



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

TRG
Docket No: 4778-98
8 April 1999

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) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a retired officer in the United States Marine Corps Reserve filed enclosure (1) with this Board requesting that his record be corrected to establish entitlement to retired pay at age 60.

2. The Board, consisting of Mr. Pfeiffer, Mr. Milner and Ms. Madison, reviewed Petitioner's allegations of error and injustice on 23 March 1999 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. Enclosure (1) was filed in a timely manner.

c. Petitioner was informed on 30 April 1982 that since he had twice failed of selection to the grade of LTCOL (O-6) and was nearing 20 years of commissioned service, his discharge or retirement was required. Subsequently, his request for retirement was approved and he was retired on 1 June 1982. On 20 March 1991 he was informed that he was entitled to commissary privileges while he was awaiting pay at age 60. His commissary privilege card was then reissued annually.

d. In 1998, as he was approaching age 60, Petitioner requested information concerning his retired pay. On 10 August 1998 he was informed that he was not eligible for retired pay because he had only been credited with 17 years of qualifying service. He was also informed that his retirement was honorary

only and did not establishment entitlement to pay. Petitioner immediately applied to the Board stating, in effect, that he believed that he had completed 20 years of qualifying service.

e. At enclosure (2) is an advisory opinion from Headquarters Marine Corps, which recommends that Petitioner's request be denied because he does not have 20 years of qualifying service. The record on which this recommendation was based showed that he had only completed 17 years of qualifying service.

f. Subsequently, the examiner assigned to the case discovered that Petitioner's fitness reports showed additional drills that did not appear on his Reserve Retirement Master Control Card. HQMC has reviewed the fitness reports and has credited him with additional points. He has now been credited with 18 years, 9 months and 16 days of qualifying service. However, in the anniversary year ending 15 August 1981 he has only been credited with 15 membership points and this is not a qualifying year. One of the fitness reports covers the period from 1 July 1982 to 30 June 1983 and it shows that he attended 48 of 48 scheduled drills. These drills have not been added to his retirement point summary because they occurred after the date of his retirement. The partial year was credited because he was retired on 1 June 1982 and his anniversary year did not end until 15 August 1982.

g. The Board is aware that reserve officers are not subject to mandatory attrition for having failed of selection if they have completed 18 years of qualifying service. Those officers are placed in a "safety zone" and are given a period of time to complete 20 qualifying years.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that the circumstances that led to the unfavorable advisory opinion have changed in that Petitioner has now been credited with over 18 years of qualifying service. If he had been credited with those points in 1982 he would have been retained in the safety zone to complete 20 years. The reason why Petitioner continued to drill after the date of his retirement is unknown but it may be because he never received the letter informing him of his retirement. The Board also notes that the correspondence he received from the Marine Corps concerning his commissary privileges could certainly lead him to believe that he had completed 20 qualifying years. Given the circumstances, the Board concludes that the record should be corrected to establish eligibility for retired pay at age 60.

The correction can be accomplished by crediting him with 35 nonpay retirement points in the anniversary year ending 15 August 1981 (essentially the points he earned after retirement) and by changing the date of his retirement to 1 September 1982. With these changes he will be credited with 20 years of qualifying service. Since Petitioner was 60 years of age on 1 September 1998, he should be transferred to the Retired List on that date.

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 naval record be corrected to show that he was credited with 35 nonpay retirement points in the anniversary year ending 15 August 1981.

b. That the record be further corrected to show that Petitioner retired from the Marine Corps on 1 September 1982 vice 1 June 1982 and, since he is now 60 years of age, that he transferred to the Retired List as of 1 September 1998.

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

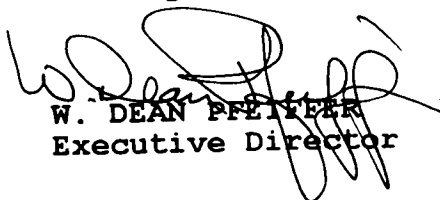
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
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 PFEIFFER
Executive Director