



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

LCC
Docket No. 11459-10
24 Aug 11

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) NPC ltr 5730 PERS-912 of 6 Dec 10
(3) Petitioner's response to the Advisory Opinion
(4) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that the Petitioner's Retirement date is 31 March 2008 so that he can be paid for drills he performed 2-3 February 2008 and 1-2 March 2008.

2. The Board, consisting of Messrs George, Pfeiffer, and Zsalmán, reviewed Petitioner's allegations of error and injustice on 11 July 2011 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. On 6 January 2008 the Petitioner submitted his application to be transferred to the Retired Reserve List Without Pay (Awaiting Pay at Age 60).

c. He wanted to retire as soon as he possibly could and he requested that the application be expedited. The reason he wanted the application rushed through the process and approved was because he was unable to prepare a family care plan to adequately provide for dependent parent care.

d. His retirement was approved effective 1 February 2008. However, Petitioner did not receive any notice that the retirement was approved.

Therefore when he received his orders from his Reserve PSD he drilled on 1 and 2 February 2008 and again on 1 and 2 March 2008.

e. He was initially paid for 1 and 2 February 2008 but the money was later recouped from his tax return. He was not paid for the drill for 1 and 2 March 2008.

g. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has recommended the request be denied. Their rationale is that per BUPERSINST 1001.39e, Chapter 20, Section 2015, no points can be earned beyond the day immediately preceding the effective retirement date.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (2), the Board concludes that petitioner's request warrants favorable action. The Board was satisfied that Petitioner was unaware that his retirement request had been approved and was effective on 1 February 2008. The Board noted that Petitioner did perform drills (work) for 1-2 February 2008 and 1-2 March 2008. The Board is of the opinion that, as a general matter, persons who perform services for the United States should be compensated for those services. Accordingly, the Board concluded that relief is warranted.

RECOMMENDATION:

That petitioner's naval record be corrected, where appropriate, to show that:

a. On "1 April 2008" vice "1 February 2008" Petitioner was transferred to the Retired Reserve List (Awaiting Pay at Age 60).

b. Petitioner is authorized payment of drills performed 2 & 3 February 2008 and 1 and 2 March 2008.

c. A copy of this Report of Proceedings will be filed in Petitioner's 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 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


WILLIAM J. HESS, III
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEFFER
Executive Director

Reviewed and Approved



8/31/11

ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000