

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

TRG

Docket No:10511-07

2 April 2008

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

Subj: REVIEW OF NAVAL RECORD

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, a former commissioned warrant officer in the Marine Corps Reserve, filed an application with this Board requesting, in effect, that his record be corrected to show that the transferred to the Retired Reserve and to the Retired List vice being discharged on 31 July 1987.

2. The Board, consisting of reviewed Petitioner's allegations of error and injustice on 25 March 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 served on active duty and in the Marine Corps Reserve continuously from 16 August 1965. On 17 May 1979 he was promoted to master sergeant (MSgt; E-8). On 15 October 1983, he accepted an appointment as a warrant officer. Subsequently, on 1 October 1985 he was commissioned as a chief warrant officer (CWO2). On 28 January 1986 he was issued a

Notification of Eligibility for Retired Pay at Age 60 (NOE).
The NOE is irrevocable unless it was procured by fraud.

d. In June of 1986 while on active duty for training, Petitioner severely injured his foot when he stepped in a hole while running. This injury resulted in processing through the disability system. On 7 April 1987 a physical evaluation board found him unfit for duty with a disability rated at 10%. On 17 July 1987, Headquarters Marine Corps directed discharge by reason of physical disability. The message stated that although Petitioner was eligible for retired pay at age 60 he had elected to be discharged with disability severance pay which terminated his entitlement to retired pay and other benefits. Petitioner was honorably discharged on 31 July 1987.

e. Petitioner became 60 years of age on 24 July 2007 and requested that his reserve retired pay be started. After review, Headquarters Marine Corps (HQMC) directed that Petitioner's reserve retired pay commence effective on his 60th birthday. However, since he had been discharged he could not be transferred to the Retired List and would be considered to be a former member.

f. The Board did not request an advisory opinion in this case. However, the Board is aware that HQMC has routinely recommended corrective action when an individual is qualified for reserve retirement and circumstances resulted in discharge rather than retirement.

g. 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 certainly in good standing in the Marine Corps Reserve and could have been retired if discharge by reason of physical disability had not occurred. Given the circumstances, the Board concludes that Petitioner's record should now be corrected to show that that he transferred to the Retired Reserve. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 August 1987 vice the discharge of 31 July 1987 now of record. Since he is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on 24 July 2007, his 60th birthday.

Since Petitioner could not continue in the Marine Corps Reserve because of a service connected disability, it appears that the grade upon retirement should be CWO2. However, the issue of his grade on retirement should be made by HQMC.

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 on the Retired List.

RECOMMENDATION:

a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve effective on 1 August 1987 vice the discharge of 31 July 1987 now of record. His record should then be corrected to show that he transferred to the Retired List on 24 July 2007, 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.

W. DEAN PFEIFFER
Executive Director