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

TRG
Docket No: 6138-99
10 February 2000

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) DD Form 149 w/attachments
(2) BCNR ltr of 6 July 1988
(3) BCNR ltr of 16 Dec 99 & Petitioner's ltr of 1 Jan 00
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting that his record be corrected to establish eligibility for retired pay at age 60.

2. The Board, consisting of Mr. Pfeiffer, Ms. Madison and Ms. Taylor, reviewed Petitioner's allegations of error and injustice on 1 February 2000 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. Enclosure (1) was filed in a timely manner.

c. Petitioner was honorably discharged from the Navy on 19 December 1977 after 11 years, 10 months and 17 days of continuous active service. In addition he had three additional qualifying years for reserve retirement on a prior enlistment. At the time of his separation Petitioner was an EN1 (E-6) and had served in that rate since 1 May 1971.

d. Petitioner enlisted in the Naval Reserve on 28 October 1982 for two years in the rate of EN2 (E-5) after a break in service of almost five years. He subsequently extended that enlistment for two years. Petitioner reenlisted in the Naval Reserve on 6 October 1986 for six years. At the end of the anniversary year ending 27 October 1987 he was credited with 19

years, 10 months and 17 days of qualifying service for reserve retirement.

e. During the second quarter of 1987 Petitioner stopped drilling. Apparently not realizing that he had 19 years of qualifying service and was not a mandatory driller, his reserve unit processed him for discharge under other than honorable conditions due to unsatisfactory participation in the Naval Reserve. He was so discharged on 30 November 1987. There is a letter in the record addressed to Petitioner, dated 18 November 1985, informing him that in addition to 20 qualifying years he had to have the last eight years of qualifying service in the reserve component. It also informed him that he would not be eligible for reserve retirement unless he earned qualifying years until 27 October 1990. Whether or not Petitioner received this letter, or understood it if he did receive it, is unknown.

f. Petitioner applied to the Board in 1988 requesting that the discharge be canceled and that the record show that he transferred to the Individual Ready Reserve (IRR). On 14 June 1988, based on a favorable recommendation from the Navy Military Personnel Command, the Board concluded that Petitioner's record should be corrected as follows:

> ... The Board concludes that the discharge under other than honorable conditions issued on 30 November 1987, and all related material and entries in the record, should be canceled and removed from Petitioner's naval record.
>
> The Board further concludes that in view of his 19 years of good service, Petitioner should have been transferred to the IRR vice discharged on 30 November 1987. In this regard, the Board notes the informal input from NMPC to the effect that transfer to the IRR would be appropriate. Although the reasons for Petitioner's poor drill attendance are unknown, the erroneous adverse discharge and his otherwise good service leads the Board to conclude that a recommendation for future affiliation in the Naval Reserve is appropriate at this time.

On 14 July 1988 the Assistant Secretary of the Navy (Manpower and Reserve Affairs) approved the foregoing action of the Board. The foregoing Report of the Board's Proceedings was provided to Petitioner, however, he did not earn any additional qualifying years. Since his discharge had been canceled he was restored to the six year enlistment contract of 6 October 1986. He was honorably discharged on 5 October 1992 at the expiration of that enlistment in the rate of EN2.

f. In 1999 as he was approaching age 60, Petitioner sent a retirement request to the Naval Reserve Personnel Center, New Orleans, LA. This request was apparently denied because he did not have 20 qualifying years for retirement and he did not have the required years of qualifying service in the reserve component. After this denial, Petitioner submitted an application to the Board. He apparently still does not understand the extent of his problem because he only asks to be credited with additional points so that he will have 20 qualifying years. He became 60 years of age on 14 December 1999.

g. On 16 December 1999 the Board sent Petitioner a letter pointing out that he had been informed in 1988 of the requirements he needed to fulfill to qualify for retirement and asking him to explain why he took no action in this regard. A copy of this letter is at enclosure (3).

h. Also at enclosure (3) is Petitioner's response to the 16 December 1999 letter. Petitioner states that he attempted to reaffiliate but was told by the reserve center that he had already been transferred to the Retired Reserve because he was an E-5 with over 18 years of service. Accordingly, he took no further action. It is not known if the record had actually been corrected at that time to show that he was in the IRR.

i. 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 completed 19 years, 10 months and 17 days of qualifying service for reserve retirement but is not eligible for retirement. It is clear that Petitioner was on notice of the retirement requirements and he could have earned retirement during the period after the previous corrective action. However, he may have received incorrect advice in 1988 when he reported to a reserve unit, and the Board believes that he still does not completely understand the requirement that the last eight years of qualifying service be in the reserve component. Given the circumstances, the Board believes that if Petitioner had understood his situation he would have qualified for retirement. Therefore, the Board concludes that the record should be corrected to establish eligibility for reserve retirement.

The best way to accomplish this action is to correct the two year

enlistment in the Regular Navy of 23 December 1975 to show that it was an enlistment in the Naval Reserve. The record should also be corrected by transferring sufficient retirement points (31 or the minimum required) from the excess over 50 in prior anniversary years to the anniversary year ending 27 October 1988. With these corrections, Petitioner will have the last eight years of qualifying service in the reserve component, will have 20 qualifying years for retirement, and will be eligible for retired pay at age 60. Finally, the record should be corrected to show that he transferred to the Retired Reserve on 1 November 1988. Since he served over six years on active duty as an EN1 and was not reduced for cause but was an EN2 at the time of retirement, the Board defers the issue of his rate on retirement to the Naval Reserve Personnel Center (NRPC). Petitioner became 60 years of age on 14 December 1999. Therefore, he should be transferred to the Retired List on that date.

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 on the Retired List.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he reenlisted in the Naval Reserve on 23 December 1975 for two years vice the reenlistment in the Regular Navy now of record;

b. That Petitioner's naval record be further corrected by transferring sufficient retirement points from the excess over 50 in prior anniversary years to raise the total in the anniversary year ending 27 October 1988 to 50, thus making it a qualifying year for retirement;

c. That Petitioner's record be further corrected to show that he transferred to the Retired Reserve on 1 November 1988 and to the Retired List on 14 December 1999 with the rate on retirement being determined by NRPC; and

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.

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