

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

[REDACTED]
Docket No: 4790-07
13 June 2007

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF
Ref: (a) Title 10 U.S.C. 1552

End: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member who has received an honorary retirement, filed an application with this Board requesting that his record be corrected, in effect, to show that he transferred to the Retired Reserve under the provisions of 10 U.S.C. 12731 vice the honorary retirement now of record.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 5 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. The record shows that Petitioner completed 19 years of qualifying service for reserve retirement purposes on 15 April 1989. Apparently believing that he had 20 qualifying years, he requested transfer to the Retired Reserve effective on 1 July 1989. This request was favorably endorsed by his command. On 1 October 1989 Headquarters Marine Corps sent him a letter stating that the Secretary of the Navy had approved his request to transfer to the Retired Reserve. This was an honorary retirement because he was not eligible for retired pay at age 60.

d. On 18 January 2006 Petitioner requested the start of his retired pay effective on 30 May 2006, his 60th birthday. However, this request was denied by Headquarters Marine Corps because he did not have 20 qualifying years. At that time, he was told to petition this Board if he believed there was an error or injustice in his record.

e. In his subsequent application to the Board, Petitioner stated that he did not understand the different categories of retirement and believed that he was eligible for reserve retirement and retired pay at age 60. The Board considered his case on 18 April 2006 and concluded, in part, as follows:

The Board believes that his retirement request would not have been favorably endorsed by his command had not believed that he had 20 qualifying years. Further, it is clear that his request for retirement with 19 years of qualifying service should not have been approved without documentation from Petitioner indicating that he was aware of his situation. Since Petitioner served in an excellent manner for 19 years and was apparently unaware that he had not qualified for retirement, the Board concludes that the record should be corrected to establish his eligibility for retired pay at age 60. Since he is already retired, the Board concludes that the best way to correct the record is to transfer 35 retirement points from the excess over 50 in subsequent anniversary years into the anniversary year ending on 13 January 1970. This action when combined with the 15 membership points will make the year qualifying for retirement. After the points are transferred, the record will show that he transferred to the Retired Reserve effective on 1 July 1989 with eligibility for retired pay at age 60

f. The Board has now been informed by representatives of Headquarters Marine Corps that, in their opinion, Petitioner cannot be transferred from the honorary retired list to the Retired List with eligibility for retired pay.

g. 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. It is clear that the Board did not take action to transfer him to the Retired Reserve because it believed that Petitioner was already retired. Since the Board's previous action corrected Petitioner's record to show that he has 20 qualifying years, he is eligible for reserve retirement. Therefore, the Board concludes that Petitioner's record should be further corrected to show that he transferred to the Retired Reserve in the grade of GYSGT, effective on 1 July 1989, under the provisions of 10 U.S.C. 12731. Since he is now 60 years of age, the record should be further corrected to show that he transferred to the Retired List on 30 May 2006, 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 under the provisions of Title 10 U.S.C. 12731 in the grade of GYSGT effective on 1 July 1989 vice the honorary retirement of that date now of records.
- b. Since he became 60 years of age on 30 May 2006, the record should be further corrected to show that he transferred to the Retired List on that date.
- c. 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.



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.

