



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

TRG

Docket No: 4197-09
4 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 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 8 August 2005.

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. 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 9 April 1999 for four years in the grade of gunnery sergeant (gysgt; paygrade E-7). Subsequently, he extended that enlistment on two occasions totaling 28 months. At the end of his anniversary year on 11 July 2003 he was credited with 21 consecutive qualifying years for reserve retirement. There are no further qualifying years in the record. He was honorably discharged on 8 August 2005 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 errors occurred which prevented retirement.

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:

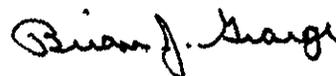
Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Petitioner was in good standing in the Marine Corps Reserve and would have been retired if he had requested it in sufficient time prior to the expiration of his enlistment. Therefore, the Board concludes that Petitioner's record should show that he transferred to the Retired Reserve in the grade of gysgt. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 August 2005. He was born on 24 August 1964 will not reach 60 until 25 August 2024. He will have to request transfer to the Retired List at that time.

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:

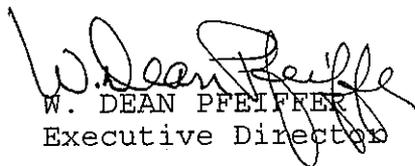
- a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve effective on 1 August 2005, in the grade of gysgt vice the discharge of 8 August 2005 now of record.
- b. That this Report of Proceedings be filed in Petitioner's naval record.
4. It is certified that a quorum 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