

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230006787

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 20 October 1995 based on repeal of Don't Ask, Don't Tell (DADT) as follows:

- change item 26 (Separation Code) to "JFF"
- change item 27 (Reentry Code) to "RE-1"
- change item 28 (Narrative Reason for Separation) to "Secretarial Authority"

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214

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 his discharge is unjust because he was only separated due to his admission of engaging in homosexual activity with no other aggravating factors. His record otherwise reflects high remarks. He was discharged over 27 years ago and only recently learned he could request a records correction. Having homosexual admission listed on his DD Form 214 has hurt his employment opportunities; the requested corrections would lift these barriers.

3. He enlisted in the Regular Army on 5 February 1991.

4. He was counseled as follows:

- 9 August 1995 for admitting to his platoon sergeant that he was bisexual and had been repressing his feelings

- 10 August 1995 concerning Department of the Army policy on homosexual affiliation/conduct
 - 17 August 1995 for initiation of separation action under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 15 (Separation for Homosexuality)
5. On 5 September 1995, he underwent a separation physical examination and was found qualified for separation.
 6. On 11 September 1995, he underwent a mental status evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows he was psychiatrically cleared for any administrative or disciplinary action deemed appropriate by his command.
 7. On 19 September 1995, his company commander notified him of his intent to initiate separation action against him under the provisions of AR 635-200, chapter 15, by reason of homosexual conduct. The specific reason for discharge was the applicant's sworn statement of admission of homosexual conduct. The commander discussed the applicant's entitlements and rights, and recommended characterization of his service as honorable. He acknowledged receipt of the notification the same day.
 8. On 19 September 1995, he waived his right to consult with legal counsel and was advised of the basis for the contemplated separation action for homosexuality; the type of discharge he could receive and its effect on further enlistment or reenlistment; the possible effects of this discharge; and the procedures/rights available to him. He elected not to submit a statement in his own behalf and waived his right to appear before an administrative separation board. He acknowledged that he might expect to encounter substantial prejudice in civilian life if a general discharge were issued to him.
 9. His company commander formally recommended his separation from the service the same day under the provisions of AR 635-200, chapter 15, by reason of his sworn statement that he had committed homosexual acts and will have the tendency to commit homosexual acts in the future. His battalion commander recommended approval of his separation the same day with characterization of his service as honorable.
 10. Following the legal review on 29 September 1995, the separation authority approved the applicant's discharge under the provisions of AR 635-200, chapter 15, by reason of homosexuality with characterization of his service as honorable.
 11. He was honorably discharged on 20 October 1995 under the provisions of chapter 15 of AR 635-200. He completed 4 years, 8 months, and 16 days of net active service during this period. His DD Form 214 shows in:

- item 26 (Separation Code) – "JRB"
- item 27 (Reentry Code) – "4"
- item 28 (Narrative Reason for Separation) – "Homosexual Admission"

12. There is no indication she petitioned the Army Discharge Review Board for an upgrade of her discharge within that board's 15-year statute of limitation.

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

14. 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

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The evidence of record shows the applicant was honorably discharged due to homosexual admission, in accordance with applicable regulations in effect at the time. However, given the repeal of DADT, and given there are no aggravating factors – such as misconduct - the Board determined a change to the separation code, RE Code, and Narrative Reason for Separation is appropriate.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by issuing the applicant a new DD Form 214 for the period ending 20 October 1995 showing in:

- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

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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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 17 September 1990 and in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-3 (Secretarial Plenary Authority) provided that:

(1) Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

(2) Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special Headquarter, Department of the Army directive that may, if appropriate, delegate blanket separation authority to field commanders for the class category of Soldiers concerned.

b. Chapter 15 (Separation for Homosexuality) stated homosexuality was incompatible with military service and provided for the separation of members who engaged in homosexual conduct or who, by their statements, demonstrated a tendency to engage in homosexual conduct.

3. The DADT policy was implemented in 1993. This policy banned the military from investigating service members regarding their sexual orientation. Under the previous policy, service members may have been investigated and administratively discharged if they made a statement that they were lesbian, gay, or bisexual; engaged in physical contact with someone of the same sex for the purposes of sexual gratification; or married, or attempted to marry, someone of the same sex.

4. The DADT Repeal Act of 2010 (Title 10, U.S. Code, section 654) was a landmark U.S. federal statute enacted in December 2010 that established a process for ending the DADT policy, thus allowing gays, lesbians, and bisexuals to serve openly in the U.S. Armed Forces. It ended the policy in place since 1993 that allowed them to serve

only if they kept their sexual orientation secret and the military did not learn of their sexual orientation.

5. The Under Secretary of Defense for Personnel and Readiness memorandum (Correction of Military Records Following Repeal of Section 654 of Title 10, U.S. Code), 20 September 2011, provides policy guidance for Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to follow when taking action on applications from former service members discharged under DADT or prior policies.

a. Effective 20 September 2011, Service DRBs and BCM/NRs should normally grant requests in these cases to change the following:

- item 24 to "Honorable"
- item 25 to "Army Regulation 635-200, paragraph 5-3"
- item 26 to "JFF"
- item 27 to "1"
- item 28 to "Secretarial Authority"

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. Although each request must be evaluated on a case-by case basis, the award of an honorable or general discharge should normally be considered to indicate the absence of aggravating factors.

d. 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 Department of Defense 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, Department of Defense regulations implementing various aspects of DADT (or prior policies) were valid regulations during that 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.

e. The DD Form 214 should be reissued in lieu of the DD Form 215 (Correction of the DD Form 214) to avoid a continued record of the homosexual separation.

//NOTHING FOLLOWS//