



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

TRG
Docket No: 4754-02
27 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 enlisted member in the Naval Reserve, filed an application with this Board requesting that his record be corrected to show that he transferred to the Retired Reserve, vice being discharged with disability severance pay.

2. The Board, consisting of Mr. Exnicios, Mr. Pfeiffer and Mr. Shy, reviewed Petitioner's allegations of error and injustice on 20 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 reenlisted in the Naval Reserve on 29 December 1998 as a petty officer first class (GM1; E-6). At the end of his anniversary year on 28 December 1999 he was credited with 20 years, 4 months and 28 days of qualifying service for reserve retirement.

d. A medical board report, dated 19 June 2000, states that in July 1999, while involved in a combat training exercise, Petitioner jumped from a vehicle and suffered a severely broken leg. The medical board report concluded as follows:

The nature of this patient's injury and its sequelae will preclude him from participating in any active duty

training or service. He will not be able to participate in any activity requiring strenuous use of the right knee. This member will not be able to run. He will not be able to load or disembark from operational vehicles. He will not be able to participate in any mandated physical fitness training or testing. It is recommended that the patient's case be forwarded to the Physical Evaluation Board (PEB) for adjudication and consideration for a medical separation.

Subsequently, the PEB directed discharge with severance pay and Petitioner was discharged on 29 August 2000. He was paid severance pay in the amount of \$54,792.00.

e. The Board is aware that once a reservist has 20 qualifying years and has been issued a Notification of Eligibility for Retired Pay at Age 60 he will receive that pay whether or not the individual has been discharged. Any severance pay will be recouped at that time.

f. Petitioner states, in effect, that he took the severance pay when it was offered. However, he now realizes that his discharge may have a future impact on his retired pay and other benefits at age 60 because he will receive his retired pay as a former member. He states that the Department of Veterans Affairs is recouping the severance pay out of his monthly checks.

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 and would have been retired if he had requested it prior to his discharge with disability severance pay. Additionally, he is eligible for retired pay at age 60 even with the discharge. Therefore, the Board concludes that no useful purpose is now served by his discharge and the record should be corrected to show that transferred to the Retired Reserve. The Board is aware that his severance pay will be recouped when he begins to draw his retired pay at age 60.

Therefore, given the requirements of the Uniform Retirement Date Act, the record should be corrected to show that he was not discharged on 29 August 2000 but transferred to the Retired Reserve, with eligibility for retired pay at age 60, effective on

1 September 2000 in the rate of GM1 (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 was not discharged on 29 August 2000 but transferred to the Retired Reserve effective 1 September 2000, with eligibility for retired pay at age 60, in the rate of GM1.

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

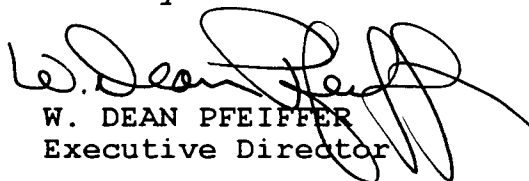
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. 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