



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

TRG
Docket No: 2198-02
13 June 2002

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 31 December 2001 or any other date.

2. The Board, consisting of Mr. Hogue, Mr. Milner and Mr. Cooper, reviewed Petitioner's allegations of error and injustice on 29 May 2002 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 received in a timely manner.

c. Petitioner was honorably discharged from the Marine Corps on 12 April 1993 under the provisions of the "voluntary discharge for early release program". He was paid separation pay of \$45,146.57. He enlisted in the Marine Corps Reserve on 13 April 1993, as required under the program under which he was discharged. On 1 January 1996 he was promoted to gunnery sergeant (GYSGT; E-7).

d. Petitioner reenlisted in the Marine Corps Reserve on 10 January 1999 for three years. At the end of his anniversary year on 15 December 1999, he was credited with five qualifying years in the reserve component and 20 years of qualifying service for

reserve retirement. He earned no further qualifying years, however, in the anniversary year ending 15 December 1999, he was credited with 41 retirement points, nine points short of the 50 points necessary for a qualifying year. The Career Retirement Credit Report (CRCR) furnished by Headquarters Marine Corps (HQMC) states that his service ended on 31 December 2001. Termination of service on that date is consistent with a transfer to the Retired Reserve effective the next day. His enlistment would have expired on 10 January 2002.

e. In order to be eligible for reserve retirement, an individual must have 20 qualifying years and as of 31 December 2001, the last six of those qualifying years must be in the reserve component¹. As indicated, Petitioner only had five qualifying years in the reserve component and normally would not be eligible for reserve retirement. However, the case examiner has been informed that HQMC has recently revised its policy (apparently since 1 January 2002) and now counts a year in which an individual changes from regular to reserve status as a qualifying year. With this change, the anniversary year ending on 15 December 1993, after his discharge from the Regular Marine Corps on 12 April 1993, is now considered a qualifying year as it relates to the six year requirement.

f. In his application Petitioner requests that his record be corrected to show that he transferred to the Retired Reserve on 1 January 2002 vice being discharged. HQMC has informed the case examiner that their computer records, which include the CRCR, show that Petitioner transferred to the Retired Reserve on 1 January 2002. However, no written documentation exists to back up those entries. HQMC has informally recommended that action by the Board be taken to clear up any confusion. Whether or not the foregoing change in policy led to the confusion in Petitioner's case is unknown.

g. 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 when an individual is qualified for reserve retirement and there is no explanation in the record why he was discharged and not retired.

h. 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:

¹ The law has changed and effective 1 January 2002, the last eight qualifying years must be in the reserve component.

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 and had been eligible. Therefore, the Board concludes that he should be transferred to the Retired Reserve in the grade of GYSGT.

In order to clear up any possible confusion as to Petitioner's eligibility, the Board concludes that the record should be corrected by moving nine retirement points from the excess over 50 points in prior anniversary years to the anniversary year ending 15 December 2001. With this change, he will have 20 qualifying years and the last six of those years will be qualifying for retirement. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 January 2002 vice the discharge of 31 December 2001 now of record or any other 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 in the Retired Reserve.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected by transferring nine retirement points from prior anniversary years to the anniversary year ending 15 December 2001.
- b. That Petitioner's naval record be further corrected to show that he transferred to the Retired Reserve effective 1 January 2002 in the grade of GYSGT vice the discharge of 31 December 2001 or any other 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