



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

TRG
Docket No: 1523-01
18 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) DD Form 149 w/attachments

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps Reserve filed an application with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve vice being discharged on 4 October 1990.
2. The Board, consisting of Mr. Brezna, Mr. Dunn and Mr. Mackey, reviewed Petitioner's allegations of error and injustice on 10 July 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. Although it appears that Petitioner's 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. The Board has been provided with an internal memorandum from Headquarters Marine Corps (HQMC) which states that Petitioner's record cannot be located. However, the Board has also been provided with a Reserve Retirement Master Control Card which shows that Petitioner has been credited with 19 years, 10 months and 21 days of service for reserve retirement. The Board has been informed that the control card was prepared based on documentation submitted by the Petitioner.

d. The control card shows that Petitioner enlisted in the Marine Corps on 29 May 1959 and served on active duty until 19 April 1963, a period of 3 years, 10 months and 21 days. He then served in the Reserve Component until the end of his military obligation without earning any qualifying years. He was honorably discharged on 28 May 1965

e. Petitioner enlisted in the Marine Corps Reserve on 21 May 1974 and then earned 16 consecutive qualifying years for reserve retirement. The control card shows that at the end of his anniversary year on 20 September 1990, he was credited with 19 years, 10 months & 21 days of service for reserve retirement and he was discharged on 4 October 1990. His grade was indicated to be GYSGT (E-7) and his date of birth was entered as 22 March 1940.

f. The Board is aware that regulations in effect at the time of Petitioner's initial enlistment requires that an anniversary date be established upon initial entry into the reserve component. Consequently, he was only credited with the actual time served of 10 months and 21 days in 1963 his last year on active duty. If the anniversary date had not changed, he would have been credited with a full year for reserve retirement on 28 May 1963.

g. The Board did not request an advisory opinion in this case. However, the Board is aware that HQMC has routinely recommended favorable action in cases where an individual is qualified for reserve retirement and there is no explanation in the record why they were discharged and not retirement.

h. The Board is also 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. Given Petitioner's 16 consecutive years of qualifying service in the reserve component, the Board believes that it was Petitioner's intent to qualify for reserve retirement and that he would not have stopped drilling and would have extended his enlistment if he had realized that he was 1 month and 19 days short of qualifying for retirement. Therefore, the Board concludes that the record should be corrected to show that he has 20 years of qualifying service for reserve retirement. The Board further concludes that the best way to accomplish this action is to transfer 35 retirement points from the excess over 50 in

subsequent anniversary years into the anniversary year ending 19 April 1965. These points, when added to the 15 membership points already credited will make this year qualifying for reserve retirement, and Petitioner will have over 20 qualifying years.

Since Petitioner was in good standing in the Marine Corps Reserve and would have been retired if he had 20 qualifying years and had requested it, the Board further concludes that he should be transferred to the Retired Reserve in the grade of GYSGT. Given the requirements of the Uniform Retirement Date Act the retirement should be effective on 1 October 1990. Since Petitioner is now 60 years old, he should be transferred to the Retired List on his 60th birthday. This date is believed to be 22 March 2000, but the actual date should be used.

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 by moving sufficient retirement points from the excess over 50 in subsequent anniversary years to make the anniversary year ending 19 April 1965 qualifying for reserve retirement.

b. That Petitioner's naval record be further corrected to show that he transferred to the Retired Reserve on 1 October 1990 in the grade of GYSGT vice being discharged on 4 October 1990. The record should be then corrected to show that he transferred to the Retired List on his 60th birthday.

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.

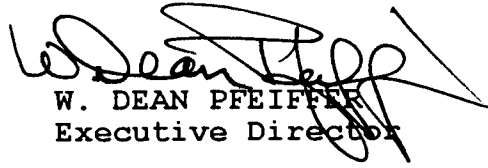
ROBERT D. ZSALMAN
Recorder



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