



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

TRG
Docket No: 5851-01
6 May 2002

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 commissioned officer in the Marine Corps Reserve filed an application with this Board requesting that his record be corrected to show either that he is eligible for reserve retirement or, in the alternative, that he be given an opportunity to serve for a sufficient period to earn retirement.

2. The Board, consisting of Mr. McPartlin, Ms. Nofziger and Ms. Suiter, reviewed Petitioner's allegations of error and injustice on 23 April 2002 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 was honorably discharged from the Marine Corps on 1 September 1994 and accepted a reserve commission. At the time of his discharge he had completed about 17 years and 8 months of active service. Apparently, he was then promoted to major (MAJ; O-4) while in the Marine Corps Reserve.

d. The Career Retirement Credit Report (CRCR) shows that the first anniversary year after his release from active duty ended on 17 January 1995, and he was credited with 227 active duty points. In the anniversary years ending 17 January 1996 and 1997 he was a member of the Individual Ready Reserve (IRR) and only earned membership points. During the next anniversary year,

he was transferred to the inactive status list which resulted in a change in the beginning and ending dates of his anniversary year. Subsequently, Petitioner returned to an active status and in the anniversary year ending 14 May 1998, he was only credited with membership points. In the next anniversary year ending 14 May 1999, he attended 18 drills. When added to his 15 membership points, he attained 33 retirement points. He has earned qualifying years since then. At that end of the anniversary year on 14 May 2002, he will have earned three consecutive qualifying years for reserve retirement and a total of 21 years of qualifying service.

e. Petitioner completed 20 years of qualifying service on 14 May 2001. At that time, the law only required that the last six years of qualifying service be in the reserve component. However, Petitioner did not meet this requirement at that time. On 1 January 2002 the law reverted to the requirement that the last eight qualifying years for retirement be in a reserve component. Petitioner cannot meet this requirement until 14 May 2007.

f. Headquarters Marine Corps (HQMC) (MMSR-5) has adopted the policy that if an individual had 20 qualifying years prior to 1 January 2002, the six year requirement would still apply to those individuals in the future. Whether or not this policy will continue after a transition period is unknown.

g. Title 10 U.S.C. 14701 allows for reserve officers in pay grade O-4 who have twice failed of selection be considered, upon request, by a selection board for continuation in an active status to complete 24 years of commissioned service. The Marine Corps precept for this type of board only allows consideration of those officers with more than 16 but less than 18 years of service and who can become retirement eligible during the continuation period. Since Petitioner has over 18 years of service and could not qualify for retirement he cannot now be considered for continuation. Although individuals are continued for four years, they are required to request reserve retirement at the earliest date they are eligible.

h. On 29 June 2001, Petitioner was informed by HQMC that since he would complete 20 years of commissioned service on 19 August 2002 and has twice failed of selection to lieutenant colonel (LTCOL: O-5), his discharge is required no later than 1 September 2002.

i. Petitioner states in his application that his requests to enter a drilling status were denied for three years because of an affiliation freeze and fiscal reasons. Since he has over 20 years of qualifying service and is not eligible for consideration

for continuation, he believes that the Board should correct the record to allow him to qualify for reserve retirement. This would require the transfer of 17 retirement points into the anniversary year with 33 retirement points and continuation for an maximum of four years so he can earn the last six or eight years, whichever is required, in the reserve component.

j. On 12 March 2001 Petitioner made an additional submission requesting that the Board correct the record to show that he is eligible for reserve retirement in 2002 and not require him to earn any further qualifying years. In support of his request, he points out that he cannot serve in his military occupational specialty (MOS) because he has not been in a flying status for many years and is too senior for retraining. He also has lost his pay billet because of his pending discharge and believes he will be too senior to obtain another billet. Therefore, he believes he will have to complete correspondence courses to earn points for retirement. Since he has already completed the Command and Staff Course and has several graduate degrees and designations, he believes that he will be reduced to taking courses like "Math for Marines" and other low level courses for four years. He believes, in effect, that it is not worthwhile to retain him just to complete an administrative requirement when the ultimate result in either circumstance will be the payment of retired pay at age 60.

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 that Petitioner has over 20 qualifying years for retirement but is not eligible because of the requirement that the last six or eight years of qualifying service be in the reserve component. Further, Petitioner might not have realized that his period of inactivity could lead to his failures of selection and attrition from the Marine Corps Reserve. In addition, Petitioner's inability to join a reserve unit may have been through no fault of his own and he should have been advised at the time that he could earn qualifying years by completing correspondence courses while in the IRR.

The Board considered his request for immediate retirement but believes that it is appropriate to require him to meet the requirements for reserve retirement. Therefore, given his many years of excellent service and the other circumstances of the case, the Board concludes that the record should be corrected to allow him to earn reserve retirement by completing eight years of qualifying service to preclude any future problems with the six or eight year rule. Therefore, the record should be corrected by moving 17 retirement points from the excess over 50 in subsequent

anniversary years into the anniversary year ending 14 May 1999, a year in which he now has 33 retirement points. With this correction, he will have four qualifying years in the reserve component at the end of his anniversary year on 14 May 2002. His record should then be further corrected to show that he was continued in the Marine Corps Reserve, as an exception to policy, for an additional period of four years under the provisions of Title 10 U.S.C. 14701. Finally, he should be required to request retirement at the earliest possible date. This is estimated to be 1 June 2004 if the six year rule is applied or 1 June 2006 if the eight year rule is deemed applicable.

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 Marine Corps Reserve.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected by moving 17 retirement points from the excess over 50 in subsequent anniversary years into the anniversary year ending 14 May 1999.
- b. That Petitioner be continued in the Marine Corps Reserve under the provisions of Title 10 U.S.C. 14701 for four year and that he be required to retire at the earliest possible 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



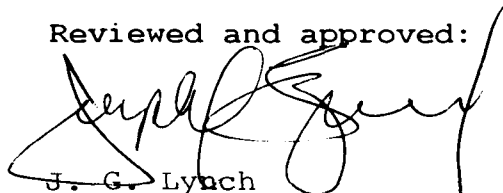
ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and approved:



J. G. Lynch
Assistant General Counsel (Manpower and Reserve Affairs)

May 8, 2002