



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

TRG
Docket No: 2152-09
31 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 retired member of the Navy, filed an application with this Board requesting, in effect, that his record be corrected to show that he transferred to the Retired Reserve on 1 May 1996 and to the Retired List on 12 January 2000 vice being retired from the Regular Navy by reason of physical disability on 1 December 1999.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 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 entered the Navy Reserve on 4 May 1957 and, except for a four month break in service, served continuously in the Navy Reserve, Army Reserve and Regular Navy until he transferred to the Temporary Disability Retired List (TDRL) on 26 April 1996. On 1 December 1999 he was permanently retired by reason of physical disability. He is not receiving his retired pay because it has been offset by the greater amount that he is receiving from the Department of Veterans Affairs (DVA).

d. A statement of service in Petitioner's record shows

that as of 26 April 1996 he was credited with 18 years, 9 months and 22 days of active duty and 19 years, 9 months and 28 days of inactive duty. It appears that he would have been eligible for reserve retirement sometime in the middle of the 1980's and would have been eligible for reserve retired pay on 12 January 2000 his 60th birthday. However, it appears that no determination as to his eligibility for reserve retirement was made because on 22 June 1983 he enlisted in the Regular Navy and served on active duty until his transfer to the TDRL on 26 April 1996. At that time, he was serving as a petty officer first class (HM1; paygrade E-6). At the time of his transfer to the TDRL and subsequent retirement he apparently believed that it was in his best interest to retire from the Regular Navy. In order to be eligible for reserve retirement at the time, an individual must have earned the last eight years of qualifying service in the reserve component.

e. The recent change in the law which allows for concurrent receipt of disability retired pay and DVA compensation (CRDP) has changed Petitioner's situation. In order to be eligible for CRDP, an individual must be retired with 20 or more years of active duty or from the reserve component with 20 or more years of service that qualifies for reserve retirement and 7200 retirement points. Because of his unique career pattern, the DVA has concluded that he does not meet either of those criteria.

f. The Uniform Retirement Date Act, 5 U.S.C. 8301, requires that the effective date of any nondisability 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 Petitioner served about 38 years in an excellent manner and is only being denied CRDP because of his unique career pattern. Given the circumstances, the Board concludes that the record should be corrected to establish his eligibility for the CRDP and that the least costly way to do this is the vesting of his reserve retirement as he has requested.

Therefore, Petitioner's record should be corrected to show that on 22 June 1983 he enlisted in the Navy Reserve instead of the Regular Navy and that he served on active duty in the reserve component until he transferred to the Retired Reserve on 1 May 1996 vice the transfer to the TDRL on 26 April 1996 now of record. The record should then be corrected to show that he transferred to the Retired List on 12 January 2000 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 naval record be corrected to show that he enlisted in the Navy Reserve on 22 June 1983 and remained on active duty in that component until he transferred to the Retired Reserve vice the enlistments in the Regular Navy for that period now of record.

b. That Petitioner's naval record be further corrected to show that he transferred to the Retired Reserve effective on 1 May 1996, in the rate of HM1. His record should then be corrected to show that he transferred to the Retired List on 12 January 2000, his 60th birthday.

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.



BRIAN J. GEORGE
Acting Recorder

ROBERT D. ZSALMAN
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