

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230008298

APPLICANT REQUESTS: the following items on his DD Form 214 (Certificate of Release or Discharge from Active Duty) to be changed:

- Item 24 (Character of Service) upgraded from uncharacterized to honorable
- Item 27 (Reentry Code) from JRB to JFF
- Item 28 (Narrative Reason for Separation) to Secretarial Authority
- Removal of any remarks on his DD Form 214 that indicates any correction from homosexual admission

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- 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 was unjust because the sole reason for it was based on homosexual admission and no other factor were alleged in his discharge so, in the interest of justice he is asks for his discharge be upgraded to honorable and all negative items to be removed.
3. The applicant enlisted in the Regular Army on 2 June 2003.
4. The applicant's service record is void of his separation packet and facts surrounding his discharge for the Board's review. Furthermore, his record does not contain any record of misconduct.
5. On 22 July 2003, he was discharged with a character of service as uncharacterized under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative

Separations), chapter 15-3b, for homosexual admission. His DD Form 214 shows he completed 1 month and 21 days of net active service this period with no lost time. His DD 214 also shows:

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

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted.

2. The Board determined the applicant's DD Form 214 should be amended, as a matter of equity, to correct his separation authority, separation code, and reentry code to reflect the entries appropriate for Secretarial Authority.

3. The Board further determined it would be inappropriate to amend his character of service from "uncharacterized" to honorable because he was still in an entry level status on the date of his discharge, and he was not awarded a military occupational specialty. The applicant's 1 month and 21 days of active service was not a long enough period of service to provide a characterization.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            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:

a. correcting the below entries on his DD Form 214 for the period ending 22 July 2003 to show the following block entries:

- Item 26 (Separation Code) "JFF"
- Item 27 (Reentry Code) "1"
- Item 28 (Narrative Reason for Separation) "Secretarial Authority"

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 amending block 24 (Character).

█

█ █

---

█

█

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 (AR) 635-5 (Separation Documents) prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), then in effect, prescribed the specific authorities (regulatory, statutory, or other directives), the reasons for the separation of members from active military service, and the separation program designators to be used for these stated reasons. The SPD code of "JRB" as shown on the applicant's DD Form 214 specified the narrative reason for discharge as "Homosexual Admission." Additionally, the SPD/Reentry Eligibility (RE) Code Cross Reference Table established RE code "4" as the proper reentry code to assign to Soldiers separated under this authority and for this reason.

4. AR 635-200, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

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. Paragraph 3-9 (Uncharacterized separation) states a separation will be described as an entry level separation if processing is initiated while a member is in entry level status.

c. Section II of the Glossary defines entry level status, for Regular Army members, is the first 180 days of active duty.

d. Paragraph 5-3 establishes policy and prescribes procedures for separating members under Secretarial plenary authority. Separation under this paragraph is the prerogative of the Secretary of the Army.

e. Paragraph 5-3 (Criteria for discharge), subparagraph (b), states the Soldier has made a statement that he/she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the Soldier has demonstrated that he/she is not a person who engages in attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(1) A statement by the Soldier that he/she is 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.

(2) The Soldier will be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence that demonstrates he/she does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. The Soldier bears the burden of rebutting the presumption. In determining whether a Soldier has successfully rebutted the presumption, some or all of the following may, be considered.

- Whether the Soldier has engaged in homosexual acts.
- The Soldier's credibility.
- Testimony from others about the Soldier's past conduct, character, and credibility.
- The nature and circumstances of the Soldier's statement.
- Any other evidence relevant to whether the member is likely to engage in homosexual acts.

5. The Under Secretary of Defense for 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 (DRB's) and Service Boards for Correction of Military/Naval Records (BCM/NR's) 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 DRB's should normally grant requests in these cases to change the:

- narrative reason for discharge to "SECRETARIAL AUTHORITY"
- SPD code to "JFF"
- character of service to "HONORABLE"
- RE code to an immediately-eligible-to-reenter category (RE-1)

b. For the above corrections or amendments 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/NR's have a significantly broader scope of review and are authorized to provide much more comprehensive remedies than are available from the DRB's, it is Department of Defense (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.

6. AR 635-8 (Separation Processing and Documents), currently in effect, prescribes the transition processing function of the military personnel system, including preparation of the DD Form 214.

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge.

b. Item 18 (Remarks) - when a DD Form 214 is administratively issued or reissued, enter "DD FORM 214 ADMINISTRATIVELY ISSUED/REISSUED ON (date)." However, do not make this entry if the appellate authority, Executive Order, or Headquarters, Department of the Army, directs otherwise.

c. The Deputy Assistant Secretary of the Army (Review Boards) (DASA (RB)), Army Review Boards Agency (ARBA), is authorized to issue or reissue DD Forms 214. Once a DD Form 214 has been issued, at the direction of the ABCMR or in other instances when appropriate, including when it is determined that the original DD Form 214 cannot be properly corrected by issuance of a DD Form 215 (Correction to DD Form 214).

//NOTHING FOLLOWS//