

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230006424

APPLICANT REQUESTS: her character of service upgraded to honorable in lieu of general, under honorable conditions.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, 10 October 1986
- VA Form 21-0781a (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault) dated 17 April 2017
- Department of Veterans Affairs (VA) Rating Decision, dated 19 October 2017

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, by the time of her discharge, she experienced multiple incidents of military sexual trauma (MST). Her chain of command labeled her as a troublemaker when she tried to report the incidents, rather than helping her. Her sexual orientation was used as a basis to discharge her from service rather than deal with the facts of the situation. She knows the laws have changed regarding sexual orientation in the military since her discharge and requests a review in accordance with those changes in law.
 - a. Her application indicates her request is related to post-traumatic stress disorder (PTSD).
 - b. Her VA statement in support of her claim for PTSD states she was sexually assaulted in February 1980 by multiple individuals at her first duty station, Fort Lewis, WA, and she was threatened by her company commander. In August 1982, while stationed in Bamberg, Germany, her commander would instruct her to attend parties

where she was paid to have intercourse, on multiple occasions, and often involving more than one perpetrator at a time. She was subject to listening to degrading comments about women. This treatment continued at Fort Riley, KS resulting in a tubal pregnancy.

3. The applicant enlisted in the Regular Army on 28 August 1979. She served at Fort Lewis from 31 January 1980 to 22 October 1981.

4. The applicant transferred to Germany on 22 December 1981 and reenlisted in the Regular Army on 7 July 1983. She departed Germany on 17 August 1983 and reported to Fort Riley, KS on 3 October 1983. She transferred back to Germany on 23 August 1985.

5. The ABCMR requested the Army Crime Records Center, Criminal Investigation Command provide a copy of the redacted MST and military police reports pertaining to the applicant. The response received included the report associated with the investigation into the applicant's homosexual conduct. No reports were received showing an investigation of MST. The reports and allied documentation show:

a. On 24 July 1986, the applicant's commanding officer made a complaint of alleged sodomy stating he had several handwritten notes from Soldiers in his unit indicating the applicant is a homosexual. He related he had at least 15 females in his unit and had no idea how many may be involved in the incident.

b. On 30 July 1986, the applicant provided a sworn statement in which she intentionally lied concerning the investigation; specifically, she denied her involvement in a consensual homosexual relationship. Sufficient evidence was found to title the applicant for the offense of false swearing.

c. During the investigation multiple individual female Soldiers from her unit were interviewed including the applicant. The applicant stated she and another female Soldier, on several occasions, engaged in unnatural carnal copulation. Sufficient evidence was found to title the applicant for the offense of sodomy.

d. The Office of the Staff Judge Advocate opined there was enough evidence for a successful prosecution of the applicant and no further investigative action was necessary.

6. On 29 August 1986, the applicant was notified of action to separate her from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 15, paragraph 15-3(a) for committing homosexual acts during her current term of service in locations subject to military control with a recommended character of service of under other than honorable conditions. She was

advised of her rights to a hearing before an administrative separation board, to consult with consulting counsel or civilian counsel, to submit statements on her behalf, and to obtain copies of documents that will be used in the proceedings. She was advised she may waive her rights, and of her entitlement to a medical examination.

7. On 2 September 1986, after consulting with counsel, the applicant acknowledged receipt of the notification of separation proceedings and elected to waive consideration of her case by an administrative separation board and a personal appearance before such board. She did not submit statements. She indicated she understood she may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued, she may apply to have such a discharge upgraded but realize that does not imply it will be upgraded.

8. The applicant underwent a medical examination on 15 September 1986. Her Standard Form (SF) 93 (Report of Medical History) shows among several complaints, she reports frequent trouble sleeping, depression or excessive worry, changes in menstrual pattern, and treatment for a tubal pregnancy in 1985. The corresponding SF 88 (Report of Medical Examination) shows a history of treatment for breast cancer while at Fort Lewis, WA with radiation therapy. She was found qualified for separation.

9. A DA Form 3822-R (Report of Mental Status Evaluation), dated 15 September 1986, shows the applicant was evaluated in connection with misconduct. It shows her behavior was normal. She was fully alert and oriented. Her mood was depressed with clear thinking process, normal thought content, and good memory. She was found to have the mental capacity to understand and participate in the proceedings, she was mentally responsible, and she met retention requirements.

10. The applicant's immediate commander initiated separation action against her under Chapter 15, AR 635-200 on 15 September 1986. On 24 September 1986, her intermediate commander recommended approval with the issuance of a General Discharge Certificate.

11. The separation authority approved the applicant's separation on 1 October 1986 with a general discharge certificate.

12. The applicant's DD Form 214 shows she was discharged on 10 October 1986 under honorable conditions for engaged/attempted to engage in or solicited another to engage in homosexual act(s) under the provisions paragraph 15-3a, AR 635-200. She received a separation code of "JRA" and a reenlistment code of "4."

13. The applicant provided a VA rating decision showing she was granted service connection for PTSD due to MST at 70 percent effective 17 April 2017.

14. Under Secretary of Defense (Personnel and Readiness) memorandum, dated 20 September 2011, provides policy guidance to follow when acting on applications from former service members discharged under DADT or prior policies. The policy provided for upgrading the characterization to honorable, providing the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT and there were no aggravating factors in the record, such as misconduct.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board noted the applicant's statement that prior to her time her discharge, she experienced multiple incidents of military sexual trauma (MST). The Board further noted that the applicant's record does not reveal a report of investigation nor was any provided on her own behalf. The Board reviewed the recommendation for elimination, resulting bases for discharge and the recommendation for the characterization of service. An inquiry resulted in a finding of probable cause for separation existed, the applicant was afforded opportunity for consult with a Staff Judge Advocate and noted she declined to submit statements on her own behalf for consideration by an administrative separation board. After due consideration of the request and DOD policy regarding retroactive corrections of records from applicants discharged under DADT, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

2. Prior to closing the case, the Board noted the applicant's reference to the rating she received by the Department of Veterans affairs. Although the Board is cognizant of the applicant's VA disability rating, the Army and VA disability rating processes serve two different purposes and operate under different authorities, thus ratings vary.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 15 (Separation for Homosexuality) states homosexuality is incompatible with military service. Paragraph 15-3(a) provides for separation of a soldier that has engaged in, attempted to engage in, or solicited another to engage in a homosexual act.

2. Under Secretary of Defense (Personnel and Readiness) memorandum, dated 20 September 2011, provides policy guidance to follow when acting on applications from former service members discharged under DADT or prior policies.

a. The memorandum states that, effective 20 September 2011, requests should be granted in these cases, to change the:

- narrative reason for discharge (the change should be to "Secretarial Authority")
- (Separation Program Designator (SPD) Code JFF)
- characterization of the discharge to honorable
- the RE code to an immediately-eligible-to-reenter category

b. For the above upgrades to be warranted, the memorandum states both of the following conditions must have been met:

- the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT
- there were no aggravating factors in the record, such as misconduct

c. The memorandum also recognized that although BCM/NRs have a significantly broader scope of review and are authorized to provide much more comprehensive remedies than are available from the DRBs, it is DOD policy that broad, retroactive corrections of records from applicants discharged under DADT [or prior policies] are not warranted. Although DADT is repealed effective 20 September 2011, it was the law and reflected the view of Congress during the period it was the law. Similarly, DOD regulations implementing various aspects of DADT [or prior policies] were valid regulations during those same or prior periods. Thus, the issuance of a discharge under DADT [or prior policies] should not by itself be considered to constitute an error or injustice that would invalidate an otherwise properly taken discharge action.

//NOTHING FOLLOWS//