



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 603-09

28 April 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 and to the Retired List vice being discharged on 29 November 1973.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 7 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 30 November 1965 for four years and subsequently extended that enlistment for four years. At the end of his anniversary year on 29 November 1971 he was credited with 19 years, 10 months and 27 days of qualifying service for reserve retirement of which more than 16 years were active duty. There are no further qualifying years of record and he was honorably discharged on 29 November 1973 at the expiration of his enlistment as extended. During his service he was advanced to chief petty officer (CMC; paygrade E-7).

d. There is a letter in the file dated 21 May 1976 which informed him that he did not have 20 years of qualifying service and that he needed to reenlist to earn retirement. Whether or not he received this letter is unknown.

e. Petitioner was born on 25 February 1920 and became 60 years old on 25 February 1980. His application for corrective action was received by the Board on 22 January 2009.

f. 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 in those cases when an individual is qualified for reserve retirement and errors occurred which prevented retirement.

g. 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.

h. The Barring Act, which is codified at 28 U.S.C. 3702, prohibits the payments of claims against the United States that 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. Petitioner was in good standing in the Navy Reserve and would have been retired if he had 20 years of qualifying service and had requested it in sufficient time prior to the expiration of his enlistment. Since he has so much active duty and was so close to qualifying for retirement, the Board concludes that the record should be corrected to show that he is eligible for reserve retirement. Therefore, sufficient nonpay retirement points should be credited in the partial anniversary year beginning on 1 July 1951 and ending on 23 February 1951 to make that partial anniversary year qualifying for retirement. With this correction he will have over 20 years of qualifying service.

The Board further concludes that Petitioner's record should then be corrected to show that he transferred to the Retired Reserve in the rate of CMC. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 November 1973 vice the discharge of 28 November 1973 now of record. Since he is now over 60 years old, the record should be

further corrected to show that he transferred to the Retired List on 25 December 1980, his 60th birthday.

Given the passage of time and the absence of any explanation as to his delay in submitting his application, the Board further concludes that the provisions of the Barring Act apply in this case. Since his application was received on 22 January 2009 the limiting date for retroactive payments is 22 January 2003. The Board states that relief would not be recommended in this case if he was entitled to almost 29 years of retroactive retired pay.

Finally, the Board 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 naval record be corrected by crediting him with sufficient nonpay retirement points to make the partial anniversary year ending on 23 February 1952 qualifying for retirement.

b. That Petitioner's record be further corrected to show that he transferred to the Retired Reserve effective on 1 November 1973, in the rate of CMC vice the discharge of 29 November 1973 now of record. His record should then be corrected to show that he transferred to the Retired List on 25 December 1980, his 60th birthday.

c. That the provisions of the Barring Act be applied in this case.

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

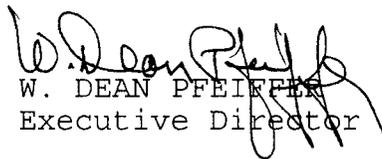
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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