



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

TRG
Docket No: 5204-01
1 August 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) 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 Marine Corps 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 on 3 January 1997.

2. The Board, consisting of Mr. Taylor, Mr. Novello and Ms. Hardbower, reviewed Petitioner's allegations of error and injustice on 31 July 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. Although it appears that Petitioner's application was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner reenlisted in the Marine Corps Reserve on 4 October 1990 for four years and subsequently extended that enlistment on two occasions totaling 26 months. On 1 January 1995 he was promoted to MSGT (E-8). The Career Retirement Credit Report (CRCR) shows that he earned no further qualifying years. On 17 January 1996 he was issued a Notification of Eligibility for Retired Pay at Age 60. He was honorably discharged on 3 January 1997 at the expiration of his enlistment as extended.

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 eligible for reserve retirement and there is no explanation in the record why an individual was discharged and not retired.

e. The Board is aware that an individual must earn two qualifying years after being promoted to retire in the higher grade. As indicated, the CRCR shows that Petitioner did not earn any qualifying years after he was promoted.

f. 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 Petitioner's record should be corrected to show that he transferred to the Retired Reserve. Given the requirements of the Uniform Retirement Date Act, he should be retired effective 1 January 1997 vice being discharged on 3 January 1997.

Concerning the issue of Petitioner's grade of retirement, the Board notes that he has not met the requirement to earn two qualifying years after being promoted. Therefore, the Board concludes that he should be transferred to the Retired Reserve in the grade of GYSGT (E-7). If he has evidence that he actually earned two qualifying years, then Headquarters Marine Corps can correct the CRCR and retire him as a MSGT. If he cannot establish additional qualifying years but believes that an error or injustice has occurred, he can submit an application to the Board on the issue of his grade on retirement.

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 on 1 January 1997 in the grade of GYSGT or MSGT as determined by HQMC vice being discharged on 3 January 1997.

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.


For W. DEAN PFEIFFER
Executive Director