



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX TRG
WASHINGTON DC 20370-5100 Docket No: 10069-08
19 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 retired 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 in the grade of master gunnery sergeant (MGySgt, paygrade E-9) vice in the grade of master sergeant (MSgt, paygrade E-8).

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 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 was promoted to MGySgt on 1 January 1998. In order to retire in that grade he was required to complete two qualifying years in grade. Petitioner's anniversary year ended on 18 April of each year. Therefore at the end of his anniversary year on 18 April 1998 he was credited with three months and 18 days of qualifying service. His next anniversary year ending on 18 April 1999 was qualifying for retirement. At that time he was credited with more than 15 months of qualifying service in grade. Late in the next anniversary year he transferred to the Individual Ready Reserve (IRR). At the end of

his anniversary year on 18 April 2001 he was only credited with 42 of the 50 retirement points necessary for another qualifying year. Since there was no change in status during this year, such as a discharge or retirement, the entire year is considered to be nonqualifying. Petitioner remained in the IRR and on 1 July 2001 he transferred to the Retired Reserve with eligibility for pay at age 60. He became age 60 on 12 February 2009 and began receiving his retired pay in the grade of MSgt.

d. Petitioner states that he thought he had two years in grade because he participated for two years after his promotion. He did not realize that the last partial anniversary year would not be credited without a change in status. He points out that he would only have needed two additional drill weekends to earn 50 retirement points that year. He now requests that his retirement date be changed to 1 January 2000. With this change in status the entire last partial anniversary year would be credited and he would be retired as a MGySgt.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board believes that if Petitioner had been aware of the situation that he only needed an additional eight retirement points he would have either earned those points or retired early in 2000 instead of remaining in the IRR. Accordingly, the Board believes that Petitioner's record should be corrected to show that he transferred to the Retired Reserve early in 2000. Although Petitioner requested that the transfer to the Retired Reserve be effective on 1 January 2000, he earned sufficient point to make all the time in the last anniversary year through 1 February 2000 qualifying for retirement. Therefore, the Board concludes that Petitioner's record should be corrected to show that he transferred to the Retired Reserve on 1 February 2000 vice the transfer to the Retired Reserve on 1 July 2001 now of record. This action will result in a change of his retirement grade from MSgt to MGySgt.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reasons for the change in his retirement date.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Retired Reserve effective on 1 February 2000 vice the transfer to the Retired Reserve on 1 July 2001 now of record.

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

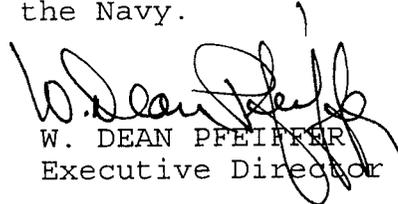
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



BRIAN J. GEORGE
Acting Recorder

ROBERT D. ZSALMAN
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