



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

TRG
Docket No: 5742-09
19 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 and to the Retired List vice being discharged on 8 December 1992.

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 was notified on 12 March 1992 that his transfer from the Selected Reserve was because he had reached the high year tenure limit for individuals serving as a petty officer first class (SH1; paygrade E-6). He requested transfer to the Retired Reserve at that time. However, that request was denied because Navy records showed that although he had over 20 years of total service, he only had 15 years, 7 months and 23 days of qualifying service for retirement. He was honorably discharged at the expiration of his enlistment on 8 December 1992. He became 60 years of age on 12 January 2007.

d. Petitioner has recently been able to establish additional qualifying years of service based on his service in the Army Reserve. A current Navy statement of service now shows that he has been credited with 21 years, 1 month and 16 days of qualifying service for reserve retirement.

e. 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 it.

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 Navy Reserve and would have been retired if he had been credited with 20 years of qualifying service at the time of his request in 1992. Therefore, the Board concludes that Petitioner's record should show that he transferred to the Retired Reserve in the rate of SH1. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 December 1992. Since he is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on 12 January 2007, 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:

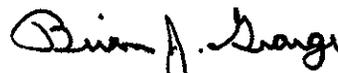
a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve effective on 1 December 1992, in the rate of SH1, vice the discharge of 8 December 1992 now of record. His record should then be corrected to show that he transferred to the Retired List on 12 January 2007, his 60th birthday.

b. That this Report of Proceedings be filed in Petitioner's naval record.

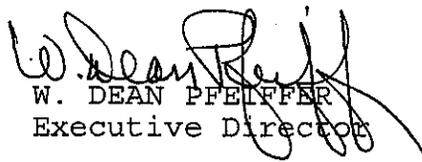
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and

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 PFELFFER
Executive Director