



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

TRG
Docket No: 2573-02
29 August 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 member in the Naval Reserve filed an application with this Board requesting, in effect, that his record be corrected to show that he transferred to the Retired Reserve vice being discharged on 24 February 1995.

2. The Board, consisting of Mr. Pfeiffer, Mr. Caron and Mr. Grover, reviewed Petitioner's allegations of error and injustice on 27 August 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. 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 reenlisted in the Naval Reserve on 25 February 1989 for six years as a petty officer second class (SH2; E-5). He then served in a satisfactory manner for about three years. The record is incomplete after 31 March 1992, and it does not contain any record of transfers from his reserve unit or an entry showing his discharge. A Statement of Service for Naval Reserve Retirement has been obtained and it shows that at the end of his anniversary year on 2 May 1993 he was credited with 19 years, 10 months and 22 days of qualifying service for reserve retirement. After that date, he earned no further qualifying

years and has been credited with only membership points. He was discharged on 24 February 1995 at the expiration of his enlistment.

d. Petitioner states in his application that he was transferred to the Individual Ready Reserve (IRR) in March 1993 because he was overweight. He believes that he should have been advised to request retirement under the provisions of the Reserve Transition Benefit program.

e. The Board did not request an advisory opinion in this case. However, the Board is aware that the Navy Personnel Command has routinely recommended corrective action in cases when an individual is eligible for reserve retirement and there is no explanation in the record why they were discharged and not retired.

f. 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 is only one month and eight days short of qualifying for reserve retirement. It was clear to the Board that if he had understood his situation and been properly assisted and advised, he would have completed the additional time. The Board is aware that an individual in the IRR can earn retirement points by completing correspondence courses. Given the circumstances, the Board concludes that the record should be corrected to show that he is eligible for reserve retirement. This can best be accomplished by transferring 35 retirement points from the excess over 50 in prior anniversary years into the anniversary year ending 2 May 1994. With this correction Petitioner will have 20 years, 10 months and 22 days of qualifying service for retirement.

Since the record will now show that he is qualified for reserve retirement and was otherwise in good standing in the Naval Reserve, he would have been retired if he had requested it. Therefore, the Board concludes that he should be transferred to the Retired Reserve in the rate of SH2. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 February 1995, vice the discharge of 24 February 1995 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 naval record be corrected by transferring 35 retirement points from the excess over 50 in prior anniversary years into the anniversary year ending 2 May 1994.

b. That Petitioner's naval record be further corrected to show that he transferred to the Retired Reserve effective on 1 February 1995 in the rate of SH2, vice being discharged on 24 February 1995.

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