



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

TRG
Docket No: 5701-02
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 former commissioned officer in the Naval Reserve filed an application with this Board requesting, in effect, that his record be corrected to show reinstatement in the Naval Reserve so that he can qualify for reserve retirement.

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 enlisted in the Navy on 2 May 1976 and accepted a commission as an ensign in the Naval Reserve on 12 August 1977. He accepted a commission as a lieutenant in the Regular Navy on 9 September 1981 and was honorably discharged on 1 February 1988. He then earned seven consecutive qualifying years for reserve retirement and was promoted to lieutenant commander (LCDR; O-4). Accordingly, at the end of the anniversary year on 1 February 1995, he was credited with 18 years, 7 months and 9 days of qualifying service for reserve retirement. He earned no further qualifying years and was honorably discharged on 31 August 2000.

d. Attached to enclosure (1) is an advisory opinion from

Director, Naval Reserve Administration Division, Navy Personnel Command. The opinion states, in part, as follows:

.... In August 1994, he was removed from a drill pay billet and transferred to the local Volunteer Training Unit (VTU) in a non-pay status, after having twice failed of selection for promotion.

.... In 1997, with 20 years of commissioned service and having at least twice failed of selection for promotion, (Petitioner) became subject to the attrition provisions of (Title 10, U.S. Code 1407). However, per the sanctuary provision of (Title 10, U.S. Code 12646), he was retained in an active status for three additional years to allow him the opportunity to complete service requirements for retirement eligibility. Although we extended sanctuary, we could find no record on file that we advised (Petitioner) of such. Notification is not required by statute, but it is provided as an administrative practice. In June 2000, having performed no further reserve service, we notified him that he had not attained retirement eligibility during his retention period and that he was being honorably discharged from the Naval Reserve on 31 August 2000.

.... We feel that petitioner is personally responsible for his current situation. We note that he did not completely investigate opinions for an early retirement in 1994 and he stopped participating in the Naval Reserve Program in 1995, less than two years before attaining retirement eligibility. He initiated no contact with Naval Reserve program managers during his remaining five years in an active status and waited an additional two years after he was discharged before raising an inquiry. We believe that a Naval Reserve Officer with over 18 years of qualifying service should have been expected to exercise some initiative to clarify his reserve status before he was discharged. Although we can not determine if the Navy informed him that he had been retained in an active status for three additional years, we considered this a minor, if not moot, possible error in view of his apparent disregard for his Naval Reserve Career. Therefore, we find no error or injustice on the Navy's part that warrants granting this petitioner.

.... If BCNR considers granting the petitioner relief on the basis that there is no proof that the navy notified him of his sanctuary status in 1997, we

recommend that BCNR direct that his discharge be cancelled and that he be retired effective 1 February 1995 under the RTB (Reserve Transition Benefit) program.

e. Petitioner states in his rebuttal to the advisory opinion that he was misadvised about the possibility of earning retirement points while in the Individual Ready Reserve (IRR), and was advised that he would be informed when he was eligible for retirement. He also points out that the Navy has conceded that he may not have been properly advised of the sanctuary zone requirements. He has also submitted copies of documents, dated 21 August 1994 and 6 February 1995, which show that on those dates he requested transfer to the Retired Reserve under the provisions of the RTB. It cannot be ascertained from the records why these requests were not processed.

f. The "Temporary Special Retirement Qualification Authority" was enacted into law in 1992 and is codified at Title 10 U.S.C. 12731a. The law allows retirement of reservist with 15 or more years of qualifying service during the period 23 October 1992 to 1 October 1999 (subsequently extended to 31 December 2001). The circumstances permitting early retirement, as they apply to this case, included loss of a pay billet.

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.

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 Naval Reserve in August 1994 when he lost his pay billet and was eligible for RTB at that time. It is unclear why he waited until 6 February 1995 to apply for the RTB or why the application was not processed. Although the Board does not condone his inaction in this matter, it notes that he was eligible for retirement in 1994 and his request should have been processed. Therefore, the Board concludes that the record should be corrected to show that he transferred to the Retired Reserve under the provision of the RTB program in the grade of LCDR with eligibility for retired pay at age 60. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 February 1995, vice the discharge of 31 August 2000 now of record.

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 transferred to the Retired Reserve with eligibility for retired pay at age 60 under the provisions of the RTB program effective on 1 February 1995 in the grade of LCDR, vice being discharged on 31 August 2000.

b. 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



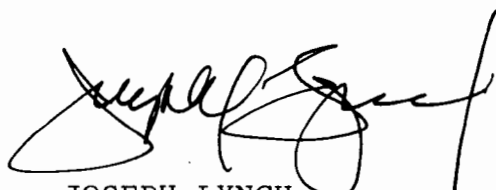
ALAN E. GOLDSMITH
Acting Recorder

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



W. DEAN PFEIFFER

Reviewed and approved: JAN 8 2003



JOSEPH LYNCH
Assistant General Counsel
(Manpower and Reserve Affairs)