



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

TRG

Docket No: 3776-09
10 June 2009

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary

1. Pursuant to the provisions of reference (a), Petitioner, a retired Navy reservist, filed an application with this Board requesting that his retirement date be changed from 1 January to 1 March 2009 to allow a period of active duty to be credited.

2. The Board, consisting of Mr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 2 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. Petitioner's application was filed in a timely manner.

c. Petitioner states in his application that in December 2008 he was informed that he was not a mandatory retiree and that the command had no information stating that he was in such a status. Accordingly he agreed to accept orders from his squadron for the January Mediterranean Detachment and he reported to active duty on 28 December 2008. He points out that during the next month he flew out of Naval Air Station, Sigonella, Italy. He states that the detachment was extended for several days to accommodate return transportation requirements. While attempting to modify his orders it was discovered that he was no longer entered in the Navy Reserve Order Writing System because he had been retired effective 1 January 2009. He notes that he has been paid for December and January but other payments such as leave and travel expenses have not been paid. Additionally, a TRICARE claim has been rejected. His request for administrative

action to correct this problem which set forth the circumstances that led to the improper issuance of the orders was favorably endorsed by his command.

d. Attached to enclosure (1) is an advisory opinion from the Navy Personnel Command (Pers 912) stating, in part, as follows:

...in early 2008, we properly notified [Petitioner] of his required separation on 1 January 2009, due to multiple failures of selection for promotion to the grade of Commander [sic] and completing 20 years of actual commissioned service. Separation actions are required per reference (b) [Title 10, U.S. Code, Section 1407] which specifies either retirement or discharge. Our records show that [he] did not respond to correspondence... by the directed separation date of 31 December 2008. Accordingly... we correctly transferred [him] to the Retired Reserve effective 1 January 2009 and notified him of such action...

...NOSC [Navy Operational Support Center], Atlanta evidently advised that he was not on their mandatory retirement list and that he was not required to retire. Even though [Petitioner], as well as Fleet Logistic Support Squadron Four Six and NAS [Naval Air Station] Atlanta, had been notified by Navy Personnel Command of his mandatory separation, no one chose to contact Navy Personnel Command (PERS-911) on this matter. Our telephone number is in the notification letter for the specific reason of addressing such questions. Instead, it appears everyone, including [Petitioner], ignored the official notification from Navy Personnel Command. Voluntary ADT [Active Duty for Training] orders for 38 days were inappropriately requested by [Petitioner] and issued by the Navy, commencing on 28 December 2008.

...Because of this error, we expect BCNR will grant [Petitioner] relief to receive points and compensation for the time served after his mandatory retirement date of 1 January 2009. However, we believe that in spite of the errors committed, his petition should be denied in view of all the correct information provided to both the command and [Petitioner]. These 38-day orders were not involuntary; rather they were voluntarily requested by [Petitioner]. In our judgment, they are last minute actions, justified by voluntary ignorance, to game an order-writing system at the end of a career, for financial gain. For this reason, we cannot support [Petitioner's] petition...

e. Petitioner states in his rebuttal to the advisory opinion that he never received the notification letters mentioned in the advisory opinion. When he was told that the NOSC had nothing either, his command asked him to take the detachment because of a shortage of pilots. He points out that he flew several missions, and as Aircraft Commander, was responsible for the safe and efficient operation of his airplane and crew. Further, since he was retired effective 1 January 2009, the Defense Finance and Accounting Service now considers him to be indebted for the amounts paid to him in January 2009. Finally, he takes exception to the implication that there was some form of fraudulent behavior on his part, noting that he could have made about the same amount of money in less time at his civilian employment and would not have had to be away from his family over the New Year's holiday.

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 should not have been issued orders. However, his version of events which led to the issuance of those orders is certainly plausible and his request for administrative action was favorably endorsed by his command. Therefore, since he performed his duties the Board believes that he should receive pay and allowances.

Therefore, Petitioner's record should be corrected to show that he was not retired on 1 January 2009 but remained on active duty until he was released on or about 5 February 2009. Given the requirements of the Uniform Retirement Date Act, the record should then be corrected to show that he transferred to the Retired Reserve effective on 1 March 2009.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reasons for the change in the retirement date.

RECOMMENDATION:

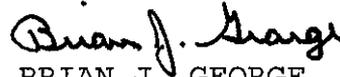
a. That Petitioner's naval record be corrected to show that he was not retired on 1 January 2009 but remained on active duty until he was released on or about 5 February 2009.

b. That Petitioner's naval record then be corrected to show that he transferred to the Retired Reserve effective on 1 March 2009.

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.

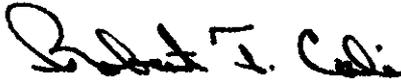
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


FOR W. DEAN PFEIFFER

Reviewed and approved:


6-26-09

Robert T. Call
Assistant General Counsel
(Manpower and Reserve Affairs)