



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX

TRG
WASHINGTON DC 20370-5100 Docket No: 787-09
9 June 2009

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: [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 30 January 2007.
2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 27 May 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. Petitioner's application was filed in a timely manner.
 - c. Petitioner was promoted to gunnery sergeant (gysgt; paygrade E-7) on 1 June 2005. It is required that he complete two qualifying years in grade to be retired as a gysgt. On 6 January 2007 he completed 22 years of qualifying service for reserve retirement purposes. His enlistment expired and he was honorably discharged on 30 January 2007. He will not be age 60 until 1 May 2019.
 - d. Petitioner states that he requested an extension, actually drilled through March 2007, it was only when he inquired why he was not being paid that he discovered that his request for an extension had been disapproved and that he had been discharged on 30 January 2007.

e. 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 errors occurred which prevented retirement.

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.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. It is clear that he had a good record and the Board believes he should have at least been extended to complete two qualifying years in grade as a gysgt. Further, he should be paid for any drills he actually performed. Since it may be that the extension request was not submitted in a timely manner, the Board concludes that his enlistment which expired on 30 January 2007 should be extended for a period of five months. Any documented drills performed during the five month period can then be credited. Whether or not there will be sufficient retirement points to make the partial year beginning on 7 January 2007 and ending with his retirement is unknown. However, the transfer of a few retirement points into that partial anniversary year can at least be considered by a future Board.

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 his record should then be corrected to show that he transferred to the Retired Reserve. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 June 2007 vice the discharge on 30 January 2007 now of record. His grade on retirement will be determined by Headquarters Marine Corps.

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:

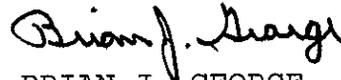
a. That Petitioner's naval record be corrected to show that on 31 January 2007 a five month extension became effective.

b. That Petitioner's record then be corrected to show that he transferred to the Retired Reserve on 1 June 2007 vice the discharge of 30 January 2007 now of record.

c. 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