



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

TJR  
Docket No: 220-10  
31 March 2010

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) 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 that his record be corrected to show that he was transferred to the Marine Corps Retired Reserve vice discharged on 19 December 2009.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 30 March 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. In addition, the Board considered the advisory opinion furnished by the Marine Corps Separation and Retirement Branch (MMSR-5) dated 8 March 2010, a copy of which is attached with enclosure (1).

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, was honorably released from active duty, and transferred to the Marine Corps Reserve. On 19 December 2009 he was honorably discharged.

d. Enclosed with an advisory opinion from the Marine Corps is a copy of Petitioner's career retirement credit record which reflects 20 years of qualifying service. Petitioner's record also contains his verification letter from the Commandant of the Marine Corps (CMC) dated 21 September 2009, stating, in effect, that he had enough time to receive retired pay at age 60.

e. Although the Board requested an advisory opinion in this case, it is aware that CMC has routinely recommended corrective action when an individual is qualified for reserve retirement and was discharged prior to requesting transfer to the Retired Reserve. In this regard, 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, the Board concludes that Petitioner's request warrants relief. In this regard, the Board substantially concurs with the comments contained in the advisory opinion and concludes that since Petitioner was in good standing in the Marine Corps Reserve and was credited with 20 years of qualifying service his record should be corrected to show that, while serving in the rank of staff sergeant (SSgt/paygrade E-6), he was transferred to the Marine Corps Retired Reserve on 1 January 2006.

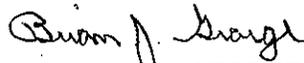
RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was transferred to the Marine Corps Retired Reserve effective 1 January 2010, in the rank of staff sergeant (SSgt/paygrade E-6), vice being discharged on 19 December 2009.

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