



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

ELP  
Docket No. 5208-00  
6 August 2001

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552  
(b) MARCORPSEPMAN  
(c) SECNAVINST 1820.2A

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 Navy, applied to this Board requesting that his record be corrected to show that he transferred to the Retired Reserve in pay grade E-7.

2. The Board, consisting of Messrs. Lightle, Whitener, and Harrison reviewed Petitioner's allegations of error and injustice on 1 August 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 to the Board was filed in a timely manner.

c. Petitioner enlisted in the Navy on 3 February 1958 and was honorably released from active duty on 17 January 1962. He

enlisted in the Naval Reserve in a drilling status on 3 June 1967. He was promoted to MMC (E-7) on 16 August 1972, was subsequently recommended for promotion to MMCS (E-8), and was authorized to wear the Naval Reserve Meritorious Service Medal. On 28 March 1978 he was granted a conditional release for an inter-service transfer to the Marine Corps Reserve, and was honorably discharged from the Naval Reserve on 31 March 1978.

d. Petitioner enlisted in the Marine Corps Reserve on 1 April 1978 as a SSGT (E-6) and continued to serve in a drilling status until 20 May 1983, when he requested transfer to the Retired Reserve. The Commandant of the Marine Corps approved his request and he was transferred to the Retired Reserve, effective 1 August 1983 as a SSGT (E-6). He had 20 years, three months, and 19 days of qualifying service.

e. Petitioner became 60 years old on 5 January 2000 and applied for retired pay on 5 February 2000. He is now being paid retired pay in the grade of E.6.

f. At enclosure (1) an advisory opinion from the Staff Judge Advocate, Research and Civil Law Branch (JAR), HQMC, states that 10 U.S.C. 1406(b)(2) provides that the retired pay base is to be computed on "the highest grade held satisfactorily by the person at any time in the armed forces." This language is further supported by paragraph 3012 of reference (b) and reference (c), both of which state that a person transferred to the Retired Reserve shall be retired in the highest grade satisfactorily held. The advisory opinion recommends retirement in pay grade E-7 if a determination is made that he satisfactorily held the rank of E-7 in the Naval Reserve. An advisory opinion from the Enlisted Promotion Branch, HQMC concurred with the JAR opinion that Petitioner should have been retired at the highest grade held.

**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 had no disciplinary actions during his Naval Reserve service and satisfactorily served as an MMC (E-7) for more than five years prior to his enlistment in the Marine Corps Reserve. The Board concurs with the advisory opinions that Petitioner should have been transferred to the Retired Reserve in pay grade E-7. It cannot be

determined why a grade determination was not made prior to Petitioner's transfer to the Retired Reserve. Accordingly, the Board concludes that it would be appropriate and just to correct the record to show that on 31 July 1983 Petitioner was promoted to GYSGT (E-7) and transferred to the Retired Reserve in that grade, effective 1 August 1983.


RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 31 July 1983 he was promoted to GYSGT (E-7) and transferred to the Retired Reserve in that grade, effective 1 August 1983.

b. That a copy of the Report of Proceedings be filed in Petitioner's naval record.

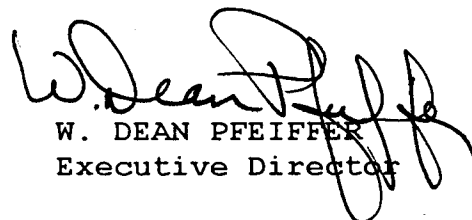
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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