



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

TRG
Docket No: 4255-01
25 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
(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 record be corrected to show that he transferred to the Retired Reserve vice being discharged on 9 May 1998.

2. The Board, consisting of Mr. Adams, Mr. Chapman and Ms. Hare, reviewed Petitioner's allegations of error and injustice on 24 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. Petitioner reenlisted in the Marine Corps Reserve on 10 November 1990 and subsequently extended that enlistment on several occasions. On 1 January 1993 he was promoted to 1stSGT (E-8). The anniversary year ending 2 January 1994 is not qualifying for reserve retirement. He then earned two consecutive qualifying years and transferred to the Individual Ready Reserve on 8 December 1995. On 2 January 1996 he was credited with 20 years of qualifying service and, shortly thereafter, was issued a Notification of Eligibility for Retired

Pay at Age 60. On 10 May 1996 he reenlisted in the Marine Corps Reserve but earned no further qualifying years. He was honorably discharged at the expiration of his enlistment on 9 May 1998.

d. The Board did not request an advisory opinion in this case. However, the Board is aware that Headquarters Marine Corps has routinely recommended favorable action in similar cases when an individual is qualified for reserve retirement and there is no explanation in the record why they were discharged and not retired.

e. The Board is aware that the Uniform Retirement Date Act, 5 U.S.C. 8301 requires that the effective day 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 noted that Petitioner was in good standing in the Marine Corps Reserve and would have been retired if he had requested it. Therefore, the Board concludes that the record should be corrected to show that he transferred to the Retired Reserve in the grade of 1stSGT. Given the requirements of the Uniform Retirement Date Act, the Board further concludes that the transfer to the Retired Reserve should be effective on 1 May 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 his status as a Retired Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that that he transferred to the Retired Reserve effective 1 May 1998 in the grade of 1stSGT vice being discharged on 9 May 1998.

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.



For W. DEAN PFEIFFER
Executive Director