



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

TRG
Docket No: 123-00
11 July 2001

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 former commissioned officer in the United States Naval Reserve filed an application with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve and then to the Retired List, vice being discharged on 8 April 2000.

2. The Board, consisting of Mr. Mazza, Mr. Harrison and Ms. Hare, reviewed Petitioner's allegations of error and injustice on 26 June 2001 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. Petitioner's application was filed in a timely manner.

c. Petitioner graduated from the Massachusetts Maritime Academy on 28 July 1963 and accepted a commission as an ensign in the Naval Reserve on 30 September 1963. He then served as Merchant Marine officer for over 20 years and was master of merchant vessels for many years. Since he was at sea most of the time, he was unable to attend drills but earned points in many years by completing correspondence courses. These points allowed him to be considered for promotion, however, he did not earn any qualifying years for retirement for over 18 years.

d. In the seven anniversary years beginning on 10 September 1982 through 9 September 1989 he was a drilling reservist and

earned qualifying years for reserve retirement. In the next anniversary year he was only credited with four drills, but was also credited with 100 points from correspondence courses and points from annual training and active duty, which resulted in another qualifying year. He then served on extended active duty from 28 August 1990 through 28 February 1995. At the end of the anniversary year on 9 September 1995 he had accumulated 13 years of qualifying service for reserve retirement.

e. During his period of active service Petitioner was awarded a Meritorious Service Medal for his performance in chartering merchant vessels in support of Operation Desert Shield/Storm. He was also awarded a Legion of Merit for his "outstanding service as the Maritime Policy and Merchant Marine Reserve Branch Head and as Special Assistant for Merchant Marine and Maritime Affairs, Deputy Chief of Naval Operations (Logistics), Washington, D. C. from March 1991 through February 1995." On 11 October 1995 Petitioner was issued two year orders as commanding officer of a reserve unit and subsequently earned another qualifying year.

f. A letter of 3 September 1996 from the Bureau of Naval Personnel (BUPERS) essentially stated that since he was a captain with over 30 years of service who was not qualified for reserve retirement, his discharge was required on 1 November 1996. The letter also informed him that if this action resulted in his involuntary transfer from the selected reserve, he might be eligible for benefits under the Reserve Transition Benefits (RTB) Program. On 28 September 1996 Petitioner requested retirement under the provisions of the RTB.

g. Petitioner continued to earn retirement points in the anniversary year beginning on 10 September 1996 and has been credited with 51 retirement points during the period from 10 September 1996 to 1 November 1996. On 18 February 1997 the Reserve Readiness Command issued orders transferring him from a pay status to a volunteer training unit while he was awaiting retirement orders, retroactively to 1 November 1996. In a separate action, BUPERS transferred him to the standby reserve (S-2) status on 1 November 1996 vice discharging him. Apparently, Petitioner remained assigned to the VTU until 1 November 1999, when he was transferred to the Individual Naval Reserve (IRR), retroactive to 1 November 1996. He was honorably discharged on 8 April 2000, his 60th birthday.

h. Attached to enclosure (1) is a Statement of Service for Naval Reserve Retirement which shows that at the end of the anniversary year on 9 September 1996, he was credited with 14 years of qualifying service for retirement. In the next anniversary year he earned 51 retirement points. However, this

is not a qualifying year because the accumulation of time in the anniversary year stopped with his transfer to S-2 status on 1 November 1996. He has been credited with the 1 month and 21 days from 10 September to 1 November 1996.

i. Attached to enclosure (1) is an advisory opinion from the Naval Reserve Personnel Management Department (Pers 9) in BUPERS. The opinion states, in part, as follows:

... Prior to 1 October 1996, reserve captains were required to be involuntarily separated upon completion of 30 years of commissioned service and two failures of selection for promotion to flag rank. Because MMR (Merchant Marine Reserve) officers did not have opportunity to promote to flag rank (Petitioner) never failed of selection. Because of this fact he could expect to remain a Ready Reservist until voluntary retirement or involuntarily separation at age 60. On 1 October 1996 this changed when ROPMA became law. Captains with 30 years of commissioned service were now required to be either retire(d) or be discharged regardless of failures of selection. At this point (Petitioner) having completed more than 30 years of commissioned service, was immediately subject to this provision of law. Because he had only completed 14 years of qualifying service, he was ineligible for transfer to the Retired Reserve and was to be honorably discharged. We transferred (Petitioner) to USNR-S2 status on 1 November 1966 to give him an opportunity before final discharge to search his records to find any additional documentation that might qualify him for retirement.

.... Normally the unit transfers officers requesting RTB to the VTU pending adjudication of their request ... Apparently, Naval Reserve Center Washington D. C., unaware of (Petitioner's) USNR-S2 status, transferred him to the VTU where he remained until 1 November 1999. We, in the member's best interest, took no further action regarding his USNR-S2 status until 9 April 2000, when by law his discharge was required at age 60. At no time between 1 November 1996 and the date of his discharge was (Petitioner) authorized nor did he actively participate in any way in the Naval Reserve included the SELRES, IRR, and VTU.

.... The above mentioned actions should have been of no surprise to (Petitioner). We had worked closely with him from 1990 through 1996 regarding his retirement eligibility. He was aware of his situation and we kept

him informed as legislative and policy changes occurred. We regret he was unable to attain retirement eligibility and that our response to his petition cannot be favorable.

j. Petitioner has submitted a lengthy rebuttal to the advisory opinion. He explains the history of the reserve Merchant Marine program and points out that it was nearly impossible to earn qualifying years while serving on board merchant vessels, and qualifying years were possible only if the individual was employed ashore. He points out that he lost his command billet because of ROPMA, but subsequently earned enough points to earn a qualifying year prior to his transfer to S-2 status. He states that he was unaware of this transfer, thought that the transfer to the VTU was valid, and did not find out otherwise until 1999. He notes that since his discharge was required on 1 November 1996, there was no basis for his continuation in the Naval Reserve after that date. He believes the Naval Reserve must have lost contact with his situation until he attempted to resolve his status in 1999.

k. Petitioner apparently submitted a copy of his rebuttal to Pers 9. After a review of the chronology of service prepared by Petitioner, Pers 9 noted that he earned 32 retirement points in the anniversary year ending 9 September 1975 and, in addition, he apparently completed a 20 day course in Marine Cargo Operations. Pers 9 has informed the examiner that if the Board believes that these points should be credited or other action is taken to bring him to 15 years of qualifying service, they would then support retirement under the RTB.

l. The Board is aware that the RTB regulations allowed early retirement for individuals with 15 years of qualifying service who were involuntarily terminated from their reserve billets.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes Petitioner had over five years of outstanding service with the Military Sealift Command and the Chief of Naval Operations which resulted in the award of the Meritorious Service Medal and the Legion of Merit. The Board also notes that Petitioner earned sufficient points in his last anniversary year to make that year qualifying for retirement except for his transfer to S-2 status. Finally the Board notes Pers 9 comments to the effect that he may have earned a qualifying year in 1975. Given the circumstances, the Board concludes that the record should be corrected to establish his

eligibility for retirement under the RTB program.

The Board believes that the best way to accomplish this action is to transfer 35 retirement points from the anniversary year which ended on 30 October 1996, with his transfer to S-2 status, to the anniversary year ending 9 September 1982. With this transfer of points and the addition of the 15 points already credited, Petitioner will have a qualifying year and, at the end of the anniversary year on 9 September 1996, he will have 15 years of qualifying service and be eligible for RTB. The record should then be corrected to show that instead of being transferred to S-2 status, he transferred to the Retired Reserve effective 1 November 1996 with eligibility for retired pay at age 60. Since Petitioner is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on 8 April 2000, his 60th birthday, vice being discharged on that date.

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

RECOMMENDATION:


a. That Petitioner's naval record be corrected to show by transferring 35 retirement points from the anniversary year beginning on 10 September 1996 to the anniversary year ending on 9 September 1982.

b. That Petitioner's naval record be corrected to show that he transferred to the Retired Reserve effective 1 November 1996 in the grade of CAPT under the provisions of the RTB program, with eligibility for retired pay at age 60, and that the record be further corrected to show that he transferred to the Retired List on 8 April 2000 vice being discharged on that date.

c. 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