



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

TRG
Docket No: 2525-09
18 June 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 vice being discharged on 24 April 2004.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED], reviewed Petitioner's allegations of error and injustice on 17 June 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 served on active duty in the Regular Navy from 5 July 1978 until his early release on 1 July 1983, a period of 4 years, 11 months and 23 days. In accordance with regulations then in effect his reserve anniversary was then established to begin on 2 July 1983. During the next 16 years, Petitioner earned 15 qualifying years. Therefore, at the end of his anniversary year on 1 July 1999 he was credited with 19 years, 11 months and 23 days of qualifying service for reserve retirement purposes.

d. Petitioner's performance evaluation for the period

ending 26 June 1999 is adverse. The evaluation comments state that he had not completed required documentation to maintain his security clearance and that he was not maintaining satisfactory drill performance. Therefore, he was being transferred to the Standby Reserve and was not recommended for reaffiliation. He earned no further qualifying years and was honorably discharged on 24 April 2004. He was born on 3 September 1956 and will not be eligible for retired pay until 3 September 2016.

e. The Board was informed that the regulations have changed and an anniversary date remains the same as long as there is no break in service. If this had been in effect at the time of Petitioner's service he would have had 20 years of qualifying service.

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 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.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board believes that Petitioner must have thought that he had 20 years of qualifying service when he quit drilling in 1999. Since he would have 20 years of qualifying under current regulations, the Board concludes that his record should be corrected to show that he is qualified for reserve retirement. This can be accomplished by transferring 14 retirement points from the anniversary year ending on 1 July 1989 into the anniversary year ending on 1 July 1988.

Since Petitioner now has over 20 years of qualifying service the record should then be further 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 April 2004, vice the discharge of 24 April 2004 now of record.

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.

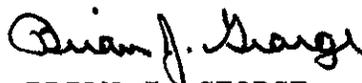
RECOMMENDATION:

a. That Petitioner's naval record be corrected by transferring 14 retirement points from the anniversary year ending on 1 July 1989 into the anniversary year ending on 1 July 1988.

b. That Petitioner's record be further corrected to show that he transferred to the Retired Reserve effective on 1 April 2004, vice the discharge of 24 April 2004 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.



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