



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

TRG
Docket No: 3373-99
21 July 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) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps Reserve filed enclosure (1) with this Board requesting that his naval record be corrected to show that he transferred to the Retired Reserve vice being discharged on 2 November 1991.

2. The Board, consisting of Mr. Pauling, Ms. Madison and Ms. Taylor, reviewed Petitioner's allegations of error and injustice on 20 July 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 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. Petitioner reenlisted in the Marine Corps Reserve for five years on 2 May 1986 in the grade of GYSGT (E-7) and subsequently extended that enlistment on two occasions totaling six months. Subsequently, he was promoted to 1stSGT (E-8). There is no promotion documentation in the record, however, it appears that he was promoted on 1 January 1991. The record shows that he transferred to the Individual Ready Reserve on 13 September 1991. There are no discharge entries in the record, however, his enlistment as extended would have expired on 1 November 1991. On 6 December 1991 he was issued a Notification of Eligibility for Retired Pay at Age 60.

d. The Board did not request an advisory opinion in this case. However, the Board is aware that headquarters Marine Corps has routinely recommended corrective action in similar cases where an individual was in good standing in the Marine Corps Reserve and there is no explanation in the record why the individual was discharged and not retired or administrative problems prevented retirement prior to discharge.

e. The Board notes that the date of Petitioner promotion to 1stSGT cannot be clearly ascertained from the record. However, it may be that he was promoted on 1 January 1991. The Board is aware that under current regulations he normally would be required to complete two qualifying years in order to retire at that grade. The date this requirement became effective is unknown.

f. The Board is aware that 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.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner was in good standing in the Marine Corps Reserve and would have been retired if he had requested it. Given the circumstances, the Board concludes that the record should be corrected to show that Petitioner transferred to the Retired Reserve vice being discharged on 1 November 1991. Given the requirements of the Uniform Retirement Date Act, the Board further concludes that Petitioner should be transferred to the Retired Reserve effective 1 November 1991.

The Board does not have sufficient documentation to determine Petitioner's grade on retirement. Therefore, it concluded that the determination of the grade of retirement should be left to Headquarters Marine Corps. If Petitioner is unhappy with the final determination he can make a separate application on this issue to the Board.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that his he transferred to the Retired Reserve effective 1 November 1991

vice being discharged on 1 November 1991.

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

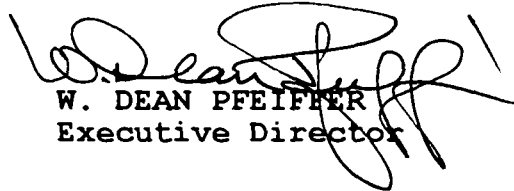
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. 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