



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

Docket No: 11423-08
8 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 enlisted 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 8 December 1990.

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 Navy Reserve on 6 December 1982 for six years as a petty officer second class (ET2; E-5). At that time, he had completed more than 12 years of qualifying service in the Air Force, Air Force Reserve and Navy Reserve. He then earned six continuous qualifying years for reserve retirement. On 1 December 1988 he was apparently transferred to the Individual Ready Reserve. At that time, he was credited with 18 years, 2 months and 28 days of qualifying service for reserve retirement. Although there are no extensions filed in the record, the Statement of Service shows that he continued to be a member of the Navy Reserve until he was honorably discharged on

8 December 1990 at the expiration of his enlistment as extended. During this additional two year period he has only been credited with membership points. Therefore, he had completed 18 years, 2 months and 28 days of qualifying service for retirement. Petitioner became 60 years of age on 15 December 1997.

d. Petitioner states in his application that he was denied further service because he could not meet the physical readiness standards.

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 to show an individual was transferred to the Retired Reserve if they were qualified for reserve retirement and then discharged instead of being transferred to the Retired Reserve.

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.

g. The Barring Act, which is codified at 28 U.S.C. 3702, prohibits the payments of claims against the United States which are over six years old. The Act does not normally apply to corrective actions taken under the provisions of the Board's statute, 10 U.S.C. 1552.

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 20 qualifying years and had requested it in sufficient time prior to the expiration of his enlistment. Since it appears that he may not have understood all of his options to earn points and his case may have not received sufficient attention, the Board concludes that his record should be corrected to show that he is qualified for reserve retirement and then transferred to the Retired Reserve and to the Retired List in the rate of ET2.

Therefore, Petitioner's record should be corrected to show that he extended his six year enlistment of 6 December 1982 for a period of two years. This action will validate the two years shown on the statement of service. Sufficient retirement points from the excess over 50 in prior anniversary years should be transferred into the two anniversary years beginning on 9 December 1988 and ending on 8 December 1990 to make those years qualifying for reserve retirement. He should then be transferred to the Retired Reserve and to the Retired List.

Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 December 1990 vice the discharge of 8 December 1990 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 15 December 1997, his 60th birthday.

Since Petitioner will be close to being 69 years old by the time this action will be implemented, and since he has not provided any explanation as to his delay in applying to the Board and there is probably no acceptable explanation, the Board further concludes that the provisions of the Barring Act should apply in this case.

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 extended his six year enlistment of 6 December 1988 for a period of two years.

b. That sufficient retirement points be transferred from the excess over 50 in prior anniversary years to make those two additional years beginning on 9 December 1988 and ending on 8 December 1990 qualifying for retirement.

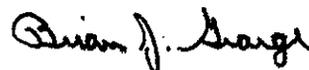
c. That Petitioner's record be further corrected to show that he transferred to the Retired Reserve effective on 1 December 1990, in the rate of ET2, vice the discharge of 8 December 1990 now of record. His record should then be corrected to show that he transferred to the Retired List on 15 December 1997, his 60th birthday.

d. That the provisions of the Barring Act apply in this case.

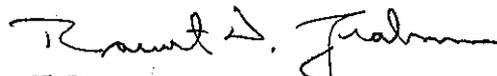
e. That this Report of Proceedings be filed in Petitioner's naval record.

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.



For W. DEAN PFEIFFER
Executive Director