



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5066-09

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 commissioned officer in 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 and to the Retired List vice being discharged on 30 June 1995.

2. The Board, consisting of [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 was commissioned on 13 August 1971 with prior enlisted service. He was promoted to major (maj; O-4) on 1 October 1985. At the end of his anniversary year on 7 January 1994 he was credited with 23 years of qualifying service for reserve retirement. He was honorably discharged in the grade of maj on 30 June 1995.

d. He became 60 years of age on 7 February 2009 and requested the start of his reserve retirement. On 8 April 2009, Headquarters Marine Corps approved his retired pay but since he

had been discharged he was considered to be a former member. Although eligible for pay, former members are not eligible for some benefits that accrue to members that were transferred to the Retired List.

e. 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.

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. 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 his mandatory discharge on 30 June 1995. Therefore, the Board concludes that Petitioner's record should show that he transferred to the Retired Reserve in the grade of maj. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 July 1995. Since he is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on 7 February 2009 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.

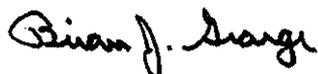
RECOMMENDATION:

a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve effective on 1 July 1995, in the grade of major vice the discharge of 30 June 1995 now of record. His record should then be corrected to show that he transferred to the Retired List on 7 February 2009, his 60th birthday.

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