



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

TRG
Docket No: 5444-08
9 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 Marine Corps 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 on 23 August 2004.
2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 24 June 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 reported for extended active duty on 24 February 2002 in the grade of gunnery sergeant (GySgt; paygrade E-7) and was honorably released from active duty on 23 February 2004. At the end of his anniversary year on 16 March 2004, he was credited with 20 years, 1 month and 22 days of qualifying service for reserve retirement. His enlistment expired and he was honorably discharged on 23 August 2004. He became 60 years of age on 26 September 2007.
 - d. The Board did not request an advisory opinion in this case. However, the Board is aware that Headquarters Marine Corps

has routinely recommended corrective action when an individual is qualified for reserve retirement and the circumstances resulted in discharge rather than retirement.

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 Marine Corps 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 GySgt. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 August 2004. Since he is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on 26 September 2007, 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 record be corrected to show that he transferred to the Retired Reserve effective on 1 August 2004, in the grade of GySgt vice the discharge of 13 August 2004 now of record.

b. Petitioner's record should then be corrected to show that he transferred to the Retired List on 26 September 2007, his 60th birthday.

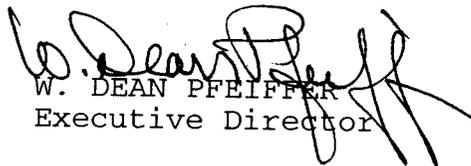
c. That this Report of Proceedings be filed in Petitioner's naval record.

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. 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