



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

TRG

WASHINGTON DC 20370-5100

Docket No: 65-09

29 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 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 vice being discharged on 1 December 2005.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 22 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 was issued a Notification of Eligibility for Retired Pay at Age 60 on 9 June 1999. At the end of his anniversary year on 18 March 2004 he was credited with 25 years of qualifying service for reserve retirement purposes. About this time, he transferred to the Individual Ready Reserve and had no further participation in the Navy Reserve. At the time of his transfer he was serving as a petty officer first class (BM1; paygrade E-6). He was honorably discharged on 1 December 2005 at the expiration of his enlistment as extended.

d. 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.

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 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 BM1. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 December 2005 vice the discharge of that date now of record.

Petitioner will not be 60 years old until 31 March 2009. However, since that date is only about two months from the date of this action, the Board concludes that no useful purpose is served by requiring him to request transfer to the Retired Reserve after his record is corrected and transfer to the Retired List should be included in this action. Therefore, his record should be further corrected to show that he transferred to the Retired List on 31 March 2009, 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.

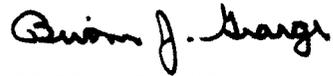
RECOMMENDATION:

a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve effective on 1 December 2005, in the rate of BM1, vice the discharge of that date now of record. His record should then be corrected to show that he transferred to the Retired List on 31 March 2009, 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.



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