



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

Docket No: 8098-08  
4 January 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 vice being discharged on 26 September 1994.

2. The Board, consisting of Mr. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 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 Marine Corps Reserve on 27 September 1992 for two years. On 1 January 1993 he was promoted to First Sergeant (1stSgt; paygrade E-8). Regulations in effect at the time and in effect now require that an individual earn two qualifying years in grade in order to be able to retire at the higher grade. At the end of his anniversary year on 7 April 1994 he was credited with 21 consecutive qualifying years for reserve retirement. Subsequently, he was allowed to extend his enlistment for three months. The next entry in the record shows that he was honorably discharged on 26 December 1994 at the expiration of his enlistment as extended. On 25 October 1995 he

was issued a Notification of Eligibility for Retired Pay at Age 60. Petitioner will not be 60 years old and eligible for retired pay until 19 September 2014.

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 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. He 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 his record should be corrected to show that he transferred to the Retired Reserve. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 December 1994 vice the discharge of 26 December 1994 now of record.

Concerning the issue of his grade on retirement it is clear that he had to serve until 31 December 1994 in order to complete two years of service in grade as a 1stSgt. However, he did not earn sufficient retirement points in that last partial anniversary year to make that year qualifying. Therefore, an extension of his enlistment for one month would serve no purpose.

Since Petitioner did not complete the required two years qualifying service needed to retire as a 1stSgt then he must be retired in the grade of gunnery sergeant (GySgt; paygrade E-7). However, if it can be established in the future that he actually earned sufficient retirement points or he believes that an injustice has occurred he may reapply to the Board to change the number of retirement points and the date of his retirement to 1 January 1995.

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:

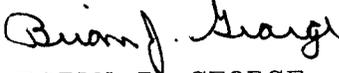
a. That Petitioner's record be corrected to show that he

transferred to the Retired Reserve in the grade of GySgt effective on 1 December 1994, vice the discharge of 26 December 1994 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.

  
W. DEAN PFEIFFER  
Executive Director