



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

TRG
Docket No: 1094-03
6 June 2003

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 enlistment member in the Naval Reserve, filed an application with this Board requesting that his record be corrected to show that she transferred to the Retired Reserve under the provisions of the Reserve Transition Benefit program (RTB).

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 28 May 2003 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 Petitioner's application 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. Petitioner enlisted in the Naval Reserve Advanced Pay Grade Program, as a petty officer second class (YN2; E-5), on 16 October 1976 at age 33. She then earned 11 consecutive qualifying years for reserve retirement. The three anniversary years beginning on 16 October 1987 and ending on 15 October 1990 are not qualifying. In the next four anniversary years, she earned three qualifying years. In one of the years, she has been credited with 43 of the 50 points required for a qualifying year. At the end of the anniversary on 15 October 1994 she was

credited with 14 years of qualifying service.

d. On 25 May 1995, she was transferred to a records review status because she was not physically qualified (NPQ), and she earned no further qualifying years. About this time, her request to transfer to the Retired Reserve under the provisions of the RTB program was denied because she did not have 15 years of qualifying service. Apparently, the paperwork to resolve her physical status was mishandled because the Physical Evaluation Board did not find her physically disqualified until 5 May 1998, almost three years after being placed in records review. Subsequently, another request for reserve retirement was denied. She was honorably discharged on 1 April 1999. Petitioner became 60 years old on 30 January 2003.

e. The Board is aware that individuals placed in an NPQ status are eligible to earn points through the completion of correspondence courses. Petitioner only completed one 12 point correspondence course.

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, as modified, allows retirement of reservists with 15 years of qualifying service during the period from 23 October 1992 to 31 December 2001. The law was also modified, effective 5 October 1994, as follows:

.... The Secretary concerned may, consistent with the other provisions of this section, provide the notification (of eligibility for retired pay at age 60) to a member who no longer meets the qualification for membership in the Selected Reserve solely because the member is unfit because of a physical disability.

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 should not have been carried in an NPQ status for almost three years without some resolution. Further, Petitioner had 14 qualifying year and another year with 43 of the 50 points necessary for a qualifying year. Since she was so close to being eligible, it is clear that she should have been advised and encouraged to complete correspondence courses. Given the circumstances, the Board concludes that Petitioner's record should be corrected to show that she was eligible for RTB retirement and transferred to the Retired Reserve.

This action can be accomplished by transferring seven retirement points from the anniversary year ending 15 October 1994 into the anniversary year ending 15 October 1993, in which she has already entered 43 points. With this change, Petitioner will have 15 qualifying years and would have been eligible for RTB retirement.

The record should then be corrected to show that she transferred to the Retired Reserve in the rate of YN2, effective 1 April 1999, vice the discharge of that date. Since Petitioner is 60 years old, the record should be further corrected to show that she transferred to the Retired List on her 60th birthday, 30 January 2003.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand her status on the Retired List.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by moving seven retirement points from the anniversary year ending 15 October 1994 into the anniversary year ending 15 October 1993.

b. Petitioner's record should then be further corrected to show that she transferred to the Retired Reserve effective 1 April 1999 in the rate of YN2 vice the discharge of that date now of record. She should then be transferred to the Retired List on 30 January 2003, her 60th birthday.

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.

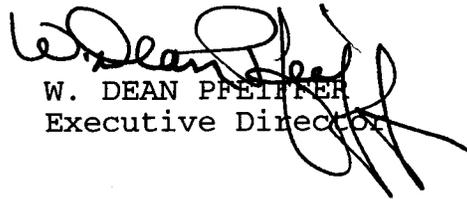
ROBERT D. ZSALMAN
Recorder



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.



W. DEAN PFEIFFER
Executive Director