



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX TRG
WASHINGTON DC 20370-5100 Docket No: 7877-08
3 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 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 on 6 August 2006.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 22 January 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 reenlisted in the Navy Reserve on 5 August 2000 for four years. On 24 January 2003 he was issued a Notification of Eligibility for Retired Pay at Age 60. His four year enlistment ended on 4 August 2004 and there are no further reenlistments or extensions filed in his record. However, his retirement point record shows that at the end of his anniversary years on 18 October 2004 and 2005 he was credited with retirement points. The retirement point record shows that he was discharged on 6 August 2006. At that time, he was serving as a petty officer second class (GM2; paygrade E-5). He was born on 21 September 1960 and will not be eligible for retired pay until 21

September 2020, his 60th birthday.

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 in cases such as this when an individual is qualified for reserve retirement and was discharged without being 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. He 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 his record should be corrected to show that he transferred to the Retired Reserve in the rate of TM2. Given the requirements of the Uniform Retirement Date Act, and the absence of any contract to authorize service after 4 August 2004, the record should be corrected if needed to ensure that he is credited with all of his earned retirement points. Therefore, the record should be corrected if needed to show that he extended his four year reenlistment of 5 August 2000 for an additional period of two years. The record should then be corrected to show that he transferred to the Retired Reserve effective on 1 August 2006.

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:

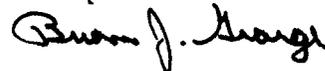
a. That Petitioner's record be corrected if needed to show that he had obligated service for at least two years past 1 August 2004.

b. That his record be further corrected to show that he transferred to the Retired Reserve effective on 1 August 2006, in the rate of GM2, vice the discharge of 6 August 2006 or any other date now of record.

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