



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

Docket No: 1306-08
19 February 2009

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 commissioned officer in the United States Marine Corps Reserve (USMCR), filed an application with this Board requesting that his record be corrected to show two additional qualifying years for retirement so that he will be retained and given an opportunity to qualify for reserve retirement.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 February 2009 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 was discharged from the USMCR on 30 June 1984 with 14 years, 1 month and 18 days of commissioned service, but only 7 years of qualifying service. He was then reappointed in the USMCR on 2 April 2002 at age 52. On 31 May 2008 he completed 20 years, 3 months and 17 days of commissioned service but as of 1 April 2008 only 13 years of qualifying service for retirement. During his second period of commissioned service he was promoted to major.

d. Attached to enclosure (1) is an advisory opinion from Headquarters Marine Corps which states, in part, as follows:

[Petitioner] needs 7 additional years of service before he reaches age 62 in order to qualify for a Reserve Retirement with pay...He will turn 62 on 30 October 2011. If the requested points are transferred, he will have 15 years of qualifying service. If he continues to serve satisfactorily until age 62, he will then have 18 years of qualifying service, placing him in a sanctuary status.

.. This command does not recommended the Board move excess retirement points from [his] satisfactory years to unsatisfactory years. As shown in enclosure (2), prior to his reappointment, this office recommended he be counseled concerning retirement eligibility and he should be informed he must have reached a minimum of 16 years of qualifying service prior to his twentieth year of commissioned service in order to be eligible for continuation. Enclosure (3) is a memorandum which states he will never retain [sic] retirement eligibility but may continue to contribute to the Marine Corps Reserve for the remainder of his time in service or until he reached his Mandatory Removal Date. [He] should have been fully aware that it was impossible for him to become retirement eligible before reaching age 62.

e. Petitioner states in his rebuttal to the advisory opinion, in effect, that he was never informed that it would be impossible to qualify for retirement. He has submitted a letter from the officer who performed the oath of office upon his recommissioning stating that he never counseled Petitioner concerning his eligibility for retirement. Petitioner points out that the two additional qualifying years will mean that he now has 16 qualifying years which will allow continuation in the Marine Corps Reserve and the opportunity to reach 18 qualifying years shortly before his 62nd birthday.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes Petitioner's excellent service and desire to continue to serve to qualify for retirement. Given the circumstances, the Board believes that the minimum action necessary to allow him to continue to serve is warranted in this case. Therefore, sufficient nonactive duty retirement points should be transferred from the excess over 50 points in

qualifying years to raise the total in two nonqualifying years to 50. With this correction Petitioner will have 16 qualifying years at the end of his anniversary year on 1 April 2009 and be eligible for continuation in the USMCR.

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 number of qualifying years.

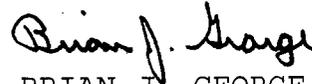
RECOMMENDATION:

a. That Petitioner's naval record be corrected by moving sufficient nonactive duty retirement points from the excess over 50 in qualifying years to raise the total in two nonqualifying years to 50.

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.

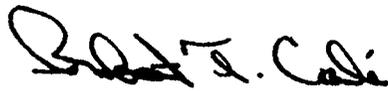
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

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


W. DEAN PFEIFFER

Reviewed and approved:


2-27-09