



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

TRG

Docket No: 10422-07
24 November 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 transferred to the Retired Reserve and to the Retired List vice being discharged.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 18 November 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. Petitioner's application was filed in a timely manner.

c. Petitioner reenlisted in the Navy Reserve on 11 August 1976 for six years. On 16 September 1981 he was advanced to chief petty officer (MSC; E-7). On 11 August 1982 a four year extension became effective. A Statement of Service for Navy Reserve Retirement shows that he was honorably discharged on 30 September 1986 with 20 years, 11 months and 18 days of qualifying service and 2,700 retirement points. An administrative remarks entry in the record indicates that he was discharged on 15 April 1987 because his enlistment had been extended by administrative action and he was not physically qualified.

d. On 6 May 1987 Petitioner was issued a Notification of Eligibility for Retired Pay at Age 60. He became 60 years of age

on 14 October 2007 and is receiving his retired pay as a former member. He states, in effect, that he did not understand his status as a former member.

e. The Board did not request an advisory opinion in this case. However, the Board is aware that the Navy Personnel Command has recommended corrective action in similar cases when an individual is qualified for reserve retirement and errors occurred which prevented retirement.

f. 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. Petitioner was in good standing in the Navy Reserve and would have been retired if he had requested it in sufficient time prior to the expiration of his enlistment. Therefore, the Board concludes that Petitioner's record should be corrected to show that he transferred to the Retired Reserve in the rate of MSC. Given the requirements of the Uniform Retirement Date Act, it appears that the retirement should be effective on 1 August 1986 the last possible date prior to the expiration of the four year extension. However as indicated there are conflicting entries in the record. Therefore, the effective date of retirement is left to the discretion of the Navy Personnel Command. Since he is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on [REDACTED] 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.

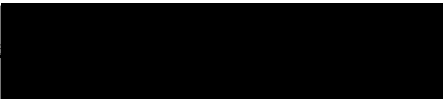
RECOMMENDATION:

a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve on a date to be determined by the Navy Personnel Command, in the rate of MSC, vice the discharge now of record. His record should then be corrected to show that he transferred to the Retired List on [REDACTED] his 60th birthday.

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

BRIAN J. GEORGE
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.

