



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

TRG
Docket No: 4602-02
12 November 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 retired enlisted member in the Marine Corps Reserve, filed an application with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve in the grade of gunnery sergeant (GYSGT; E-7) vice being retired in the grade of staff sergeant (SSGT; E-6).

2. The Board, consisting of Mr. Brezna, Mr. Kastner and Mr. McPartlin, reviewed Petitioner's allegations of error and injustice on 5 November 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 completed 20 years of qualifying service for reserve retirement on 9 November 1994. About 51 days later, on 1 January 1995, he was promoted to GYSGT. In the anniversary year ending 9 November 1995, he has only been credited with 33 of the 50 retirement points required for a qualifying year. In the next partial anniversary year he was only credited with membership points. Petitioner was honorably discharged on 9 October 1996.

d. On 8 November 2001, the Board directed that Petitioner's record be corrected to show that he transferred to the Retired Reserve on 1 October 1996 vice being discharged on 9 October 1996. However, since he did not complete two years of qualifying

service after being promoted to GYSGT it was further directed that he be retired in the grade of SSGT. He was informed at that time that he could apply to the Board in the future if he believed this action was erroneous or unjust.

e. Petitioner states that he was unaware of the requirement for two qualifying years after being promoted and he was never advised of this requirement by his command.

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 not promoted to GYSGT until after he had completed 20 years of qualifying service. However, he was in good standing in the Marine Corps Reserve and apparently could have earned two qualifying years if he had been properly advised. Given the circumstances, the Board concludes that the record should be corrected to allow retirement in the grade of GYSGT.

Therefore, Petitioner's retirement effective 1 October 1996 should be cancelled and his enlistment extended for three months to expire on 9 January 1997. Sufficient retirement points, from the excess over 50 in qualifying years, should be transferred into the anniversary years ending on 9 November 1995 and 1996 and the partial anniversary year ending 31 December 1996 to make those years qualifying for reserve retirement. He should then be transferred to the Retired Reserve effective 1 January 1997 in the grade of GYSGT.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand he retired in the grade of GYSGT.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not retired on 1 October 1996 but extended his enlistment for three months to end on 9 January 1997.

b. Petitioner's record should be further corrected by transferring sufficient retirement points from the excess over 50 in qualifying years into the anniversary years ending on 9 November 1995 and 9 November 1996, and the partial anniversary year ending 31 December 1996 to make those periods qualifying for reserve retirement.

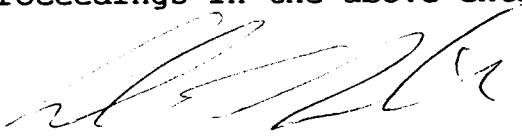
c. That Petitioner's record then be corrected to show that he transferred to the Retired Reserve effective 1 January 1997 in

the grade of GYSGT.

d. That this Report of Proceedings be filed in Petitioner's naval record.

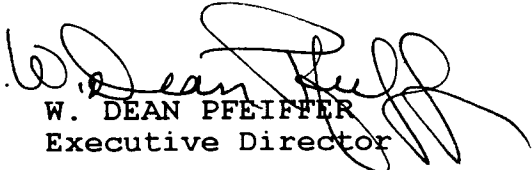
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



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