



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

TRG
Docket No: 8021-08
6 May 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 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 13 October 1986.

2. The Board, consisting of Mr. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 April 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 Marine Corps Reserve for three years on 14 August 1983 in the grade of gunnery sergeant (GySgt; E-7). Subsequently, he extended that enlistment for a period of two months. He was honorably discharged on 13 October 1986.

d. Petitioner became 60 years of age on 5 March 2007 and requested that his reserve retirement pay be started. A statement of service, dated 25 July 2008, indicates that he was discharged on 13 October 1985 with 18 years of qualifying service.

e. Petitioner applied to the Board on 18 August 2008. An initial review of his record revealed that the 25 July 2008 statement of service was in error. Subsequently, Headquarters Marine has issued a new statement showing that he was discharged on 13 October 1986 with 19 years and 11 months of qualifying service for reserve retirement.

f. 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 errors occurred which prevented 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. Since he has now been credited with 19 years and 11 months of qualifying service, it is clear that he and his command believed that he had 20 years of qualifying service. Because he is so close to qualifying, the Board concludes that his record should be corrected to show that he has 20 satisfactory years. His last partial anniversary year began on 28 August 1986 and ended on the date of his discharge on 13 October 1986. Therefore, sufficient retirement points should be transferred from the excess over 60 in the anniversary year ending on 27 August 1986 into the partial anniversary which began on 28 August 1986 to make that partial year of over one month qualifying for retirement. With this correction he will have over 20 qualifying years.

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 and had 20 qualifying years. Therefore, the Board concludes that his record should 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 October 1986 vice the discharge on 13 October 1986 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 5 March 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's naval record be corrected by transferring sufficient points from the excess over 50 in the anniversary year ending on 27 August 1986 to make the partial anniversary year ending with the date of his retirement qualifying for reserve retirement.

b. That Petitioner's record be further corrected to show that he transferred to the Retired Reserve effective on 1 October 1986, in the grade of GySgt vice the discharge of 13 October 1986 now of record. His record should then be corrected to show that he transferred to the Retired List on 5 March 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