



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

TRG

Docket No: 1136-06  
17 July 2007

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

1. Pursuant to the provisions of reference (a), Petitioner, a retired member of the Navy Reserve, filed an application with this Board requesting that his record be corrected to show that the highest grade satisfactorily held for retirement purposes is petty officer second class (AD2; E-5).
2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 July 2007 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, the Electronic Military Personnel Records System (EMPRS), 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 filed in a timely manner.
  - c. Petitioner served on active <sup>uty</sup> duty from 20 February 1985 until 25 July 1994, a period of more than nine years. He then served in the Navy Reserve, earning six qualifying years for reserve retirement between 1994 and 2000. During these periods of active and reserve service, Petitioner attained the rate of petty officer third class (AD3; E-4) and earned two Good Conduct Medals and a Navy Achievement Medal.
  - d. Petitioner continued his Navy Reserve service and was advanced to AD2 on 16 December 2000. On 14 December 2003, he reenlisted in the Navy Reserve for six years. At that time, he had over 18 qualifying years for reserve retirement.

e. In the latter part of 2004, while serving on active duty in Bahrain, cooking utensils valued at about \$50 belonging to a local hotel were found in Petitioner's baggage. On 17 October 2004, he received nonjudicial punishment (NJP) for larceny and wrongful appropriation. The punishment imposed was a reduction in rate to petty officer third class (AD3; E-4). In December 2004, Petitioner appealed the NJP, essentially contending that the punishment was disproportionate to the offense committed. The commanding officer stated in his endorsement on the NJP appeal, in part, as follows:

.. As evidenced by witnesses' statements contained in enclosure (1), (Petitioner) did, in fact, take utensils out of the room he was occupying. He first denied all knowledge of the missing utensils, when cornered, he offered on of the items back and then ultimately all of the items. He then added a very questionable excuse that a housekeeper allowed him to have the items, only after all other attempts to distance himself from the incident failed. ....

... Ultimately, (Petitioner) fails to understand the gravity of theft in a foreign country and the possible resulting actions. ...

Subsequently, the NJP appeal was denied by the Commander, Naval Reserve Forces Command. Copies of the NJP appeal and endorsement are attached to enclosure (1).

e. On 10 December 2004 Petitioner was transferred to a nonpay status because he had reached the high-year tenure point for an individual serving in paygrade E-4. However, he completed 20 years of qualifying service for reserve retirement purposes in August 2005 and, on 9 January 2006, he was issued a Notification of Eligibility for Retired Pay at Age 60.

f. Petitioner was then issued involuntary active duty orders for one year and reported for extended active duty in July 2006. His division chief states that he is serving in an excellent manner as a customs agent in Kuwait. He was released from active duty on 20 June 2007 with a recommendation for reenlistment.

g. Attached to enclosure (1) is an advisory opinion from the Navy Personnel Command (NPC), dated 14 September 2006, which concludes that because of the 17 October 2004 NJP, he did not serve satisfactorily in the grade of E-5 and he should be retired as an E-4 at age 60. The determination of the highest grade for retirement in reserve cases is normally not made until the member is eligible for retired pay at age 60. However, it is clear from

the NPC opinion that the determination has been made in this case.

h. Since Petitioner has now attained 20 years of qualifying service for reserve retirement, he may be transferred at any time to the Retired Reserve. When he reaches his 60th birthday in 20~~0~~4, he may be transferred to the Retired List and he will be eligible for retired pay.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board does not condone the offenses for which he received NJP on 17 October 2004 and believes that the NJP was properly imposed and a reduction in grade at that time was appropriate. However, it was clearly an aberration in an otherwise good record. Additionally, since the recommendation concerning his retirement grade was made, he has served in an excellent manner in Kuwait. Given the totality of the record, the Board concludes that his record should be corrected to show that the highest grade satisfactorily held was AD2 and he should be retired in that grade when he begins receiving his retired pay at age 60. The Board's action does not preclude retirement in a reduced grade if he receives disciplinary action in the future.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record to document the Board's action and so all future reviewers will understand the reasons for the change in the retirement grade.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that the highest grade held for retirement purposes on transfer to the Retired List on his 60th birthday is AD2.

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

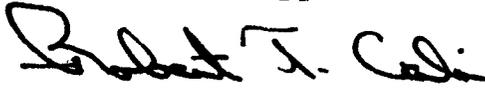


ALAN E. GOLDSMITH  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

Reviewed and approved:



7-23-07

**Robert T. Call**  
Assistant General Counsel  
(Manpower and Reserve Affairs)