



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

TRG  
Docket No: 5817-01  
25 January 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 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 2 August 1990.

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 reenlisted in the Marine Corps Reserve for three years on 3 May 1987 in the grade of 1stSGT (E-8) and subsequently extended that enlistment for three months. He has submitted a copy of a request to transfer to the Retired Reserve dated 15 May 1990. No action was taken on this request and he was honorably discharged on 2 August 1990 at the expiration of his enlistment. Petitioner became 60 years old on 21 July 2001 and is drawing his retired pay as a former member.

d. 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 and 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 1stSGT. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 August 1990 vice the discharge of 2 August 1990 now of record. Since Petitioner is drawing his retired pay, the record should be further corrected to show that he transferred to the Retired List on 21 July 2001, his 60th birthday.

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 August 1990 in the grade of 1stSGT, vice being discharged on 2 August 1990. The record should be further corrected to show that he transferred to the Retired List on 21 July 2001, 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