



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

TRG
Docket No: 250-07
3 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
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, the widow of a former enlisted member in the Naval Reserve, filed an application with this Board requesting, in effect, that her late husband's (Subject's) naval record be corrected to show that he was eligible for reserve retirement and that he elected spousal coverage under the Reserve Component Survivor Benefit Plan (RCSBP).
2. The Board, consisting of Mr. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 19 June 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, 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 filed in a timely manner.
 - c. Subject enlisted in the Delayed Entry Program (DEP) of the Navy Reserve on 26 January 1987. Service in the DEP cannot be used for longevity purposes.
 - d. Subject's enlistment contract shows that he enlisted in the Regular Navy on 3 March 1997. However, the first DD Form 214 shows active service from 23 March 1997, which would be consistent with a Regular Navy enlistment on this date. Subject's anniversary years should have been established as beginning on the date of enlistment in the Regular Navy. The

Navy Personnel Command's statement of service indicates that the anniversary year begins on 22 March 1987. This 19 day discrepancy does not have any impact on any future correction to the length of service.

e. Petitioner then served continuously in the Navy and Navy Reserve for more than 19 years. During his service, he was advanced to master chief petty officer (MACM; E-9).

f. Subject performed periods of extended active duty from 21 September 2001 to 20 June 2002 and from 15 August 2005 to 29 July 2006 and received outstanding performance evaluations. During his career he was awarded three Navy and Marine Corps Commendation Medals and several Navy and Marine Corps Achievement Medals.

g. On 6 November 2006, Subject was killed in an automobile accident. As of the date of his death, he had accumulated 19 years, 7 months and 15 days of continuous qualifying service for reserve retirement. He was credited with 205 retirement points in his last partial anniversary year and had to live until March 2007 in order to be eligible for retirement.

h. A Navy Reservist cannot make an RCSBP election until he or she completes 20 years of qualifying service for reserve retirement. The RCSBP election form is provided when the Notification of Eligibility for Retired Pay at Age 60 is sent to the reservist. Since Subject did not have 20 years of qualifying service, he had no opportunity to make an RCSBP election.

i. Petitioner has submitted a statement in which she states that she had discussed a RCSBP election with Subject, and they had agreed that an election would be made. A retired reservist and friend of the deceased member has stated that he advised Subject on Serviceman's Group Life Insurance and RCSBP issues and was convinced that Subject would have made an RCSBP election.

j. The RCSBP allows for the election of one of three options. Option A defers the RCSBP election until the member reaches age 60. Option B provides for an annuity as of the date the deceased member would have reached age 60. Option C provides for an immediate annuity as of the date of the members death. Options A and B require the spouse to consent to less than immediate coverage. Further, all three options require the spouse to consent if the annuity is to be based on less than the full retired pay.

k. Attached to enclosure (1) is the Navy Personnel Command response to an E-mail from the examiner in this case which states, in part, as follows:

....Unfortunately there isn't anything that I can provide with respect to being creative to give this member 20 qualifying years. Every year is qualifying.

On a brighter note, though, (if there can be in cases like this) I believe this members has SGLI (Serviceman's Group Life Insurance) and that is \$400,000 to the beneficiary (his wife). Recommend to allow SGLI to do its job and that is to cover those not eligible for retirement benefits.

My recommendation is to deny her request because she is not entitled to anything other than SGLI.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. It is clear that Subject served in an exceptional manner throughout his career and performed in an outstanding manner during two extended recalls since September 2001. Clearly he was in good standing in the Navy Reserve and would have been retired, with an opportunity to make an RCSBP election, if he had lived until he reached 20 years of qualifying service. Given the circumstances, which included the possibility of further extended active service, the Board is convinced that he would have made an RCSBP election at that time and would have selected Option C based on the full amount of his retired pay.

After considering Subject's outstanding record of service and the unfortunate circumstances, the Board concludes that the deceased member's record should be corrected to show that he had 20 qualifying years for reserve retirement. Since he did not have any nonqualifying years and his service cannot be extended beyond the date of his death, the additional period must be added to the beginning of his service. In order to prevent a change in the apparently erroneous anniversary date and the adjustment of over 20 years worth of retirement points, the Board concludes that the best way to correct the record is to show that he enlisted in the Navy Reserve on 22 March 1986 for the minimum period of two years and was immediately placed in the Individual Ready Reserve (IRR), vice the 26 January 1987 enlistment in the DEP now of record. Thirty-five correspondence course retirement points should then be transferred from other anniversary year(s) into the new year. These points, when added to the 15 membership points will establish another qualifying year. The corrected record will then show that he completed 20 years of qualifying service in March 2006 and was eligible to make an RCSBP election at that time.

Although there is a 19 day discrepancy in the beginning date of his service that has no effect on the reserve retirement, NPC may change the enlistment in the Navy Reserve to 3 March 1986, and all subsequent anniversary years. However, retirement points should only be transferred between anniversary years if the change in the beginning date of the anniversary year causes a nonqualifying year.

The Board further concludes that Subject's record should be corrected to show that in March 2006 he made an Option C (Immediate annuity) RCSB election based on the full amount of his retired pay.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand that the Petitioner is entitled to an RCSBC annuity.

RECOMMENDATION:

- a. That Subject's naval record be corrected to show that he enlisted in the Navy Reserve on 22 March 1986 or 3 March 1986 for the minimum period of two years and was immediately transferred to the IRR, vice the enlistment in the DEP of 22 January 1987 now of record. The record should then show that he was honorably discharged from his reserve contract the day prior to his enlistment in the Regular Navy. As indicated, the discharge date can either be 2 March or 21 March 1987 at the discretion of NPC.
 - b. That 35 correspondence course retirement points be transferred from other anniversary year(s) into the new reserve year so that it will be qualifying for reserve retirement.
 - c. That Subject's naval record be further corrected to show that in March 2006 he made an RCSBP Option C election based on the full amount of his retired pay.
 - d. 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:



7-26-07

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