



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX TRG
WASHINGTON DC 20370-5100 Docket No: 412-09
26 March 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 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 vice being discharged on 10 April 1994.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 17 March 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 promoted to master sergeant (MSgt; paygrade E-8) on 1 January 1992. On 11 April 1992 he reenlisted in the Marine Corps Reserve for two years. At the end of his anniversary year on 13 June 1992 he was credited with 19 years of qualifying service. On 7 March 1993 he transferred to the Individual Ready Reserve (IRR). The record shows that at the end of his anniversary year on 12 June 1993 he was credited with 56 retirement points which is sufficient to make that year qualifying and he then had 20 qualifying years. He was honorably discharged on 10 April 1994 at the expiration of his enlistment. Petitioner will not be eligible for pay at age 60 until 20 July

2014.

d. The Board did not request an advisory opinion in this case. However, the Board is aware that Headquarters Marine Corps has routinely recommended corrective action when an individual is qualified for reserve retirement and the individual was discharged while in the IRR.

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. Petitioner was in good standing in the Marine Corps 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 Petitioner's record should be corrected to show that he transferred to the Retired Reserve in the grade of MSgt. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 April 1994 vice the discharge of 10 April 1994 now of record.

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 April 1994, in the grade of MSgt, vice the discharge of 10 April 1994 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.

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