



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

LCC/TRG

Docket No: 7036-99

14 June 2000

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

Subj: REVIEW OF NAVAL RECORDS [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments  
(2) HQMC Memo 1040 RAM-5 of 20 Jan 00  
(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, in effect, promotion to SSGT (E-6) and reenlistment in the Marine Corps Reserve.

2. The Board, consisting of Mr. Kastner, Mr. Pfeiffer and Mr. Zsalman, reviewed Petitioner's allegations of error and injustice on 28 March 2000 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. Enclosure (1) was filed in a timely manner.

c. Petitioner was denied reenlistment in the Marine Corps and was honorably discharged on 7 April 1997. The denial of his reenlistment was caused by his failure to be selected for SSGT and because he had reached length of service limitations for a SGT (E-5). At the time of his discharge he had completed over 13 years of active service. The Board has ascertained that he was paid separation pay in the amount of \$26,696.27.

d. The law which established separation pay for enlisted members provides that an individual receiving such pay incur a three year reserve obligation. Through administrative error this was not done in Petitioner's case and he had no status in the Marine Corps reserve after 7 April 1997. According to Petitioner

the message from Headquarters Marine Corps (HQMC) authorizing separation pay stated that he should not be authorized a reserve contract. It is unclear from the record why this was done, but it may be because he was also over service limitations as a SGT in the Marine Corps Reserve. However, an incorrect computer entry was made which showed he was a member of the Individual Ready Reserve. As a result of this error he was considered and selected to the grade of SSGT by the calendar year 1997 (CY97) reserve selection board with the promotion to be effective 1 January 1998. When it was discovered that Petitioner had no military status the promotion was canceled.

e. Apparently, Petitioner's applications for enlistment in the Marine Corps Reserve were denied on several occasions during 1997. In January 1998 Petitioner again applied for enlistment in the Marine Corps Reserve essentially contending that since he had been selected for promotion he was no longer at service limitations. HQMC recognized that an injustice may have occurred and authorized a one year enlistment in the USMCR to allow Petitioner an opportunity to be selected for SSGT. Petitioner enlisted in the Marine Corps Reserve on 8 April 1998 and immediately affiliated with a reserve unit. On 18 May 1998 he began a period of active duty for special work (ADSW) and remained on active duty unit 18 December 1998. Subsequently, he extended his enlistment for a period of one month and he was honorably discharged on 7 May 1999. It states in a 12 April 1999 letter from HQMC to Petitioner, in part, as follows:

Although your total satisfactory service at the time was at the established limitation, we determined your case warranted special consideration. Due to your sterling record, service limitations were waived, and you were approved for a 1 year reenlistment on February 25, 1998. You enlisted in the USMCR on 8 April 1998.

.... You were properly reviewed by the CY98 selection board for promotion in the SMCR and were not selected. The current structure of the USMCR cannot support further extensions of service limitations in your case .... and you will receive no further USMCR service.

f. Petitioner enlisted in the North Carolina National Guard on 28 July 1999 in the grade of SGT and has performed ADSW with the Guard.

g. At enclosure (2) is an advisory opinion from Headquarters Marine Corps which states, in part, as follows:

... (His) records indicated that he currently possesses a total of 14 years, 11 months and 26 days total

qualifying service. ... service limits for the rank of sergeant is established not to exceed 13 years. (He) was granted special consideration when he was authorized to reenlist into the Marine Corps Reserve for 1 year past high year tenure for his grade.

.. (He) appears to have experienced what one may view to be a very unfortunate turn of events. However, it does not negate the fact that he was once passed for promotion prior to his release from active duty, he was not under a valid contract during the time of his erroneous selection to staff sergeant within the reserve component, and his failure of selection to staff sergeant within the reserve component while he was on a valid contract.

.. It is our advisory opinion that current structure of the USMCR cannot support any changes to (the) previous decision regarding the erroneous promotion selection nor the service limitation situation in (his) case; therefore, the decision ... stands and (he) will receive no further USMCR service.

h. Petitioner contends, in effect, that if he had been properly enlisted in the Marine Corps Reserve he would have been promoted to SSGT and would have been allowed to reenlist in the Reserve in May 1999. He also contends that he was not properly considered for staff sergeant in CY98 because his status in the Marine Corps Reserve was not properly reflected in the record. As indicated, he desires his promotion and reenlistment in the Marine Corps Reserve.

i. The Board has obtained a Career Retirement Credit Report (CRCR) which shows that he has been credited with 14 years, 11 months and 26 days of qualifying service for reserve retirement. However, the CRCR shows continuous service with no break in service between his discharge on 7 April 1997 and his enlistment in the USMCR on 8 April 1998. This shows that the erroneous computer entry indicating that he had status in the USMCR still persists in Marine Corps records. The CRCR also reveals that in the anniversary year ending 11 May 1998 he has been credited with 45 retirement points. Fifty retirement points are needed for a qualifying year for reserve retirement.

h. The Board is aware that by statute an individual cannot be a member of two components of the Armed Forces at the same time. Therefore, any correction of his Marine Corps record must end on 27 July 1999 the day before his enlistment in the National Guard. Additionally, the Board must acknowledge that any future enlistment in the Marine Corps or Marine Corps Reserve is a

matter under the cognizance of the Marine Corps and is not a correction that can be taken by this Board.

**CONCLUSION:**

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes the unfavorable advisory opinion recommending that he not be promoted because he did not have status in the USMCR. However, the advisory opinion does not address the issue of whether Petitioner should have had status in the USMCR. Given his overall good record and the other circumstances of the case, the Board believes that he should have been enlisted in the Marine Corps Reserve for the required three years. If given such status the comments concerning his promotion in the advisory opinion are no longer applicable.

Therefore, the Board concludes that the record should be corrected to show that Petitioner enlisted in the Marine Corps Reserve on 8 April 1997 for three years vice the one year enlistment now of record. With this action he will have status in the Marine Corps Reserve and his record should be further corrected to show that he was promoted to SSGT on 1 January 1998. Since he cannot be a member of two Armed Forces components at the same time, the record should show that he was honorably discharged from the Marine Corps Reserve on 27 July 1999, the day prior to his enlistment in the North Carolina National Guard.

The Board notes that the correction to his record to show that he was a SSGT may have an impact on the grade at which he was enlisted in the National Guard. However, this issue cannot be resolved by this Board.

Additionally the Board believes that if he had status in the Marine Corps Reserve that he would have earned a qualifying year. Since the CRCR shows that he only needs five retirement points to have a qualifying year, the Board further concludes that he should be credited with five nonpay retirement points in the anniversary year ending 11 May 1998.

Finally the Board concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future Marine Corps reviewers will understand the circumstances of his case.

**RECOMMENDATION:**

- a. That Petitioner's naval record be corrected to show that he enlisted in the USMCR on 8 April 1997 for a period of three years and that the one year enlistment of 8 April 1998 with the

one month extension are null and void. The record should then show that he was honorably discharged on 27 July 1999 the day prior to this enlistment in the National Guard.

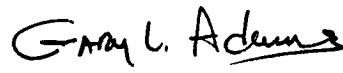
b. That Petitioner's record be corrected to show that he was selected for promotion by the CY 1997 reserve selection board and was promoted to SSGT on 1 January 1998.

c. That Petitioner's record be further corrected by crediting him with five nonpay retirement points in the anniversary year ending 11 May 1998.


d. 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

  
GARY L. ADAMS  
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