical Education (CME) ... along with conducting physical examinations at my office in Clearwater, Florida, complete correspondence courses and I would garner the requisites to acquire satisfactory years for retirement as well as being satisfactory in my drilling status. This proposal solved time restraints of my demanding schedule. As far as I knew the Center Commanding Officer/Chief/Staff had checked regulations and nothing was amiss. No one ever contacted me to notify this was an unsatisfactory directive, so I thought all was proper and I would receive credit for these years, In addition to conducting physical exams for enlistment/reenlistments /annuals at Clearwater, I also treated active duty and retired Navy Personnel, their Dependents,--this included Commanding Officers to Non-Rated--no one was ever refused or charged. If I would have been notified that CME participations were limited to five points annually and the numerous physicals I conducted were not to be credited by the Tampa Center, I certainly would have altered my schedule or stopped drilling altogether. There seems to be a contradiction of allowing only five points a year for CME credits when reflexing or PRIMUS positions in the Reserve (receiving credits without drilling) is available, credit for credit. You are able to reflex each month of drill, providing you would attend approved meeting for CME credit.

Petitioner has submitted a letter from another doctor who states he was present at a meeting where the commanding officer told them that drills could be credited for such things as performing physicals. He has also submitted a letter from an enlisted man who was present at the meeting and confirms that such an offer was made.

e. Attached to enclosure (2) is an advisory opinion from the Bureau of Naval Personnel which states, in part, as follows:

... conducting physical examination at his civilian medical practice was not creditable activity for accruing retirement points. The REFLEX and PRIMUS programs he notes were not available in 1980.

Every Naval Reservist received an Annual Retirement Point Record from the Naval Reserve Personnel Center which specifically delineates how many points were earned and what type of drill/duty was performed during the member's anniversary year. This report is a cumulative history of all service, active and reserve. (He) was sent such a statement annually which indicated his points earned. The opportunity to resolve or adjust his level of participation should have been in 1981 when he received his annual report indicating he was receiving a total of 20 drill credit points yearly (5 CME and 15 gratuitous for reserve participation). ...

It is unfortunate that (he) served temporarily in a capacity which did not allow him to accumulate additional years of qualifying service. It must be realized, however, that the principal contributing factor in this case was his failure to adequately monitor his recorded drill participation and adjust his participation level accordingly. His discovery in September 1995 of not receiving years of qualifying service fifteen years earlier exceeds the statute of limitations for such an appeal.

.. (He) can apply for an overage waiver to permit his Naval Reserve participation beyond age 60 in order to qualify for retirement benefits.

f. Petitioner states in his rebuttal to the advisory opinion, in part, as follows:

... If at any time, the Naval Reserves would have instructed me on point capture sheets and on how to read them, I certainly would have made corrections

earlier in my career, ... Until the last five years, I never received annual point capture records. It is difficult to succeed in monitoring your drilling record when you never were afforded the opportunity to learn what they are or how to use and follow them. There are still items that I receive from the Navy which I cannot understand or interpret as they are so vague and confusing.

If I had known that I had to apply for an overage waiver to go beyond age 60, I would not have rejoined, nor do I believe the Navy should have taken me back under those circumstances.

... (concerning physicals) I will include a copy of COMNAVRESFORINST 1570.9D from the Department of the Navy. On page 2, Sec C-5, it describes obtaining reserve credit for physical exams completed in a civilian practice, and having them be creditable for Retirement points.

... There were not only physical exams performed but a multitude of medical treatments for active duty personnel and dependents. As an example, with the many chest pains I evaluated in my office to prevent an emergency room visit with a probable admission, I have saved the Navy hundreds of thousands of dollars. This is one of the many examples of my treating Navy personnel and their dependents. I have continued over the past twenty or so years treating Navy personnel, retired, active, and their dependents without charge and will continue to do so. ...

With his rebuttal Petitioner has provided a statement from a retired petty officer who was stationed at the reserve center from 1994 to 1996. The petty officer states that Petitioner continues to provide medical treatment for active duty personnel and performs physicals at no charge to the individual or the government. He believes that Petitioner should be given the requested drill credit.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board concludes that Petitioner was told that he could receive drill credit for performing physicals and providing other medical services, and actually did so. The Board notes the program cited by Petitioner in his rebuttal was not in effect

during the years at issue but it would currently allow drill credit for physicals.

The Board notes the comments in the advisory opinion to the effect that the time to resolve any drill crediting problems was upon receipt of the Annual Retirement Point Record. However, the Board is aware that doctors are not always knowledgeable about retirement point crediting. The Board also notes that despite his problems with drill crediting, he has continued to earn qualifying years.

Since Petitioner provided substantial medical services to the Navy in good faith with the expectation that he would receive drill credit, the Board concludes that he should be credited with additional retirement points. However, the Board further concludes that given the passage of time he should only be credited with the exact number of points which would make the years at issue qualifying for reserve retirement. Therefore, Petitioner should be credited with 30 nonpay retirement points in each of the four anniversary years beginning on 19 December 1980 and ending on 18 December 1984. With this change, Petitioner will be credited with 19 years, 6 months and 17 days of qualifying service as of 18 December 1998. He will be eligible to transfer to the Retired List on or about 1 June 1999 if he earns about 25 retirement points after 19 December 1998.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the crediting of his retirement points.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was credited with an additional 30 nonpay retirement points in each of the four anniversary years beginning on 19 December 1980 and ending on 18 December 1984.

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

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

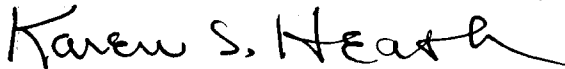


ALAN E. GOLDSMITH
Acting Recorder

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


W. DEAN PFEIFFER

Reviewed and approved: MAY 21 1999



KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)