



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

Docket No: 6197-07
25 April 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, in effect, that his record be corrected to show that he was eligible for reserve retirement and transferred to the Retired Reserve and to the Retired List vice being discharged on 20 January 1990.

2. The Board, consisting of Mr. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 15 April 2008 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 Navy Reserve on 20 April 1968 with three years of qualifying service in a prior enlistment. During the next 17 anniversary years he was credited with 16 years of qualifying service for reserve retirement purposes. In the anniversary year ending on 19 April 1971 he was only credited with only 40 of the 50 retirement points needed for a qualifying year. He had earned a total of 19 years of qualifying service for retirement. On 22 June 1985 he was found not physically qualified for service and was transferred to the Standby Reserve. Therefore, he was unable to earn any further qualifying years.

He was honorably discharged at the expiration of his enlistment on 20 January 1990. During his service he was advanced to petty officer second class (CE2; E-5). He attained 60 years of age on 11 December 1999.

d. Attached to enclosure (1) is an advisory opinion from the Navy Personnel Command (NPC) that states that Petitioner has 19 years of qualifying service. Since he did not have 20 qualifying years, NPC recommends that his request for reserve retirement be denied.

e. 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 he missed qualifying for retirement because he was 10 retirement points short in the anniversary year ending on 19 April 1971. Since he was so close to qualifying for retirement, the Board believes that he would have continued to drill if he had been physically qualified. Under the circumstances, the Board concludes that Petitioner's record should be corrected by transferring 10 retirement points from the excess over 50 in the anniversary year ending on 19 April 1972 into the anniversary year ending on 19 April 1971. With this correction, he will have 20 years of qualifying service.

Petitioner had been in good standing in the Navy Reserve and would have been retired if he had accumulated 20 years of qualifying service and had he requested it in sufficient time prior to the expiration of his enlistment. Therefore, the Board concludes that Petitioner's record should show that he transferred to the Retired Reserve in the grade of CE2. Because of the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 January 1990. Since he is now over 60 years of age, the record should be further corrected to show that on 11 July 2007, the date his application to the Board was accepted for review, he requested transfer to the Retired List.

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 by transferring

10 retirement points from the anniversary year ending on 19 April 1972 into the anniversary year ending on 19 April 1971.

b. That Petitioner's naval record be further corrected to show that on 1 January 1990 he transferred to the Retired Reserve vice the discharge of 20 January 1990 now of record. The record should then show that on 11 July 2007 he requested transfer to the Retired List and the start of his retired pay.

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.

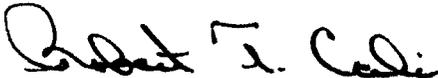
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

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


W. DEAN PFEIFFER

Reviewed and approved:


5-1-08

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