



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

TRG  
Docket No: 4298-01  
3 October 2001

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) Case Summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps Reserve filed an application with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve vice being discharged on 4 August 1999.

2. The Board, consisting of Mr. Pfeiffer, Mr. Whitener and Mr. Beckett, reviewed Petitioner's allegations of error and injustice on 2 October 2001 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. Petitioner's application was filed in a timely manner.

c. Petitioner reenlisted in the Marine Corps Reserve on 5 August 1995 for four years in the grade of GYSGT (E-7). He subsequently performed several extended periods of active duty for special work (ADSW). The fitness report for the period 15 May to 23 September 1998 states, in part, as follows:

Convicted by Special Court-martial of (UCMJ) Articles (89) Disrespect towards a superior commissioned officer, (92) Failure to obey order or regulations (Sexual Harassment), (112) Drunk on duty, (134) Wearing unauthorized insignia, decoration, badge, ribbon, device or lapel button. ....

There is no other documentation concerning the court-martial in the record. However, the sentence of the court must have included a reduction in grade to SSGT (E-6) since subsequent correspondence is addressed to him in that grade and he states that he is a SSGT. At the end of his anniversary year, on 5 November 1998, he was credited with 20 years of qualifying service for reserve retirement. Subsequently, he was issued a Notification of Eligibility for Retired Pay at Age 60. The record shows that he was honorably discharged on 4 August 1999 at the expiration of his enlistment.

d. The Board did not request an advisory opinion in this case. However, the Board is aware that Headquarters Marine Corps (HQMC) has routinely recommended corrective action in similar cases when an individual is qualified for reserve retirement and there is no explanation in the record why they were discharged and not retired.

e. The Board is also aware that 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.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner was in good standing in the Marine Corps Reserve and would have been retired if he had requested it. The Board concludes that he should be transferred to the Retired Reserve. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 August 1999 vice the discharge of 4 August 1999 now of record.

Concerning the issue of Petitioner's grade on retirement, the Board notes that was apparently reduced in grade to SSGT as the result of a court-martial sentence. Therefore, the Board concludes that he should be transferred to the Retired Reserve in the grade of SSGT (E-6). The Board notes that the facts and circumstances of the charges which led to the court-martial are unknown and the remainder of the court-martial sentence cannot be verified with the available record. Therefore, if Petitioner believes that the court-martial sentence was too severe or that his overall record as a GYSGT was sufficient to warrant retirement in that grade despite the court-martial conviction, he can submit an application to the Board on that issue.

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 transferred to the Retired Reserve effective 1 August 1999 in the grade of SSGT, vice being discharged on 4 August 1999.

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

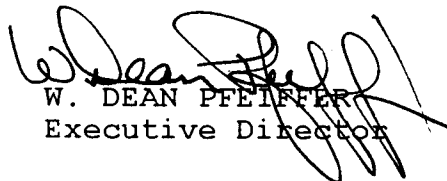
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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