



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

TRG
Docket No: 1204-09
5 March 2009

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

Subj: REVIEW OF NAVAL RECORD OF EX- [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 and to the Retired List vice being discharged on 6 July 1991.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 3 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 reenlisted in the Marine Corps Reserve on 7 July 1987 for four years. On 1 December 1988 he was promoted to sergeant major (SgtMaj; paygrade E-9). At the end of his anniversary year on 6 December 1989, he was credited with 22 consecutive qualifying years for reserve retirement purposes. Early in 1990 he transferred to the Individual Ready Reserve and earned no further qualifying years. However, during 1991 he was recalled to active duty for a period of 36 days. He was then honorably discharged at the expiration of his enlistment on 6 July 1991.

d. It is clear that since Petitioner did not earn any qualifying years after 6 December 1989 that he did not complete the required two qualifying years after being promoted to retire in the grade of SgtMaj and he must be retired in the grade of first sergeant (1stSgt; paygrade E-8).

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 an enlistment expired prior to a request for transfer 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.

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 show that he transferred to the Retired Reserve in the grade of 1stSgt. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 July 1991 vice the discharge of 6 July 1991 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 29 October 2008, 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:

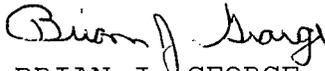
a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve effective on 1 July 1991 in the grade of 1stSgt vice the discharge of 6 July 1991 now of record. His record should then be corrected to show that he transferred to the Retired List on 29 October 2008, his 60th 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.

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