



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

TRG
Docket No: 1831-07
25 July 2008

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 member of the Navy Reserve, filed an application with this Board requesting that he be transferred to the Retired Reserve under the provisions of the Reserve Transition Benefits (RTB) program. He further requests transfer to the Retired List effective on his 60th birthday.
2. The Board, consisting of Mr. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 8 July 2008 and, pursuant to its regulations, the majority of the Board, Mr. Boyd and Ms. LeBlanc, 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 consider the application on its merits.
 - c. Petitioner was commissioned in the Chaplain Corps on 10 March 1983. He then earned 17 consecutive qualifying years for reserve retirement purposes. In the anniversary year ending on 9 March 2001 he was only credited with 45 of the 50 retirement points needed for another qualifying year. The next anniversary year is qualifying which raised his total to 18 qualifying years. The next four years are not qualifying, however, in one of those years he has been credited with 39 retirement points.

Petitioner, while serving in the grade of commander (CDR), reached his 60th birthday on 10 September 2006 and since he was not eligible for reserve retirement he was honorably discharged on that date.

d. Petitioner contends in his application that he was not properly advised of the provisions of the Reserve Transition Benefits (RTB) program when he was removed from drill pay status and transferred to a Volunteer Training Unit on 30 September 1999. He points out that early retirement was available for individuals with more than 15 years of qualifying service and that he had 17 years of such service at the time.

e. Attached to enclosure (1) is an advisory opinion from the Navy Personnel Command which states, in part, as follows:

...To receive RTB, the member had to have been involuntarily removed from a pay billet after being in a pay status for at least one year; there had to be no further pay billets available or offered for the member to fill; the application for RTB had to be made by the member within 40 days of removal from billet; and applications had to be reviewed by Navy Reserve Forces Command to ensure other pay billets were not available worldwide...

...To our knowledge, there was no requirement placed on Reserve managers to brief members being ordered out of Selected Reserve billets about the RTB Program; however, it was a well-known option by 2000, having been in effect since 1992. It is, therefore, difficult to support a petition based simply on the fact that the member "wasn't made aware" of this option by a center commanding officer.

...Members frequently opted not to take RTB and, instead, remained in the Navy Reserve Program to continue being considered for promotion, compete for future Selected Reserve billets, increase retirement benefits at age 60, and complete time-in-grade requirements.

...In view of the above, we are reluctant to retroactively endorse - seven years after the fact - RTB eligibility, particularly when we see several missed opportunities to complete qualification for retirement. Unless the individual can provide overwhelming documentation to prove his case, we cannot support his petition...

f. Petitioner points out in his rebuttal that he served in an excellent manner, was promoted to commander and spent many hours in voluntary activities in support of service members.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority, consisting of Mr. Boyd and Ms. LeBlanc, do not disagree with the comments contained in the advisory opinion concerning the RTB program. However, they note Petitioner's many years of excellent service and that he has 18 years of qualifying service for retirement. Since he only missed qualifying for retirement by five retirement points in the anniversary year ending on 9 March 2001 and 11 retirement points in the anniversary year ending on 9 March 2003 the majority believes that the record should be corrected by transferring sufficient points into the two years at issue so that he will have 20 qualifying years. The record should then be corrected to show that he transferred to the Retired Reserve and the Retired List.

The majority further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand Petitioner's retirement status.

In view of the foregoing, the majority finds the existence of an injustice warranting the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected by transferring 16 retirement points from the excess over 50 in prior anniversary years into the anniversary years ending on 9 March 2001 and 9 March 2003 to make those two years qualifying for retirement.

b. That Petitioner's record be further corrected to show that he transferred to the Retired Reserve in the grade of CDR on 1 March 2006 and to the Retired List on his 60th birthday, 10 September 2006.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

MINORITY CONCLUSION:

Mr. Pfeiffer disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. He notes that Petitioner was a long time member of the Navy Reserve serving in the grade of CDR and believes that he knew or should have known the requirement necessary to qualify for reserve retirement. Mr. Pfeiffer also notes that Petitioner has been

treated no differently than many others who have failed to qualify for reserve retirement based on a few years with less than 50 retirement points.

In view of the foregoing, the minority essentially agrees with the comments and recommendation contained in the advisory opinion that reserve retirement in this case is not warranted.

MINORITY RECOMMENDATION:

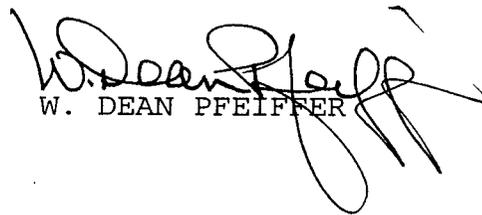
a. That Petitioner's request be denied.

4. It is certified that a quorum was present at the Board's review and deliberations, and the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

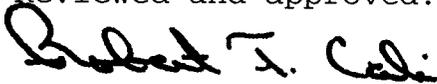
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

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


W. DEAN PFEIFFER

MAJORITY REPORT:
Reviewed and approved:


8-5-08

~~MINORITY~~ REPORT:
Reviewed and approved: