



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

TRG
Docket No: 3674-07
25 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, a retired former member of the Marine Corps, filed an application with this Board requesting that this record be corrected to show that he retired with 20 years of active service in order to allow concurrent retirement and disability pay (CRDP).
2. The Board, consisting of Mr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 17 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, 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 reenlisted in the Marine Corps for the last time on 15 December 1989. On 1 April 1993 he was promoted to master sergeant (MSGT; E-8). Subsequently, because of liver failure, he was forced to undergo a liver transplant and was later processed for disability retirement. On 16 April 1993 he was transferred to the Temporary Disability Retired List (TDRL). At that time, he had completed 19 years, 11 months and 28 days of active service. He was permanently retired on 9 April 1997.

d. At the time of his separation from active duty, Petitioner was entitled to retired pay from the Marine Corps based on 20 years of active and constructive service. However, this payment was offset by payments from the Department of Veterans Affairs (VA). In 2004 the law changed to allow concurrent receipt of disability retired pay and VA compensation for certain severely disabled retirees. The law allows those members with retirement based on 20 years of service to receive VA and retirement compensation at the same time without offset. CRDP for everyone else will be phased in over 10 years. As indicated, Petitioner was retired two days short of 20 years and is not eligible for CRDP.

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 Congress enacted the 20 year requirement to recognize severely disabled individuals who retired with 20 years of service. Since Petitioner is so close to having 20 years of active service, and certainly would have been retained for the additional two days if CDRP had been in effect at the time, the Board concludes that corrective action is appropriate in this case. Therefore, Petitioner's record should be corrected to show that he transferred to the TDRL on 18 April 1993 vice the transfer of 16 April 1993 now of record. With this correction, he will be retired with 20 years of active duty. However, he will still be required to meet the other requirements in order to be eligible for CRDP.

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

RECOMMENDATION:

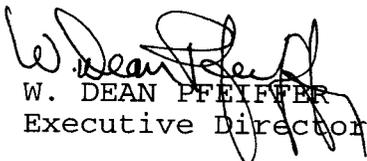
- a. That Petitioner's naval record be corrected to show that he transferred to the TDRL on 18 April 1993 vice the transfer on 16 April 1993 now of record.
 - b. That this Report of Proceedings be filed in Petitioner's naval record.
4. It is certified that a quorum was present at the Board's review and 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.



W. DEAN PFEIFFER
Executive Director