



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

TRG
Docket No: 2838-99
24 June 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 former enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve vice being discharged.

2. The Board, consisting of Mr. Brezna, Mr. Pfeiffer and Mr. Tew, reviewed Petitioner's allegations of error and injustice on 15 June 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 reenlisted in the Naval Reserve on 11 September 1971 for four years and subsequently extended that enlistment for another four years. During this eight year period he served in an excellent manner, and on 16 October 1975, was advanced to ADC (E-7). Petitioner's last anniversary year began on 10 September 1978 and he transferred to the Individual Ready Reserve (IRR) on 1 January 1979. He has been credited with 51 retirement points, one more than the minimum necessary for a qualifying year.

d. On 15 August 1979 he requested that he be transferred to the Retired Reserve. Before action could be taken on his

request, his enlistment expired. He was honorably discharged on 10 September 1979. On 4 October 1977 the Bureau of Naval Personnel informed the command that no action could be taken on the retirement request because the Records of Naval Reserve Service (Page 11's) from his last enlistment were not available. Given the delay, the Bureau authorized a one year reenlistment. After reviewing the page 11's, on 6 December 1979 the Bureau issued a Notification of Eligibility for Retired Pay at Age 60. In a letter dated 7 December 1979, the Bureau acknowledged that Petitioner did not desire to reenlist but confirmed that he would be entitled to retired pay at age 60 as a former member. Petitioner became 60 years old on 30 July 1994.

e. In his application Petitioner states that because of the pressures of his civilian job he decided not to reenlist because he was told by his counselor that he would be entitled to all benefits at age 60 as a former member. He states that when he became 60 years old he began drawing his retired pay, was issued a retired ID card, and entered into CHAMPUS. Apparently when his wife recently tried to renew her ID card, they were informed that they were not entitled to benefits because he was not retired but a former member, and a retired ID card would not be issued. In support of his application he has submitted a copy of a page from a Naval Reserve Personnel Command brochure, dated June 1991, which states, in part, as follows:

... As used in this brochure, a "former member" is any person who completed 20 years of qualifying service and is fully eligible for retired pay at age 60, but who elects to separate from the Naval Reserve vice transfer to the Retired Reserve. Upon application, former members are eligible for retired pay benefits, an Armed Forces Identification Card (DD Form 2 Blue) and health care benefits ...

Petitioner contends, in effect, that it was improper to change the rules after he made an irrevocable decision and requests that the record be corrected to show that he transferred to the Retired Reserve.

f. The Board is aware that the Uniform Retired Date Act, 5 U.S.C 8301 required that the effective date of any retirement be the first day of the month.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable

action. In his regard, the Board notes that Petitioner was in good standing in the Naval Reserve and would have been retired if he had allowed sufficient time for processing prior to the expiration of his enlistment. The Board also notes that Petitioner made his decision not to reenlist based on information which may no longer be valid. Given the circumstances, the Board concludes that the record should now be corrected to show that he transferred to the Retired Reserve in the rate of ADC. Since the Uniform Retirement Date Act requires that retirement be on the first day of a month, the record should be corrected to show that he extended his enlistment for a period of one month and that he transferred to the Retired Reserve on 1 October 1979. The record should be further corrected to show that he transferred to the Retired List on 30 July 1994, his 60th birthday.

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 on the Retired List.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he extended his enlistment for one month and transferred to the Retired Reserve on 1 October 1979. The record should be further corrected to show that he transferred to the Retired List on 30 July 1994, his 60th birthday.
- b. That this Report of Proceedings be filed in Petitioner's naval record.
- c. That the Department of Veterans Affairs be informed on request that Petitioner's application was received on
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.

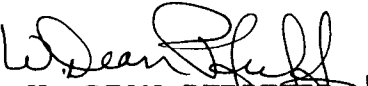
ROBERT D. ZSALMAN
Recorder



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