



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

TAL
Docket No: 13412-09
19 July 2010

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case Summary
(3) HQMC MMSR-5 memo dtd 19 Apr 10
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps Reserve, filed enclosure (1) with this Board requesting, in effect, that his record be corrected to show that he transferred to the Marine Corps Retired Reserve vice being discharged on 28 February 1994.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED], and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 8 July 2010 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 enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps and was honorably released from active duty and transferred to the Marine Corps Reserve where he served until he was discharged on 28 February 1994.

d. With his application, Petitioner forwarded a copy of his statement of service showing 21 years of qualifying service along with his verification letter from the Commandant of the Marine Corps (CMC) dated 19 April 2010, stating he had enough time to receive retired pay at age 60.

e. Enclosure (3) is an advisory opinion from the Headquarters Marine Corps office which has cognizance over Petitioner's request. It states that his request has merit and warrants favorable action.

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 following the date of separation.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (3), the Board concludes that Petitioner's request warrants relief. He was in good standing in the Marine Corps Reserve and was credited with 21 years of qualifying service. Therefore, the Board concludes that his record should show that he transferred to the Marine Corps Retired Reserve on 1 March 1994.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Marine Corps Retired Reserve effective 1 March 1994, in the rank of gunnery sergeant (GySgt/E-7), vice being discharged on 28 February 1994, now of record.

b. That this Report of Proceedings be filed in his naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c) 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 Regulation, 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