

IN THE CASE OF: ██████████

BOARD DATE: 22 February 2024

DOCKET NUMBER: AR20230007953

APPLICANT REQUESTS: correction of their DD Form 214 (Certificate of Release or Discharge from Active Duty) to show their:

- court ordered name
- requested date of birth (DOB)
- receipt of an honorable character of service

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Psychiatry Progress Notes (2 pages)
- Court Order
- Letter from ██████████ Healthcare
- ██████████ Identification Card
- Social Security Card
- DD Form 214

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR2001065207 on 24 January 2002 and AR2002082625 on 17 June 2003.

2. The applicant provides a Court Order granting their name change and their record contains a Standard Form 88 (Report of Medical Examination), dated 20 April 2020, showing the requested DOB. The Board will not consider their request to correct their name and DOB, these portions of the request will be addressed administrative correction without action by the Board.

3. The applicant states they suffers from post-traumatic stress disorder (PTSD), other mental health issues, sexual assault/harassment, and that they are transgender. They further state, many veterans like them were forced to repress their gender identity and

sexual preference. They were not given the opportunity to serve 181 days to get an honorable discharge, instead they received an uncharacterized discharge.

4. On 1 May 2000, the applicant enlisted in the Regular Army.

5. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding their discharge processing, nor is there evidence of any underlying misconduct. However, their DD Form 214 shows they were initially discharged on 1 September 2000 in pay grade E-1, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 15-3B, for homosexual admission. Their service was uncharacterized, due to being in an entry level status. They completed 4 months and 1 day of net active service this period. There is no evidence they were awarded a military occupational specialty (MOS).

6. The applicant's request for an upgraded character of service was previously considered by the following Boards:

a. On 24 January 2002, ABCMR Docket Number AR2001065207 considered the applicant's request to upgrade their uncharacterized characterization to honorable. The ABCMR denied the applicant's request, the rationale being that the applicant was in an entry level status.

b. On 23 January 2013, the Army Discharge Review Board (ADRB) determined his narrative reason for separation was inequitable based on current standards and changed his narrative reason. His DD Form 214 reflects in:

- Character of Service, Uncharacterized
- Separation Authority, Army Regulation (AR) 635-200, Chapter 5-3
- Narrative Reason for Separation, Secretarial Authority

7. Soldiers are considered to be in an entry-level status and when they are within their first 180 days of active-duty service. Active duty Soldiers discharged in an entry level status without having been awarded an MOS receive an "uncharacterized" service characterization in accordance with governing regulations.

8. In 1993, the "Don't Ask – Don't Tell" (DADT) policy was implemented; under this policy the military was banned from investigating service members based on their sexual orientation. In 2011, the Under Secretary of Defense (Personnel and Readiness) issued guidance stating Boards should normally grant requests for character of service upgrades when the former Soldier's separation was due to DADT or a similar earlier policy. The guidance authorized Boards to amend the Soldier's narrative reason for discharge, modify their character of service to honorable, and change the reentry (RE) code to reflect immediate eligibility for reentry. For the above

upgrades to be warranted, the original discharge had to be based solely on DADT (or a similar policy in place prior to enactment of DADT), and no other aggravating factors in the record, such as misconduct.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the regulatory guidance found within AR 635-200 related to separations initiated within the first 180 days of military service, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

However, the Board did note the administrative notes below from the analyst of record and recommended the name and DOB should be changed on the applicant’s DD Form 214.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by administratively correcting the applicant's name and DOB to show the name and DOB listed on the court ordered name change.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.

X Donna Bush

CHAIRPERSON

Signed by: BUSH.DONNA.MARIE.1035646074

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.

ADMINISTRATIVE NOTES: administratively correct the applicant's name and DOB to show the name and DOB listed on the court ordered name change.

REFERENCES:

1. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.
 - a. Paragraph 3-4(2) Entry-Level status. Service will be uncharacterized, and so indicated in block 24 of DD Form 214, except as provided in paragraph 3-9a.

 - b. Paragraph 3-7a states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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.

c. Paragraph 3-9a Entry-level status separation. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when—

(1) Characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.

(2) HQDA on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, convenience of the Government, and Secretarial plenary authority.

(3) The Soldier has less than 181 days of continuous active military service, has completed Initial Entry Training, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment.

d. Chapter 15 (Discharge for Homosexual Conduct) stated, a Soldier will be discharged if the Soldier has made a statement that they are homosexual or bisexual, or words to that effect, unless there is a further approved finding that the Soldier has demonstrated that they are not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. A statement by the Soldier that they are a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the Soldier engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

e. Section II (Terms):

(1) Character of service for administrative separation - A determination reflecting a Soldier's military behavior and performance of duty during a specific period of service. The three characterizations are honorable, general (under honorable conditions), and under other than honorable conditions. The service of Soldiers in entry-level status is normally described as uncharacterized.

(2) Entry-level status - For Regular Army Soldiers, entry-level status is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

2, The Under Secretary of Defense (Personnel and Readiness) memorandum, dated 20 September 2011, subject: Correction of Military Records Following Repeal of Section 654 of Title 10, U.S. Code, provides policy guidance for Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs)

to follow when taking action on applications from former service members discharged under DADT or prior policies.

a. The memorandum states that, effective 20 September 2011, Service DRBs should normally grant requests, in these cases, to change the:

- narrative reason for discharge (the change should be to "Secretarial Authority" 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 and 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//