

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230007823

APPLICANT REQUESTS: upgrade of her uncharacterized discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Bachelor of General Studies Certificate, 21 May 2004
- Certificate of Achievement, 15 July 2022

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, in effect:

a. She was discharged from the U.S. Army, because one of her ex female lovers sent letters that the applicant had written to the battalion leadership. The letters were used to prove that she did not deserve to be in the military, because she was gay. When her leaders approached her regarding the letters, she was frightened and felt ashamed because her sexual preference had been exposed. Legally, she did not know what to do but to run from the embarrassment of being exposed, so she accepted being put out of the military. This was an injustice and pure discrimination, which caused her to feel ashamed of her sexual orientation.

b. Years after being discharged, the laws changed and she is entitled to a proper discharge, which is honorable. Her discharge papers should show an honorable discharge because according to her records, she was a thriving Soldier and strong leader. She wanted nothing more than to serve her country and help others do the same.

3. The applicant provides the following:

- a. Bachelor of General Studies degree certificate dated 21 May 2004.
  - b. A Certificate of Achievement; 15 July 2022, shows she successfully completed all the requirements of the course/certificate program for a certificate in web design.
4. A review of the applicant's service record shows:
- a. The applicant enlisted in Regular Army on 14 November 1984.
  - b. On 23 November 1984, she was assigned to D Company, 2nd Battalion, 3rd Basic Training Brigade, Fort Dix, NJ for Basic Combat Training (BCT).
  - c. DA Form 4856-R (General Counseling Form) shows the applicant received counseling on 18 January 1985 to inform her that she was being discharged for alleged homosexual activities before enlistment into the service. It stated, that while the applicant was assigned to second platoon, she pulled her own weight and was in the top 10 percent in everything she did. She was referred for further counseling.
  - d. On 22 January 1985, she underwent a medical examination for the purpose of separation. The medical provider noted she was qualified for separation.
  - e. On 22 January 1985, the applicant underwent a mental status evaluation. She was cleared for administrative separation.
  - f. She received a General Counseling Form on 23 January 1985 because she was pending a discharge for alleged homosexual activities. The applicant was made aware of a packet received by her commander, and he had consulted a lawyer. The counseling noted that the applicant had no problems since she arrived and had been one of the better Soldiers in the company. She was being referred to the first sergeant (1SG) and company commander for further counseling.
  - g. On 26 January 1985, the applicant's immediate commander notified her of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 15, paragraph 15-3, for homosexuality. The commander informed the applicant of her rights.
  - h. On 28 January 1985, the applicant received two General Counseling Forms, one from her 1SG and the other from her commander, informing her she was being discharged under the provisions of AR 635-200, chapter 15. The counseling stated that a package of letters and pictures were mailed to the commander on 8 January 1985 in reference to the applicant being a lesbian. After reading the letters in the package there was enough evidence to refer her for a chapter 15 to be discharged from the U.S. Army. The commander informed her that she still had the right to talk to a lawyer.

i. On 31 January 1985, the applicant acknowledged notification of the proposed separation under the provisions of AR 635-200, chapter 15, paragraph 15-3, and its effects; of the rights available to her and the effect of waiving those rights. She chose not to submit a statement in her own behalf and requested consulting counsel.

j. On 4 February 1985, her immediate commander recommended approval of the separation under the provisions of AR 635-200, chapter 15, paragraph 15-3, by reason of homosexuality.

k. On 4 February 1985, the intermediate commander recommended approval and noted that although the applicant's actions did not meet the criteria of AR 635-200, paragraph 15-4a (discharge under other than honorable conditions for homosexuality), it was obvious from the letters and photographs that the applicant was known to be a Soldier and brought disgrace upon the Army by her actions during Christmas leave period 1984. He strongly recommended she be discharged under other than honorable conditions.

l. On 12 February 1985, the separation authority stated the case did not meet the criteria established in AR 635-200, paragraph 15-4a, and directed she be discharged with an entry level separation, uncharacterized discharge.

m. The applicant was discharged on 22 February 1985. Her DD Form 214 shows she was discharged under the provision of AR 635-200, paragraph 15-3a. She completed 3 months and 9 days of net active service this period. This form shows in:

- Item 24 (Character of Service): Uncharacterized
- Item 25 (Separation Authority) AR 635-200, Chapter 15-3A
- Item 26 (Separation Code): JRA
- Item 27 (Reenlistment Code): RE-4
- Item 28 (Narrative Reason for Separation): Engaged, attempted to engage in or solicited another to engage in homosexual act(s)

5. The applicant previously applied to the ABCMR to request that her assigned RE code be upgraded. On 30 March 1988 and in ABCMR Docket Number AC86-03912, the Board determined after thoroughly examining and considering the application and available records, the applicant failed to submit sufficient evidence to demonstrate the existence of probable material error or injustice.

6. 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.

7. 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 Don't Ask - Don't Tell" (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 to "JFF"
- characterization of the discharge to honorable
- RE code to an immediately-eligible-to-reenter category

8. 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

9. In reaching its determination, the Board can consider the applicant's petition, her service record, and her statements in light of the published guidance on equity, injustice, or clemency.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, and the reason for separation.

a. The evidence shows the applicant was in initial entry training when she was discharged from active duty due to homosexual admission or acts. Her discharge processing was conducted in accordance with applicable law and regulation in effect at the time. She completed 3 months and 9 days of active service, did not complete initial entry training, and was not awarded an MOS. Her service was uncharacterized. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. There is no error.

b. However, the Board also noted that had it not been for the policy to separate Soldiers with homosexual admissions or acts, in effect at the time, it is very likely the applicant could have completed training, specially that one of her counseling forms states "she pulled her own weight and was in the top 10 percent in everything she did."

Additionally, based upon repeal of the DADT policy, and a change in DoD policy relating to homosexual conduct, an upgrade is appropriate if 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. The Board determined there were no aggravating circumstances and as a result, determined an honorable characterization of service is appropriate.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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:	:	:	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 22 February 1985 showing in:

- item 24 (Character of Service) Honorable
- 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), in effect at the time, set policies, standards, and procedures for the separation of enlisted personnel. Chapter 15 (Separation for Homosexuality) provided homosexual conduct was grounds for separation from the Army under the criteria set forth in paragraph 15-3. This includes pre-service, prior service, or current service homosexual conduct.
  - a. Paragraph 15-3 provided that a Soldier would be discharged if one or more of the following findings had been made and approved by the separation authority: if he or she engaged in, attempted to engage in, or solicited another person to engage in a homosexual act or acts; made a statement that he or she was a homosexual or bisexual, or married or attempted to marry a person known to be of the same biological sex.
  - b. Soldiers separated in an entry level status (i.e., the first 180 days of continuous active duty) would receive an uncharacterized discharge. If the Soldier was in an entry level status, at the time of discharge, the DD Form 214 could describe their service as uncharacterized. The Secretary of the Army could, on a case-by-case basis, authorize the issuance of an honorable character of service, when such action was clearly warranted by unusual circumstances involving personal conduct and performance of duty.
3. The "Don't Ask - Don't Tell" (DADT) policy was implemented in 1993 during the Clinton administration. This policy banned the military from investigating service members about their sexual orientation. Under that policy, service members may be 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:

- Narrative reason for discharge to “Secretarial Authority”
- Separation Program Designator Code (SPD) to “JFF”
- Characterization of the discharge to honorable
- Reentry Code (RE) 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 further states that 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. 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//