

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230011219

APPLICANT REQUESTS: the sister of a former service member (SM), requests an upgrade of the SM's under other than honorable conditions (UOTHC) character of service and correction of her DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), to show:

- a change in her separation program number (SPN) 257, presumably more favorable
- restoration of her rank/grade to private first class (PFC)/E-3
- the issuance of DD Form 258A (Undesirable Discharge Certificate) removed from the DD Form 214
- reissuance of a new DD Form 214

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- Statement, Post Military Life of SM
- Evidence, Records, and Additional Remarks contents page
- Correspondence, National Personnel Records Center (NPRC), dated 27 June and 28 June 2023
- DD Form 214, for the period ending 13 November 1964
- Army Service Records (157 pages), dated 18 February 1963 to 10 November 1964
- Statement of support, dated 28 April 2023
- Letters of Reference (2), dated 2 June 1977 and 9 April 1980
- Poem, "Sick Call Sweetie," by T.L.W., dated 3 July 1992
- Certificate of Live Birth, State of Wisconsin, dated 23 September 1955
- Newspaper article, Wisconsin State Journal, dated 30 November 1952
- Marriage Certificate, State of Wisconsin, 15 October 1988
- Power of Attorney, Finances and Property, dated 24 August 2016
- Statement of Incapacity, dated 1 June 2023
- Power of Attorney, Health Care, dated 16 September 2009
- Election of Hospice, dated 27 September 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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. Her sister's discharge was based on a detailed investigation which concluded her actions were indicative of a homosexual relationship. The investigation was an injustice, biased, and discriminatory. It was a deliberate attack upon the SM's character, not a representation of her ability to serve our country. Due to the harassment and humiliation her sister incurred; she chose to be discharged. Her request for an under honorable conditions (general) discharge was denied.

b. At the time of the investigation, she was a private first class/E-3 and about to receive a promotion. A memorandum dated 18 May 1964, noted "she has performed her duties in a superior manner. She demonstrates her ability in the adept manner in which she practices her skills." Unfortunately, her discharge included her reduction in rank to private/E-1, and the forfeiture of all pay and allowances. This addition appears to be an act of punishment where there were no judicial charges against her. She had previously received punishment for two minor offenses prior to the investigation.

c. Her sister was kind, caring, and supportive. She was always reachable when needed. She did the best she could with the many challenges she endured. Despite these challenges, the applicant observed her sister's strength, courage, and persistence in service as a nurse. While cleaning out her sister's apartment, the applicant found a letter, dated 14 April 2015, from U.S. Senator Tammy Baldwin, regarding the process of upgrading an Army discharge. The applicant believes it was too painful for her sister to revisit such a traumatic experience. With her sister now being 84 years old, the applicant's heart leads her to carryout the steps that were too painful for her to take.

d. The sadness she feels for what her sister experienced and has carried alone her entire life is heartbreaking. Despite this, she managed to be an independent, strong, hardworking, respectful woman. She has always shown a deep respect for the military. "Treat others with dignity and respect while expecting others to do the same." It has been a challenge to convey the injustice her sister experienced. It is never too late to correct an injustice.

3. The SM enlisted in the Regular Army – Women's Army Corps (WAC) on 18 February 1963 for a 3-year period. She was assigned as a 911.10 (Medical Specialist) at Walter Reed Army Medical Center. The highest rank she attained was PFC.

4. A DA Form 1049 (Personnel Action), dated 9 January 1964, shows the SM requested she be awarded primary military occupational specialty 911.30 (Advanced Medical Specialist). Her request was endorsed by her chain of command and subsequently granted.

5. The SM accepted non-judicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two occasions:

a. On 17 January 1964, for failure to obey a lawful general regulation, by bringing beer into the WAC billets and consuming it therein, between on or about 31 December 1963 and 1 January 1964. Her punishment consisted of seven days of extra duty and seven days of restriction.

b. On 18 March 1964, for failure to report to her appointed place of duty, on or about 17 March 1964. Her punishment consisted of forfeiture of \$10.00 pay and seven days of restriction.

6. The Criminal Investigation Division (CID) investigated allegations of "Homosexuality and Undesirable Habits of Trait and Character," during which time, multiple witness statements were taken. An Investigator's Statement, dated 20 July 1964, provides that the SM and several other enlisted women were interrogated in reference to allegations set forth in statements by witnesses. The enlisted women, to include the SM, denied any impropriety on their part, but admitted certain situations set forth by witnesses were accurate.

7. The SM underwent a psychiatric evaluation on 17 September 1964. The evaluating psychiatrist stated verbal reports indicated [the SM] had a good work record. There was a recent accumulation of evidence indicating she was a participant in homosexual activity; however, she claimed the statements were only partially true, and she denied the homosexual implications. She felt very humiliated by the accusations and felt anger about the situation as she was ready to be promoted. The psychiatrist further opined, [the SM's] sketchy developmental history was compatible with, but not diagnostic of, homosexuality.

8. On 12 October 1964, the SM's commander recommended the SM's elimination from service under the provisions of Army Regulation (AR) 635-89 (Personnel Separations – Homosexuals), paragraph 6. The commander further stated the SM habitually associated with known homosexuals, and her actions were strongly indicative of involvement in a homosexual relationship.

9. The SM consulted with counsel on 19 October 1964 and was advised of the basis for the recommended action.

a. She waived a hearing of her case by a board of officers, under the provisions of AR 635-89, and accepted discharge for the good of the service. She acknowledged understanding she may receive a UOTHC discharge and that she may be deprived of many rights and benefits as a Veteran; and that she may expect to encounter substantial prejudice in civilian life.

b. She elected to submit a statement in her own behalf, wherein she attempted to clarify facts contained in the witness statements against her. She further stated that because of the humiliation and harassment she had gone through, she wished to sign herself out. She was a human being, and she was sure she would be happier as a civilian.

10. On 3 November 1964, the SM's intermediate commander concurred with the recommended separation action and further recommended an undesirable discharge.

11. The separation authority approved the recommended separation action on 10 November 1964, and directed the issuance of a DD Form 258A.

12. The SM was discharged on 13 November 1964, under the provisions of AR 635-89, in the rank/grade of private/E-1. Her DD Form 214 confirms her service was characterized as UOTHC, with separation program number 257 (unfitness, homosexual acts). She was credited with 1 year, 8 months, and 26 days of active service.

13. The applicant provides the following:

a. In a statement regarding the SM's post-service life, the applicant states, the SM continued in nursing following her discharge. In the early 1970s, she started a relationship with someone who had two sons. She struggled with alcohol and stopped drinking in 1985. She kept on course the best she could. In 1990, she took a "daring leap," at the age of 50, and was hired at the Indiana Reformatory Health Care Center, Pendleton Correctional Facility. Her perseverance prevailed. Working and retiring from the Pendleton Correctional Facility fulfilled her desire to be of service in the tougher places of the world. Her life's work conveys the Army values she learned while serving. Unfortunately, she was not allowed the opportunity to share them while serving her country. Her time serving in the Army will always be a time of great honor and pride for her.

b. A letter from NPRC, dated 27 June 2023, and follow-up email dated 28 June 2023, show the applicant received a copy of the SM's Official Military Personnel File from NPRC.

c. 157 pages of Army Service Records are summarized, in pertinent part, in the "Facts" section of this Record of Proceedings (ROP) above.

d. In a statement of support, dated 28 April 2023, the author states, in effect:

(1) The SM began a partnership with his mother in 1970, which put him squarely under the SM's roof as her son in his formative years. His father was absent, and she stepped in. Her positive influence was profound. She shaped the man he is today. She was fair in teaching discipline and was positive and upbeat in the face of adversity. She imbued in him traits she learned in the U.S. Army. If not for her example as a positive role model, he would not have made it through his career in the U.S. Navy. She has continued to be a mentor, role model, and mother to him. She is a "rock of stability in all of life's storms." She was also a fantastic nurse.

(2) He was shocked to learn the Army terminated her military service and took away her access and eligibility to benefits because of her sexual orientation and deeply flawed military policy. Archaic policy turned away a bright, highly capable, worthy, and amazing Army nurse in-the-making. The most shocking about this is the fact that she went on conveying all the years of her life how proud she was to have served the U.S. Army. She continued loving and respecting an institution who treated her so wrongly.

(3) As a U.S. Navy Veteran, it is because of her positive influence that he became a U.S. Submarine Sailor, a career U.S. Government Executive, a Political Appointee as Special Assistant to the President of the United States and Director of White House Operations, and finally a mentor for today's Veterans. His mother has always kept the honor of her service in her heart and mind; it is time to restore the full honor, respect, and privilege owed to a U.S. Army Veteran.

e. In two letters of reference, dated 2 June 1977 and 9 April 1980, the authors attest to the SM's excellence as a nurse under their employment. Due to her loyalty, professionalism, trustworthiness, and dependability, they offered the highest recommendation for future employment.

f. A poem, entitled "The Sick Call Sweetie," dated 3 July 1992, was written in her honor and describes her efforts as a nurse.

g. The applicant's Birth Certificate, dated 23 September 1955, her mother's marriage announcement, dated 30 November 1952, and her Marriage Certificate, dated 15 October 1988, are provided to establish her relationship as sister to the SM.

h. A Power of Attorney (POA), dated 24 August 2016, establishes the applicant as the SM's POA for finances and property.

i. A POA for Health Care, dated September 2009, establishes the applicant as the POA for the SM, and an attached Statement of Incapacity, dated 1 June 2023, certifies that the SM meets the statutory definition of incapacity.

j. An Election of Hospice Benefit, dated 27 September 2023, shows an election for hospice care related to the F\SM's terminal illness.

14. The Don't Ask Don't Tell (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.

15. The DADT Repeal Act of 2010, 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.

16. The Under Secretary of Defense for Personnel and Readiness memorandum, dated 20 September 2011 [Stanley Memorandum], subject: Correction of Military Records Following Repeal of Section 654 of Title 10, USC, 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.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, 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 SM was separated for under the provisions of AR 635-89, in the rank of private/E-1. Her DD Form 214 confirms her service was characterized as UOTHC, with separation program number 257 (unfitness, homosexual acts). She was credited with 1 year, 8 months, and 26 days of active service. 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. However, the Board also noted that, 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 a change to the character of service, narrative reason for separation and corresponding codes, as well as restoration of her former grade of PFC, 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 amending the applicant's DD Form 214 for the period ending 9 November 2005 to show:

- items 4a (Grade, rate or Rank) and 4b (Pay Grade): PFC/E-3, effective the date of separation
- 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, USC, 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. AR 635-89, in effect at the time, prescribed the criteria and procedures for the separation of homosexual personnel from the Army.

a. Homosexual personnel, irrespective of sex, were not permitted to serve in the Army in any capacity. Prompt separation was mandatory. The regulation defined three classes of homosexuality:

- class I - involving an invasion of the rights of another person, as when the homosexual act is accompanied by assault or coercion, or where the person involved does not willingly cooperate or consent
- class II - cases in which homosexual military personnel have engaged in one or more homosexual acts not within the purview of class I
- class III - consists of homosexual individuals who have not engaged in homosexual acts while in active military service

b. When investigation clearly indicated an individual was a class II homosexual, he/she was be afforded the opportunity to accept a discharge. If not accepted, the commander was to forward the case to the general court-martial convening authority for action. Action could include retention, appropriate action under the UCMJ, or separation.

c. The separation approval authority determined the character of service, but honorable or general discharges were normally only awarded in cases where the Soldier had disclosed his/her homosexual tendencies when entering the service, if the Soldier served over an extended period of time, or if he/she performed in an outstanding or heroic manner. Upon discharge determination, the Soldier was reduced to private/E-1.

3. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Paragraph 5–3 (Secretarial plenary authority) provides that:



a. 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.

b. 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.

4. 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.

5. The DADT Repeal Act of 2010 (Title 10, USC, 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.

6. 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, USC, provides policy guidance for Service DRBs and Service BCM/NRs to follow when taking action on applications from former service members discharged under DADT or prior policies.

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

- item 24 (Character of Service) - "Honorable"
- item 25 (Separation Authority) - "Army Regulation 635-200, paragraph 5-3"
- item 26 (Separation Code) - "JFF"
- item 27 (Reenlistment Code) - "RE-1"
- item 28 (Narrative Reason for Separation) - "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 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, 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. It further directed that the DD Form 214 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//