



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

TRG
Docket No: 6373-00
13 March 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 Naval Reserve filed enclosure (1) with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve in the grade of SSGT (E-6) vice being discharged on 6 July 1981.

2. The Board, consisting of Mr. Pfeiffer, Mr. Kastner and Mr. Dunn reviewed Petitioner's allegations of error and injustice on 6 March 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 enclosure (1) 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. The record shows that on 15 October 1978 a reserve unit requested clearance from the Army Reserve (USAR) so that they could enlist Petitioner him in the USMCR. When the clearance was granted his grade in the USAR was indicated to be SSGT (E-6) and he was recommended for reenlistment.

d. The incomplete record shows that Petitioner reenlisted in the Marine Corps Reserve in the grade of SGT (E-5) on 25 June 1979 and that he was honorably discharged on 6 July 1981 at the expiration of his enlistment. At that time, he was apparently

still serving as a SGT. On 6 July 1981 Headquarters Marine Corps prepared a Reserve Retirement Master Control Card which shows that his last two years of service in the Marine Corps Reserve were served on active duty. The Master Control Cards shows that he had completed 22 years, 3 months and 2 days of qualifying service for reserve retirement. Petitioner became 60 years old on 15 August 2000.

e. The record shows that on 2 November 1984 Headquarters Marine Corps provided a statement of service to the USAR. However, the Board has been informed that there is no evidence of any service in the USAR after 1978.

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

g. The Board is 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.

h. The Board notes that the pertinent part of 10 U.S.C. 1406 states concerning non-regular service retirement as follows:

....the retired pay base is the monthly basic pay, determined at the rates applicable on the date when retired pay is granted of the highest grade held satisfactorily by the person at any time in the armed forces.

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. Given the circumstances, the Board concludes that Petitioner should be transferred to the Retired Reserve. Since it appears that Petitioner was on active duty at the time of his discharge on 6 July 1981, the requirement of the Uniform Retirement Date Act to transfer him to the Retired Reserve on 1 July 1981 would result in an indebtedness. Therefore, his reenlistment of 7 July 1979 should be extended for a period of one month and he should be transferred to the Retired Reserve in the grade of SGT on 1 August 1981.

Since Petitioner became 60 years of age on 15 August 2000, the

record should be further corrected to show that he transferred to the Retired List on that date. Given the requirement of the law as set forth in 10 U.S.C. 1406, the transfer to the Retired List should be in the grade of SSGT (E-6).

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 extended his enlistment for one month and then transferred to the Retired Reserve in the grade of SGT on 1 August 1981 vice being discharged on 6 July 1981.

b. That Petitioner's naval record be further corrected to show that he transferred to the Retired List on 15 August 2000, his 60th birthday in the grade of SSGT (E-6).

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.



for W. DEAN PFEIFFER
Executive Director