



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

TRG
Docket No: 5577-01
3 December 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 retired Naval Reserve Officer filed enclosure (1) with this Board requesting that his record be corrected to show that he is entitled to retired pay at age 60.

2. The Board, consisting of Mr. Dunn, Mr. Neuschafer and Ms. Schnittman, reviewed Petitioner's allegations of error and injustice on 14 November 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 was commissioned in the Regular Navy on 20 October 1967. At that time, he had completed over five years of active enlisted service. Petitioner then served on active duty until he was honorably discharged on 30 June 1978. At that time he was credited with 16 years, 4 months and 17 days of active service.

d. Petitioner was commissioned in the Naval Reserve on 1

July 1978. Subsequently, he was promoted to LCDR (O-4) and to CDR (O-5). Petitioner has provided a statement of service, dated 30 March 1987, prepared by the Naval Reserve Personnel Center that shows that during the period 1 July 1978 until his transfer to the Retired Reserve on 1 October 1985, he earned five years and three months of qualifying service for reserve retirement. There are two years in which he was not credited with the 50 retirement points necessary to make those years qualifying. At the time of his transfer to the Retired Reserve he was credited with 23 years, 1 months and 14 days of qualifying service. However, he is not eligible for reserve retirement because the last eight qualifying years were not in the reserve component.

e. The foregoing statement of service was forwarded to Petitioner on 30 March 1987 so that he could verify his naval reserve participation. As indicated, the statement shows that he had over 23 years of qualifying service. In addition, blocks were checked indicating that he had the last eight years of qualifying service in the reserve component and a Notification of Eligibility for Retired Pay at Age 60 had been issued.

f. Petitioner states that in 1985 he was advised that he met all of the requirements for reserve retirement, and elected to retire effective 1 October 1985. After that, he received the statement of service which indicated that he had met all of the requirements for reserve retirement. Therefore, he believed that he was eligible for retirement and took no further action until he requested his retired pay to start on 29 December 2001, his 60th birthday. He was then informed that he was not eligible because he did not have the last eight years of qualifying service in the Naval Reserve.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board believes that Petitioner thought he was eligible for reserve retirement, and the statement of service could be construed as confirming his eligibility. Therefore, the Board concludes that an injustice has occurred and the record should be corrected to establish his eligibility for retired pay at age 60.

The Board believes that the best way to correct the record is to transfer sufficient points from the excess over 50 in the qualifying years, into the two years which are not qualifying, thus raising the point totals in those years to 50. With this correction, Petitioner will have seven years, three months of

qualifying service. The record should be further corrected to show that he did not transfer to the retired reserve on 1 October 1985 but continued to serve until he transferred to the Retired Reserve on 1 July 1986. He should be credited with sufficient nonpay drills in this year to make it qualifying for reserve retirement. With these corrections, Petitioner will have over 23 years of qualifying service with the last eight years in the reserve component, and will be eligible for retired pay at age 60. Since Petitioner will be 60 years old on 29 December 2001 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 eligibility for retired pay at age 60.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by transferring sufficient retirement points from the excess over 50 in the five qualifying years to make the two anniversary years ending on 30 June 1981 and 1982 qualifying for reserve retirement.

b. That Petitioner's naval record be further corrected to show that he did not transfer to the Retired Reserve on 1 October 1985 but continued to serve until he transferred to the Retired Reserve effective 1 July 1986, and that he was credited with sufficient nonpay points in the anniversary year ending 30 June 1986 to make that year qualifying for reserve retirement. Since Petitioner will be 60 years old on 29 December 2001 he should be transferred to the Retired List on that date.

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.

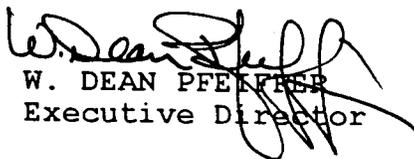
ROBERT D. ZSALMAN
Recorder



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