



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

TRG
Docket No: 4229-08
25 July 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 vice being discharged.

2. The Board, consisting of Ms. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 22 July 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 13 November 1994 for six years in the grade of chief petty officer (QMC; paygrade E-7). On 6 March 1998 he completed 20 years of qualifying service for reserve retirement. Subsequently, he was issued a Notification of Eligibility for Retired Pay at Age 60. On 14 November 2000 a two year extension of his enlistment became effective. Although there is no discharge entry in the record it appears that he was honorably discharged on 12 November 2002 at the expiration of his enlistment as extended. Petitioner was born 26 October 1954 and will not be eligible for retired pay until 26 October 2014.

d. The Board did not request an advisory opinion in this case. However, the Board is aware that the Navy Personnel Command has routinely recommended corrective action when an individual is qualified for reserve retirement and there is no explanation in the record why the individual was discharged rather than transferred to the Retired Reserve.

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. 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 grade of QMC. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 November 2002 vice the discharge of 12 November 2002 or any other date now of record.

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.

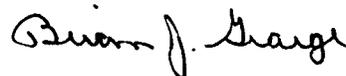
RECOMMENDATION:

a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve effective on 1 November 2002, in the grade of QMC vice the discharge of 12 November 2002 or any other date now of record.

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.

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W. DEAN PFEIFFER
Executive Director