



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX TRG
WASHINGTON DC 20370-5100 Docket No: 8222-08
4 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 and to the Retired List vice being discharged on 5 February 1989.

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 Navy Reserve on 6 February 1983 for six years. On 1 November 1987 he transferred to the Individual Ready Reserve (IRR) and had no further participation in the reserve program. At the end of his anniversary year on 12 March 1988 he was credited with 22 years of qualifying service for reserve retirement purposes and was serving as a petty officer first class (TM1; paygrade E-6). Subsequently, he was issued a Notification of Eligibility for Retired Pay at Age 60. He was honorably discharged on 5 February 1989 at the expiration of his enlistment.

b. Petitioner was born on 2 November 1945 and became 60 years old on 2 November 2005. On 24 July 2008 he was authorized reserve retired pay retroactive to his 60th birthday. However, since he had been discharged he is considered to be a former member and is not entitled to all benefits associated with military retirement.

c. 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 was discharged rather than transferred to the Retired Reserve.

d. 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 TM1. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 February 1989. Since he is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on 2 November 2005, 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:

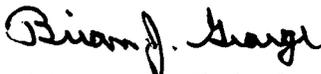
a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve effective on 1 February 1989, in the rate of TM1, vice the discharge of 5 February 1989 now of record. His record should then be corrected to show that he transferred to the Retired List on 5 February 1989, his 60th birthday.

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

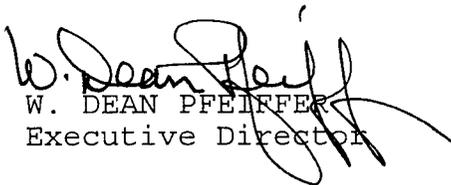
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and

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