

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20230011076

APPLICANT REQUESTS: in effect,

- correction of his DD Forms 214 (Certificate of Release or Discharge from Active Duty) to reflect his name and gender as listed on his Order for Change of Name, 19 November 2020
- an upgrade of his character of service from "under honorable conditions (general)" to "honorable" (for both discharges in February 1992 and September 2004)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Order for Change of Name (Adult), 19 November 2020
- Physician Letter, 5 February 2021
- Certificate of Live Birth, 16 April 2021
- DD Forms 214, 3 February 1992, 10 September 2004
- Commercial Driver's License

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 Board will not address the applicant's request for a change of name or gender.

a. Neither Army Regulation 635-5 (Separation Documents) in effect at the time, nor Army Regulation 635-8 (Separation Processing and Documents), currently in effect have a provision for entering the gender marker on the DD Form 214, nor is there any block entry dedicated to the entry of a persons gender of the DD Form 214.

b. The applicant provided his Court Ordered Name change document, which is sufficient to justify correction of his DD Form 214 to show his name without action by the Board.

3. The applicant states, in effect, he left the Army with a heart full of regrets and shame. He had been sexually assaulted over and over and no one would listen or do anything to help him. He loved being in the Army. He never saw himself doing anything but serving his country. What happened changed everything that he thought was true. The military sexual trauma (MST) hovered over him like a shield of shame, and he did not become the Soldier he thought he was going to be. He was an honorable Soldier who worked and played hard. After the assault, his performance and attitude went quickly downhill.

4. The applicant enlisted in the Regular Army on 28 November 1989. He completed training and was awarded military occupational specialty 76Y (Unit Supply Specialist).

a. The applicant received counseling for/on:

- failing to report to the appointed place of duty, 12 July 1991
- Army Physical Fitness Test (APFT) failure, 24 July 1991
- inability to obtain a military driver license, 12 September 1991
- failing to obtain a military driver license, 2 October 1991
- failing to report for driver license study period, 18 October 1991
- failing to retrieve a copy of a new profile and return directly to place of duty or inform supervisor of whereabouts, 25 October 1991
- failing to return to work and failing to inform supervisor of whereabouts, 2 December 1991
- second consecutive APFT failure, 9 December 1991

b. Records show he received a mental status evaluation on 18 December 1991 as part of a physical examination for administrative discharge from the Army. No mental health problems were found which required treatment or disposition through medical channels. The applicant was cleared for any administrative and disciplinary action deemed appropriate by the command.

c. On 16 January 1992, the applicant was notified of the unit commander's intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13 for Unsatisfactory Performance (APFT Failure) with a general discharge.

d. On 16 January 1992, the applicant consulted with legal counsel. He was advised of the basis for the contemplated separation action, the possible effects of a discharge, and of the rights available to him. He understood that he may expect to encounter

substantial prejudice in civilian life if a general discharge is issued to him and that he may be ineligible for many or all benefits as a veteran under both Federal and State laws. He also understood that he may apply to the Army Discharge Review Board or the ABCMR for upgrading; however, an act of consideration by either board did not imply his discharge would be upgraded. He did not elect to submit a statement in his own behalf.

e. On 28 January 1992, the unit commander initiated action to separate the applicant under the provisions of AR 635-200, Chapter 13, Unsatisfactory Performance, APFT Failure.

f. On 28 January 1992, the separation authority waived further rehabilitation efforts, approved the applicant's discharge under the provisions of Army Regulation 635-200, Chapter 13, and directed the applicant be issued a General Discharge Certificate.

g. On 3 February 1992, the applicant was discharged accordingly in the rank/grade of Private First Class/E-3, with an under honorable conditions characterization of service. The DD Form 214 he was issued at the time shows he completed 2 years, 2 months, and 6 days of creditable active military service during this period with no time lost. He was awarded or authorized the Army Service Ribbon, the National Defense Service Medal, and the Markman Marksmanship Qualification Badge with Rifle Bar (M-16). This form also includes the following entries:

- block 24 (Character of Service) - under honorable conditions (general)
- block 25 (Separation Authority) – AR 635-200, chapter 13
- block 26 (Separation Program Designator (SPD) Code) - "JHJ"
- block 27 (Reentry CODE (RE code) - "3"
- block 28 (Narrative Reason for Separation) - unsatisfactory performance

5. After a break in service, on 27 May 2004, the applicant enlisted in the North Carolina Army National Guard (NCARNG).

a. He entered active duty for training (ADT) on 15 August 2004.

b. His record does not contain a separation packet, but it does contain a DD Form 214, which shows, he entered initial active duty for training on 15 August 2004 and he was awarded a military occupational specialty. His DD Form 214 shows he was honorably discharged under the provisions of Army Regulation 635-200, paragraph 15-3b (Homosexual Admission), after completing 26 days of net active service (Separation Code JRB, Reentry Code NA)

c. On 8 January 2005, he was issued a DD Form 214 to amend his characterization of service to reflect under honorable conditions (general).

- block 24 (Character of Service) - under honorable conditions (general)
- block 25 (Separation Authority) - Army Regulation 635-200, Paragraph 15-3b
- block 26 (Separation Program Designator (SPD) Code) - "JRB"
- block 27 (Reentry CODE (RE code) - 4
- block 28 (Narrative Reason for Separation) - Homosexual Admission

6. There is no evidence the applicant petitioned the Army Discharge Review Board for an upgrade of either of his discharges within that board's 15-year statute of limitation.

7. The applicant provides the following documentation, in addition to that was previously discussed:

- Order for Change of Name (Adult), 19 November 2020
- Physician Letter, 5 February 2021
- Certificate of Live Birth, 16 April 2021
- Commercial Driver's License

8. The Case Management Division (CMD), Army Review Boards Agency (ARBA), requested the U.S. Army Criminal Investigation Command (CID), U.S. Army Crime Records Center (USACRC), provide copies of any records on file pertaining to the applicant. The records maintained at the U.S. Army Crime Records Center include criminal investigative and military police reports that are indexed by personal identifiers such as names, social security numbers, dates, and places of birth and other pertinent data to enable the positive identification of individuals. On 11 March 2024, CID responded, stating a search of Army criminal file indexes revealed no MST records pertaining to the applicant.

9. The Board should consider the evidence and the applicant's statements in accordance with the 25 July 2018, Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and BCM/NRs regarding equity, injustice, or clemency determinations.

10. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of their character of service from under honorable conditions (general) to honorable. The applicant contends MST-related PTSD mitigates their discharge. The applicant provides documentation indicating gender reassignment and will be referred to as he/him in this opine.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 28 November 1989.
- Applicant received counseling for/on:
 - failing to report to the appointed place of duty, 12 July 1991
 - Army Physical Fitness Test (APFT) failure, 24 July 1991
 - inability to obtain a military driver license, 12 September 1991
 - failing to obtain a military driver license, 2 October 1991
 - failing to report for driver license study period, 18 October 1991
 - failing to retrieve a copy of a new profile and return directly to place of duty or inform supervisor of whereabouts, 25 October 1991
 - failing to return to work and failing to inform supervisor of whereabouts, 2 December 1991
- second consecutive APFT failure, 9 December 1991
- On 3 February 1992, the applicant was discharged under the provisions of Army Regulation 635-200, Chapter 13, with an under honorable conditions (general) characterization of service. He was assigned separation code "JHJ" and the narrative reason for separation listed as unsatisfactory performance with a reentry code of 3.

c. Review of Available Records Including Medical: The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed include the applicant's completed DD Form 149, DD Form 214, self-authored statement, ABCMR Record of Proceedings (ROP), and documents from his service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states, he left the Army with a heart full of regrets and shame. He had been sexually assaulted over and over and no one would listen or do anything to help him. He loved being in the Army. He never saw himself doing anything but serving his country. What happened changed everything that he thought was true. The military sexual trauma (MST) hovered over him like a shield of shame, and he did not become the Soldier he thought he was going to be. He was an honorable Soldier who worked and played hard. After the assault, his performance and attitude went quickly downhill.

e. Due to the period of service no active-duty electronic medical records were available for review. However, the applicant submitted hardcopy documentation of a mental status evaluation dated 18 December 1991. The report indicates there was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels. The applicant was mentally

responsible, could distinguish right from wrong, and possessed sufficient mental capacity to understand and participate intelligently as a respondent in any administrative proceedings. The applicant was psychiatrically cleared for any administrative action deemed appropriate by the command.

f. The VA electronic medical record indicates the applicant is 100% service-connected for MST-related PTSD. The record further indicates the applicant has been treated with both therapy and medication management for her symptoms related to PTSD. A C and P examination dated 6 January 2017, shows the applicant was diagnosed with PTSD due to MST. The report documented the following assault: "Veteran reported her trauma involved confiding in a male army friend about being gay. Not long after, at a barracks card party, this friend offered to walk her home, but he wanted to stop in his room first, and repeatedly asked if she was sure she is gay, and he then said that maybe 'it's because she's never been with the right man' and grabbed her and raped her. She says she told a male sergeant who told her she had been drinking and probably asked for it and shouldn't have been in the male barracks."

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant experienced MST and a subsequent behavioral health condition during military service. The applicant's experience and behavioral health condition provides mitigation of the misconduct that led to discharge.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends MST-related PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 100% service-connected for MST-related PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharge due to unsatisfactory performance including failure to report, PT failures, and not obtaining a driver's license. Given the nexus between MST-related PTSD and avoidance as well as difficulty with authority, the applicant's unsatisfactory performance is mitigated by his BH condition.

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.

a. The evidence shows the applicant served on active duty from November 1989 to February 1992. She was separated due unsatisfactory performance after twice failing the APFT and after repeated counseling. The Board found no evidence of error or injustice in her separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewer. The Board concurred with the medical reviewer's finding that the applicant was discharged due to unsatisfactory performance including failure to report, PT failures, and not obtaining a driver's license. Given the nexus between MST-related PTSD and avoidance as well as difficulty with authority, the applicant's unsatisfactory performance is mitigated by her behavioral health condition. The Board determined an upgrade of her discharge to fully honorable is appropriate.

b. The applicant served again on active duty for training from August to September 2004. The evidence shows the applicant was discharged from active duty for training due to homosexual acts and/or admission, prior to completing initial entry training and award of an MOS. She was issued a general discharge. Her discharge processing was conducted in accordance with applicable law and regulation in effect at the time. The Board found no error or injustice in her separation processing. The Board found it likely that had the command not initiated separation action against her for homosexuality, she was likely to complete initial entry training. 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 a change to the narrative reason for separation and corresponding codes 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:

In addition to the correction addressed in Administrative Note(s) below, 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 amending the applicant's two DD Forms 214 for the periods ending on 3 February 1992 and on 10 September 2004 to show:

- Character of Service: Honorable
- Separation Authority: AR 635-200
- Separation Code: JFF
- Reentry Code: 1
- 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.

ADMINISTRATIVE NOTE(S):administratively correct the applicant's DD Forms 214, by reissuing both the applicant's DD Form 214 to show their new legal name. Do not make any entry in item 18 to indicate this form was reissued or that they previously held another name.

REFERENCES:

1. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.
 - a. Chapter 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, commanders will separate a member under this Chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier. Additionally, paragraph 13-8, provides the service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.
 - b. Chapter 15 at the time, prescribed the criteria and procedures for the investigation of homosexual personnel and their discharge from the Army. When the sole basis for separation was homosexuality, a discharge under other than honorable conditions could be issued only if such characterization was otherwise warranted and if there was a finding that during the current term of service the Soldier attempted, solicited or committed a homosexual act by using force, coercion or intimidation; with a person under 16 years of age; with a subordinate; openly in public view; for compensation; aboard a military vessel or aircraft; or in another location subject to military control if the conduct had, or was likely to have had, an adverse impact on discipline, good order or morale due to the close proximity of other soldiers of the Armed Forces. In all other cases, the type of discharge would reflect the character of the Soldier's service.
3. The "Don't Ask, Don't Tell" policy was implemented in 1993 during the Clinton presidency. 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.

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

- block 24 (Character of Service) - upgrade the characterization of service to Honorable
- block 26 (Separation Program Designator (SPD) Code) - showing the SPD Code as "JFF"
- block 27 (Reentry CODE (RE code) - showing the code as RE-1
- block 28 (Narrative Reason for Separation) - changing the narrative reason for separation to "Secretarial Authority"

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

(1) the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT; and

(2) 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. 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.

4. AR 601-210 (RA and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the RA and the United States Army Reserve. Table 3-1 included a list of the RA RE codes. RE codes are numbered 1, 3, and 4.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at the time of separation, but the disqualification is waivable; those individuals are ineligible unless a waiver is granted
- RE-4 applies to Soldiers ineligible for reentry

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. At the time, this regulation:

a. identifies the SPD code of "JHJ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 13, unsatisfactory performance. Additionally, the SPD/Reentry Eligibility (RE) Code Cross Reference Table established RE code 3 as the proper reentry code to assign to Soldiers separated under this authority and for this reason.

b. identifies SPD code "JRB" as the appropriate code to assign to Soldiers separated under the provisions of chapter 15, Army Regulation 635-200, based on homosexuality. 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.

6. Army Regulation 635-8 (Separation Processing and Documents), paragraph 8-2b block 18 (Remarks) states that when a DD Form 214 is administratively reissued, enter "DD FORM 214 ADMINISTRATIVELY ISSUED/REISSUED ON (date)." However, as this case pertains to a transgender name change, do not make this entry.

//NOTHING FOLLOWS//