



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

TRG  
Docket No: 7726-01  
7 November 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 enlisted member of the 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 15 November 1998.

2. The Board, consisting of Mr. Novello, Mr. Taylor and Mr. Pfeiffer, reviewed Petitioner's allegations of error and injustice on 6 November 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 was promoted to 1STSGT (E-8) on 1 January 1995 and subsequently earned more than two years of qualifying service. He reenlisted on 15 November 1997 for a period of one year. At the end of his anniversary year on 16 March 1998 he was credited with 24 years of qualifying service for reserve retirement. He was honorably discharged on 14 November 1998 at the expiration of his enlistment.

d. On 7 May 2000, Headquarters Marine Corps (HQMC) informed

Petitioner that although he was eligible for retired pay at age 60, he had to petition the Board to correct the record to show that he was retired vice discharged. The Board did not request a further advisory opinion in this case. However, the Board is aware that HQMC has routinely recommended corrective action in similar cases when an individual is qualified for reserve retirement and there is no explanation in the record why he was discharged and not retired.

e. 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. Therefore, the Board concludes that he should be transferred to the Retired Reserve in the grade of 1STSQT. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 November 1998 vice the discharge of 14 November 1998 now of record.

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 in the Retired Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Retired Reserve on 1 November 1998 in the grade of 1stSGT, vice being discharged on 14 November 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