



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

Docket No: 4608-07
20 December 2007

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 Navy Reserve, filed an application with this Board requesting, in effect, that his record be corrected to show that he has 20 years of qualifying service and transferred to the Retired Reserve and to the Retired List vice being discharged.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 December 2007 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 consider the application on its merits.

c. Petitioner applied to this Board contending that there were errors in his retirement point record and if they were corrected that he would have 20 qualifying years and would be eligible for reserve retirement. His record was then sent to the Navy Personnel Command (NPC) to correct any errors and to provide an advisory opinion as to the disposition of his case. Attached to enclosure (1) is the advisory opinion from the NPC which states, in part, as follows:

... We have reviewed [Petitioner's] record and the documentation he provided and have credited him with an additional seven retirement points to make his anniversary year ending on 13 April 1976 a qualifying year. However, the active duty points that he states are missing from his anniversary year ending 14 April 1973 were actually performed in, and have been properly credited to, the anniversary year ending 14 April 1974. (He performed two AT [Annual Training] periods during the April 1973 - April 1974 anniversary year - one in June 1973, the other in March 1974). Accordingly, [Petitioner] is now credited with only 19 years of qualifying service and is still not eligible for a Reserve retirement....

...[Petitioner] was commissioned in April 1968 and served on Active Duty[Sic] until January 1972. He then drilled and performed Annual Training (AT) in the Navy Reserve until September 1990, at which time he transferred to the Individual Ready Reserve (IRR) and ceased all participation...we notified [Petitioner] in 1998 that his retention period had expired, that he had not qualified for retirement, and therefore, must be discharged. Again, [Petitioner] did not contact us regarding this matter and he was discharged effective 30 June 1998.

...He ceased all participation and communication with the Navy in the fall of 1990 ([REDACTED]

[REDACTED] and when we notified him in 1995 that he had not yet qualified for retirement, he did not contact us to try to correct his record at that time.

...After reviewing his record and in view of the above, we recommend [Petitioner's] petition be denied. Even with the correction of his retirement point record, he is still not credited with 20 qualifying years of service and, therefore, is not eligible for a Reserve [Sic] retirement...

d. A review of the corrected Statement of Service for Reserve Retirement, dated 27 June 2007, shows anniversary years with 45, 49, 39 and 36 retirement points. Fifty points in any of those four years would make him eligible for reserve retirement.

e. In his rebuttal to the advisory opinion, Petitioner has submitted documentation which appears to show that there are other retirement points that have not been credited. However, if he entitled to those points his retirement point record can be

administratively corrected and action by the Board on this matter is not required. It does not appear that any of those points will be credited in any anniversary year in which he has less than 50 retirement points. So the number of qualifying years will not change.

f. There is no information in the record concerning Petitioner's motivation to stop drilling in 1990. It is possible that he thought he had 20 years of qualifying service at that time. Given the action taken by NPC, it is clear that there were some errors in the recording of retirement points. The record shows that Petitioner was born on 27 May 1946 and he became 60 years of age on 27 May 2006.

f. 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. Since he is only one point short of qualifying for retirement and may have believed that he had 20 years of qualifying service in 1990, the Board concludes that the record should be corrected to show that he is eligible for reserve retirement. This action can be accomplished by transferring one retirement point from the excess over 50 in the anniversary year ending on 14 April 1974 into the anniversary year ending on 14 April 1975. With this correction, he will have 20 years of qualifying service for reserve retirement.

Since Petitioner will now have 20 years of qualifying service and was otherwise in good standing, the Board further concludes that his record should be corrected to show that he transferred to the Retired Reserve. Since he had no participation in the Navy Reserve after 14 April 1991 and given the requirements of the Uniform Retirement Date Act, the Board further concludes that the retirement should be effective on 1 May 1991 (the earliest possible date after completion of 20 years of qualifying service) vice the discharge on 1 July 1998 now of record.

Since he is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on 27 May 2006, his 60th birthday.

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 by transferring one retirement point from the anniversary year ending on 14 April 1974 to the anniversary year ending on 14 April 1975.
- b. That Petitioner's naval record be further corrected to show that he transferred to the Retired Reserve on 1 May 1991 vice the discharge of 1 July 1998 now of record.
- c. That Petitioner's naval record then be corrected to show that he transferred to the Retired List on 27 May 2006, his 60th birthday.
- 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.

[REDACTED]
Recorder

[REDACTED]
Acting Recorder

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

[REDACTED]

[REDACTED]
JM