



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

TJR
Docket No: 1401-10
29 April 2010

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments
(2) Case summary with an advisory opinion
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps Reserve, filed enclosure (1) with this Board requesting that his record be corrected to show that he was transferred to the Marine Corps Retired Reserve vice discharged on 28 February 1994.
2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 April 2010 and, pursuant to its regulations, determined that the partial 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 enclosure (1) 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 Marine Corps, was honorably released from active duty, and transferred to the Marine Corps Reserve. On 8 February 1999 he was honorably discharged.

d. Enclosed is a copy of Petitioner's career retirement credit record which reflects 19 years, 8 months, and 25 days of qualifying service. In this regard, an advisory opinion from the Headquarters Marine Corps Separation and Retirement Branch (MMSR-5) dated 19 April 2010 states, in part, that he is not eligible for reserve retirement, and that there was no documentation to reflect that he had requested additional service in order to reach the required 20 years of qualifying service. The advisory opinion further recommends that his request for reserve retirement be denied.

e. Although the advisory opinion in this case recommends relief be denied, the Board is aware that the Commandant of the Marine Corps has routinely moved points, as a corrective action, to satisfy reserve retirement requirements even though an individual was not fully qualified for reserve retirement. In this regard, a review of Petitioner's career retirement credit record reflects that if points are moved from a satisfactory year to an unsatisfactory year, he would be eligible for reserve retirement, and as such would have enough time to receive retired pay at age 60.

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 following the date of separation.

CONCLUSION:

Upon review and consideration of all the evidence of record, and despite the advisory opinion from MMSR-5, the Board concludes that Petitioner's request warrants relief. In this regard, the Board substantially concurs with the comments contained in a previously received advisory opinion that recommended moving points from a satisfactory year to an unsatisfactory year. The Board concludes that since Petitioner was in good standing in the Marine Corps Reserve and will be credited with 20 years of qualifying service, after moving points, his record should be corrected to show that, while serving in the rank of gunnery sergeant (GySgt/paygrade E-7), he was transferred to the Marine Corps Retired Reserve on 1 March 1994.

RECOMMENDATION:

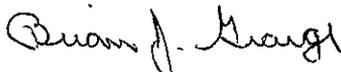
a. That Petitioner's naval record be corrected to show that sufficient retirement points from the excess over 50 points in a prior anniversary year were transferred into the anniversary year ending on 21 April 1982, thus making that a qualifying year for reserve retirement.

b. That Petitioner's naval record be corrected to show that he was transferred to the Marine Corps Retired Reserve effective 1 March 1994, in the rank of gunnery sergeant (GySgt/paygrade E-7), vice being discharged on 28 February 1994.

c. That this Report of Proceedings be filed in his 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.

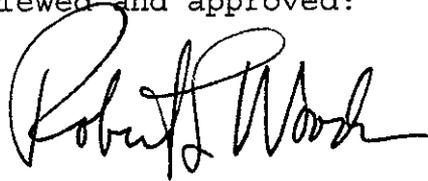
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

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


W. DEAN PFEIFFER

Reviewed and approved:


Assistant General Counsel
(Manpower and Reserve Affairs)

5/5/10