



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

██████████  
Docket No. 4811-22  
Ref: Signature Date

██████████  
████████████████████  
██  
████████████████████

Dear ██████████:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 7 February 2023. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies. In addition, the Board considered the advisory opinions contained in Headquarters, U.S. Marine Corps (HQMC) memorandum 1820 MMSR-5 of 25 October 2022 and HQMC memorandum 1070 JPL of 30 December 2022 and your response to the opinion.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

Title 10 U.S. Code § 12731 (Age and service requirements). Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—(1) has attained the eligibility age applicable under subsection (f) to that person; (2) has performed at least 20 years of service computed under section 12732 of this title; (3) in the case of a person who completed the service requirements of paragraph (2) before April 25, 2005, performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before October 5, 1994, the number of years of such qualifying service under this paragraph shall be eight.

Title 10 U.S. Code § 12731a (Temporary special retirement qualification authority). Retirement With At Least 15 Years of Service.-For the purposes of section 12731 of this title, the Secretary concerned may; (1) during the period described in subsection (b), determine to treat a member of the Selected Reserve of a reserve component of the armed force under the jurisdiction of that Secretary as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member; (A) as of October 1, 1991, has completed at least 15, and less than 20, years of service computed under section 12732 of this title; or (B) after that date and before the end of the period described in subsection (b), completes 15 years of service computed under that section; and (2) upon the request of the member submitted to the Secretary, transfer the member to the Retired Reserve.

Period of Authority. The period referred to in subsection (a) (1) is the period beginning on October 23, 1992, and ending on December 31, 2001.

Applicability Subject to Needs of the Service. (1) The Secretary concerned may limit the applicability of subsection (a) to any category of personnel defined by the Secretary in order to meet a need of the armed force under the jurisdiction of the Secretary to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories

You transferred to the Marine Corps Reserve with an honorable character of service, were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 6 June 1980 to 18 October 1991 upon completion of required active service, and accepted a reserve commission. On 13 May 1992 you transferred to the Selected Marine Corps Reserve.

On 7 May 1994 you requested via administrative action (NAVMC 10274) for Early Qualification for Retirement Pay at age 60.

On 12 June 1994 the Commanding Officer, Marine Observation Squadron ██████████ notified Commanding Officer, Marine Aircraft Group ██████████ via Personnel Officer, Marine Aircraft Group ██████████ that you wished to accept early qualification for retired pay at age 60, effective 30 Jun 1994. In accordance with ALMAR 145/93, the process includes transferring you involuntarily to the IRR [Individual Ready Reserve] pending approval of your qualifications package by CMC [Commandant of the Marine Corps]. Your OQR [Officer Qualification Record] would be retained at ██████████ until the packages have been approved, or 30 June 1994.

On 14 June 1994 the Commanding Officer, Marine Observation Squadron ██████████ notified Commandant of the Marine Corps that Congress did not intend for the requirement of eight years reserve service to apply to involuntary separations, such as in your case. He concluded that Congressional intervention might be required to address the issue.

On 21 June 1994 the Commandant of the Marine Corps notified Commanding Officer, ██████████ ██████████ MAW, NAS ██████████ that, "Pursuant to PHONECON between CO, ██████████ ██████████/CMC (RAP) ██████████ on 9, 10, 13, and 14 June 1994, the early qualification for retirement pay at age 60, as outlined in CMC 241929Z of May 1993, by

law requires eight years qualifying service in the Reserve Component. This is in accordance with 10 U.S.C. Section 1331 and 1331A.” ...”There is no authority to waive this requirement since it is codified in law.”

On 29 June 1994 you transferred to the IRR.

On 30 June 1994 you certified an administrative remarks (NAVMC 118) stating “SNO Involuntary separated from the Selected Marine Corps Reserve due to unit deactivation and the realignment of forces. SNO involuntarily transferred to the Individual Ready Reserve pending the disposition of a request for early eligibility for retirement pay at age 60 in accordance with ALMAR 145/93.”

On 16 September 1994 the Commanding Officer, Marine Aircraft Group █ notified you (First Endorsement on CMC letter 1800/MMSR-5 dated 31 August 1994) that your request for Early Retirement Awaiting Pay at Age 60 was delivered.

On 6 June 1995 you completed 15 qualifying years of service towards a reserve retirement. 11 years, 4 months, and 13 days in the active component. On 31 July 1995, you requested via administrative action (NAVMC 10274) for Transfer to the Retired Reserve.

On 29 September 1995 the Commandant of the Marine Corps notified you that “the Secretary of the Navy approved your request for transfer to the Retired Reserve. You were transferred to the Honorary Retired List of the Marine Corps Reserve, without pay and allowance, per the provisions of MCO P1900.16D par. 3016 and Title 10 USC Section 10154 and 12774 (a), effective 1 January 1996. The Honorary Certificate of Retirement reflecting your change of status in the Marine Corps Reserve was forwarded to you.”

On 24 February 1997 the Commanding General, Marine Corps Reserve Support Command notified you “that MCO 1900.16E requires all members of the Ready Reserve, except reservists on active duty, be screened annually to ensure a ready reserve force composed of qualified individuals who will be immediately available during any national emergency. Based on results of such a screening, you were to be transferred to the Standby Reserve, Inactive Status List (ISL) by reason of failing to earn 27 points your last anniversary year.

You were also informed that all members are screened for further retention within 3 years of assignment to the ISL. You could, upon request, be considered for return to an active status in the Ready Reserve at any time, if a requirement existed and you were physically and otherwise qualified.

Finally, it was explained that “Rather than transfer to the ISL, you may: apply for transfer to the retired reserve, if eligible. Request resignation, per current directive, if you have completed a period of obligated service under law or contractual agreement. Join a drilling reserve unit. If you choose this option, all action must be completed within the next 30 days. If you do not choose any of the above options within 30 days of receipt of this letter, you will be transferred to the ISL on 25 April 1997. You will also be considered for separation by next reserve officers' mobilization potential screening board.”

On 29 March 1997 you notified Commandant of the Marine Corps of your request for transfer to the Retired Reserve. On 26 April 1997 you were joined to the ISL.

On 27 May 1997 the Commanding General, Marine Corps Reserve Support Command notified Commandant of the Marine Corps (First Endorsement of ██████████ letter of 29 March 1997) regarding consideration of your request and response:

“We transferred ██████████ to the Standby Reserve, Inactive Status List (ISL) on 25 April 1997 for lack of mobilization potential. After he was reinstated, his Career Retirement Credit Record showed he failed to earn the required 27 points as an Individual Ready Reserve member for anniversary year 6 June 1995 to 5 June 1996. Unless directed otherwise, he will remain in the ISL.”

On 22 July 1997 the Commandant of the Marine Corps notified you via Commanding General, Marine Corps Reserve Support Command regarding your request:

“We have carefully reviewed your request in reference (a) [Your letter dated 29 March 1997 w/enclosure] for information regarding your requests for an early Reserve retirement under the provisions of reference (b) [MCO 1900R.17 (Selected Reserve Transition Benefits (RTB) Program)], your current status in the Marine Corps Reserve, and the status of your Reserve Involuntary Separation Pay (RISP).”

Your first question was: “Why was I not transferred to the Retired Reserves as required by ALMAR 145/93?” Answer: You were denied an early transfer to the Retired Reserve under MCO 1900R.17 because you do not meet all the eligibility requirements set forth in Title 10, U.S.C., sections 1331 and 1331a. Title 10, U.S.C., sections 1331 and 1331a is the law which formed the basis for the 1993 ALMAR. Title 10 specifically delineates that the last 6 years of the required 15 qualifying years of service be performed while a member of a Reserve component. In your case, the enclosure reflects that as of 7 May 1994 (the date of your first request for early retirement), you only had 14 years of qualifying service; of those 14 years, only two years were served as a member of the Reserve component. Accordingly, your request for early retirement was denied. Unfortunately, you never received a formal denial letter from the Commandant of the Marine Corps (CMC). CMC did send a “blanket” letter to the Commanding Officer, ██████████ in June 1994. A copy of this letter is provided for your information.

Your second question was; “What is my current status? If I am in the IRR, why do I have a Retirement certificate?” Answer: CMC received a *second* request from you for early Retirement Awaiting Pay at Age 60 dated 31 July 1995. By July 1995, you had achieved 15 qualifying years of service, however you still only had the last three years in the Reserve component. Although once again, you never received a formal denial letter on your second request for early retirement, you still did not meet the criteria for early retirement under the RTB. MCO 1900R.17 delineates that application be made within one year after the date of involuntary separation from the deactivated unit. Your second request for early retirement was dated 31 July 1995, yet you signed a page 11 entry in your Officer Qualification Record indicating that you were being involuntarily separated from the Selected Marine Corps

Reserve on 30 June 1994. In addition to not meeting the application deadline for early retirement, you still did not qualify for it because you did not have the last 6 years of qualifying service in the Reserve component. Instead of sending you a denial letter for early retirement, you were inadvertently given an Honorary Retirement from CMC with an effective date of 1 January 1996. This administrative action should not have occurred and was never implemented at this Headquarters, although you have documentation in your possession to reflect it did. You should destroy the retirement certificate in your possession or mail it back to HQMC (MMSR-5).

Your third question was: "If I was approved for RISP, where is that money and what other benefits do I have?" You requested RISP on 30 October 1995. The Commanding General, Marine Forces Reserve approved your request on 12 January 1996. Your pay records reflect that an RISP payment in the amount of \$9,407.15 was electronically transferred to your account number XXX██████████ at the ██████████ Employees Credit Union, ██████████ on 9 April 1996. There is no record that these funds were ever returned to the Defense Finance and Accounting Service (DFAS), ██████████ DFAS was not notified until May 1997 that the account number XXX██████████ at the ██████████ Credit Union had been closed since 6 April 1995.

If you did not receive the RISP payment, your first course of action should be to contact the ██████████ Employees Credit Union in ██████████. They will need to provide you with documentation to show that the funds were either deposited to your account or that they never received them OR that they returned them to the DFAS. You should provide the Credit Union with the electronic transaction number 0000X██████████, so that the electronic deposit may be traced. If the Credit Union determines that they never received the funds, then they will need to submit a claim on your behalf with accompanying documentation to the Direct Deposit Branch, DFAS, ██████████ ty.

Your current status should be that you were discharged or Honorary Retired from the Marine Corps Reserve under the Reserve Transition Benefit Program due to receipt of RISP. The RISP is your only benefit under this program. This Headquarters will initiate action, based on your request, to either discharge you effective 1 September 1997 or to Honorary Retire you on the same date."

On 30 July 1997 the Commandant of the Marine Corps notified you that CMC letter 1822/MMSR-5 of 29 September 1995 contained orders transferring you to the Honorary Retired List effective 1 January 1996. These orders were erroneous and were therefore cancelled.

On 1 November 2000 you resigned honorably from the Marine Corps Reserves.

You requested to be transferred to the retired Reserve list and receive retired pay benefits. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. The Board concluded that in accordance with Title 10 United States Code 12731, in order to earn non regular retirement, you were required to have completed 20 years of qualifying service with the last 6 qualifying years within the U.S. Marine Corps Reserve except that in the case of a person who completed the service requirements before October 5, 1994, the number of years of such qualifying service under this paragraph shall be

eight. Furthermore, in accordance with 10 U.S. Code § 12731a (Temporary special retirement qualification authority), the secretary concerned may treat a member of the Selected Reserve of a reserve component as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member, as of October 1, 1991, has completed at least 15, and less than 20, years of service or if the member completes 15 years of service after that date and before 31 December 2001.

In June 1993 your unit was erroneously advised by CMC that the above service requirements did not apply in your situation. You submitted for early retirement in March 1994 when you only had 14 total years of qualifying service. In June 1994, just prior to the unit's deactivation, your unit was informed by CMC of their error. You were transferred to the IRR awaiting a response to your request. Although you did not receive a written response to your request, you were clearly not eligible for early retirement at the time because you did not have 15 total years of qualifying service, nor did you have 8 years in a reserve component. It is also reasonable to believe that your command had notified you of the reserve service requirement based on their efforts on your behalf to get your request for early retirement approved.

On 6 June 1995 you completed 15 qualifying years of service towards a reserve retirement. You requested early retirement again on 31 July 1995. By that time, you had just over 15 total years of qualifying service, however, you only had 3 years in the reserve component. It is regrettable that you did not receive timely written determinations for each of your requests, however, this unfortunate circumstance does not warrant changing your record to show you earned the qualifying service in the Marine Corps Reserve to gain eligibility for early retirement.

You are entitled to have the Board reconsider its decision upon submission of new supporting evidence, which will require you to complete and submit a new DD Form 149. New evidence is that not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

3/3/2023

[REDACTED SIGNATURE]

Deputy Director

[REDACTED]