



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

Docket No: 9447-08
26 November 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 enlisted member of the Navy Reserve, filed an application with this Board requesting, in effect, that his record be corrected to show that he is qualified for reserve retirement and transferred to the Retired Reserve and to the Retired List vice being discharged on 13 December 1990.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 18 November 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. At the end of Petitioner's anniversary year on 14 December 1986 he was credited with 19 years, 7 months and 18 days of qualifying service for reserve retirement. That same day, he reenlisted for two years as a petty officer first class (AD1; E-6). On 1 June 1987 he transferred to the Individual Ready Reserve (IRR). At the end of his anniversary year on 14 December 1987 he was only credited with 35 retirement points. Since 50 retirement points are required for a full qualifying year, the computation of his qualifying years did not change. A two year

extension became effective on 14 December 1988, however, the extension is not reflected on the statement of service. There was no participation in the reserve program after 1 June 1987.

d. The Board is aware that a partial anniversary year may be credited if an event occurred such as a discharge or retirement and there are sufficient retirement points to make the partial year qualifying. In this case, Petitioner attended 20 drills prior to 30 June 1987. Regulations require that in order for the 170 days from the start of the anniversary year on 14 December 1986 to 30 June 1987 to be qualifying for retirement an individual must be credited with 27 retirement points. The prorated membership which can be credited for 159 to 182 days is seven points. Therefore, as of 30 June 1987, Petitioner can be credited with 20 drills and 7 membership points and the period from 14 December 1986 to 30 June 1987 will be qualifying. The 170 days when added to Petitioner's 19 years, 7 months and 18 days of qualifying service now of record would make him qualified for reserve retired pay at age 60.

e. 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 errors occurred which prevented retirement.

f. 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. In this regard it is clear that if Petitioner had been properly advised he would have requested retirement on 1 June 1987 vice the transfer to the IRR on that date now of record.

Petitioner was in good standing in the Navy Reserve and would have been retired if he had requested it in sufficient time prior to the appropriate retirement date. Therefore, the Board concludes that Petitioner's record should be corrected to show that he transferred to the Retired Reserve in the rate of AD1. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 June 1987. Since he is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on 16 February 2008, 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.

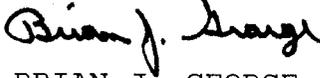
RECOMMENDATION:

a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve effective on 1 June 1987, in the rate of AD1 vice the discharge of 13 December 1990 or any other date now of record. His record should then be corrected to show that he transferred to the Retired List on 16 February 2008, 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