



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

TRG
Docket No: 5801-01
1 February 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
[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 Naval 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 30 June 1981.

2. The Board, consisting of Mr. Agresti, Mr. Pfeiffer and Mr. Beckett, reviewed Petitioner's allegations of error and injustice on 23 January 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. 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 commissioned in the Naval Reserve as an ENS (O-1) on 21 June 1954. He was promoted to CDR (O-5) on 1 August 1968 and on 24 May 1973 he was issued a Notification of Eligibility for Retired Pay at Age 60. He was honorably discharged on 30 June 1981 because he had twice failed of selection for promotion. Petitioner became 60 years old on 17 February 1992 and is drawing his retired pay as a former member.

d. Individuals in Petitioner's situation would normally have been given a chance to request transfer to the Retired

Reserve prior to their discharge date. Whether this happened in Petitioner's case or if he received the correspondence giving him this opportunity cannot be ascertained from the records.

e. Petitioner states in his application that he did not realize that there was a problem with his status because he and his wife were originally issued identification cards and were entered in DEERS. On 21 June 2001 they were informed that his wife was no longer entitled to medical care. He states that if they had known she was not entitled, his wife would not have dropped her health insurance.

f. The Board did not request an advisory opinion in this case. However, the Board is aware that the Navy Personnel Command 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.

g. 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 Naval 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 CDR. Given the requirements of the Uniform Retirement Date Act, the retirement should be transferred to the Retired Reserve on 30 June 1981 vice the discharge of that date now of record. Since Petitioner was 60 years old on 17 February 1992, the record should be further corrected to show that he transferred to the Retired List 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 in the Retired Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Retired Reserve on 30 June 1981 in the grade of CDR, vice being discharged on that date. His record should be further corrected to show that he transferred to the Retired List on 17 February 1992, his 60th birthday.

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