



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

TRG
Docket No: 1955-09
8 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 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 15 August 2007.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 31 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 16 May 2001 for six years and apparently extended that enlistment for three months. On 1 June 2005 he was promoted to gunnery sergeant (GySgt; paygrade E-7). At the end of his anniversary year on 11 June 2007 he was credited with 20 consecutive qualifying years for reserve retirement purposes. The record shows that he was honorably discharged on 15 August 2007 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 Headquarters Marine Corps

has routinely recommended corrective action when an individual is qualified for reserve retirement and he/she was discharged prior to requesting transfer to the Retired Reserve.

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 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 be corrected to show that he transferred to the Retired Reserve in the grade of GySgt.

Petitioner's last anniversary year began on 12 June 2007 and he was discharged on 15 August 2007. During this period he was credited with 11 paid drills. Since application of the Uniform Retirement Date Act would require retirement on the first of August he would lose any paid drills he earned after that date. Therefore, the Board concludes that his record should be corrected to show that his reenlistment of 16 May 2001 was extended for an additional period of one month. The record should then be corrected to show that he transferred to the Retired Reserve effective on 1 September 2007.

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 he extended his reenlistment of 16 May 2001 for an additional period of one month.

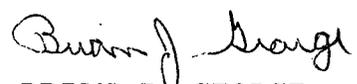
b. That Petitioner's record be further corrected to show that he transferred to the Retired Reserve effective on 1 September 2007, in the grade of GySgt vice the discharge of 15 August 2007 now of record.

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