

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]  
[REDACTED]

BOARD DATE: 9 July 2024

DOCKET NUMBER: AR20230013334

APPLICANT REQUESTS:

a. In effect, the correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) by amending the following:

- Item 1 (Name (Last, First, Middle)) – delete current last name and replace with the last name listed on her first DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States), dated 24 October 1980
- Item 25 (Separation Authority) – replace the current entry with Secretarial Authority
- Item 26 (Separation (SPD) Code) – remove current entry and replace with "JFF" (Secretarial Authority SPD code)
- Item 27 (Reentry (RE) Code) – change current entry to "RE-1" (fully eligible for reentry)
- Item 28 (Narrative Reason for Separation) – delete current entry and replace with "Directed by Service Secretary"

b. Permission to appear personally before the Board.

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

- Online 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 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, in accordance with the new Department of Defense policy, she would like to Board to revise her DD Form 214 as outlined in her request.

a. The applicant notes that everyone is likely aware of the policy changes that have occurred in 1993 and 2010, and, had they been in effect while she served on active duty, she would have continued the military career that she loved.

b. With her requested corrections, the applicant will be able to apply for a home loan, seek Department of Veterans Affairs (VA) health care and benefits, and qualify for burial without having to disclose her personal information.

c. With regard to the last name listed on her DD Form 214, the applicant points out that she divorced her former husband in 1989, and, in 1994, she reverted back to her maiden name.

3. A review of the applicant's service records reveal the following:

a. On 20 November 1980, the applicant enlisted into the Regular Army for 4 years; on her DD Form 4, her last name is V\_\_. Upon completion of initial entry training and the award of military occupational specialty 05k (Electronic Warfare/Signal Intelligence, Non-Morse Interceptor/Analyst), orders assigned to Japan, and she arrived at her new unit, on 27 November 1981.

b. On 27 September 1983, the applicant requested the Army change her records to reflect her married name (H\_\_).

c. Through reenlistments, she continued her service in both the continental United States and overseas. On 1 July 1988, orders assigned the applicant to a military intelligence brigade in Pensacola, FL. On 19 June 1990, the U.S. Army Criminal Investigation Command (CID) received a report alleging the applicant had been involved in homosexual relationships; upon questioning, the applicant admitted to the relationships.

d. On 25 June 1990, the applicant's commander advised her, via memorandum, that he was initiating separation action against her, per chapter 15 (Separation for Homosexuality), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), because she had acknowledged having homosexual relationships over that past 10 years. The commander stated he would be recommending her for an honorable discharge.

e. On an unknown date prior to 2 July 1990, the applicant consulted with counsel and affirmed, in writing, that counsel had informed her of the basis for her pending separation action. The applicant elected to waive consideration by, and her personal

appearance with counsel before, an administrative separation board; the applicant additionally indicated she would be providing statements in her own behalf. The applicant's available service record contains a multi-tabbed document that includes the applicant's awards, letters of appreciation and commendation, evaluation reports, and training completion certificates.

f. On 2 July 1990, the applicant's commander forwarded his separation recommendation to the separation authority. The commander outlined his basis for separation and stated, "[Applicant] has been an outstanding Soldier, with the exception of her homosexual problems. She has provided almost 10 years of faithful service to the US Army, always striving to do her best. Therefore, I have recommended an honorable discharge."

g. On 12 July 1990, the separation authority approved the commander's separation recommendation and directed the applicant's honorable discharge. On 20 July 1990, orders separated the applicant accordingly.

h. The applicant's DD Form 214 shows she completed 9 years, 8 months, and 1 day of net active duty service. The report additionally reflects the following:

(1) Item 1 shows the applicant's married name (H\_\_).

(2) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Army Service Ribbon
- Army Achievement Medal (3rd Award)
- Overseas Service Ribbon
- Army Good Conduct Medal (3rd Award)
- Noncommissioned Officer Professional Development Ribbon w/Numeral "2"
- Army of Occupation Medal
- Two marksmanship qualification badges

(3) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200, paragraph 15-3b (Separation for Homosexuality – Criteria – Soldier States He or She is Homosexual)
- Item 26 (Separation (SPD) Code) – "JRB"
- Item 27 (Reentry (RE) Code) – RE-4 (Non-waivable disqualification for reentry)
- Item 28 (Narrative Reason for Separation) – "Admission of Homosexuality/Bisexuality"

4. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

5. The ABCMR does not grant records correction requests solely to help applicants qualify for VA benefits; however, in reaching its determination, the Board can consider the applicant's petition, her evidence and assertions, and her service record in accordance with published equity and injustice guidance.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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

a. The evidence shows an investigation determined the applicant had been involved in homosexual relationships after she admitted to the relationships. As a result, her chain of command, initiated separation action against her for homosexuality. The Board found no error or injustice in her separation processing. The Board also considered the change in policy upon the repeal of DADT. The Board found no underlying misconduct associated with the applicant's separation under DADT. Based on a preponderance of evidence, and the repeal of DADT, the Board determined that a correction to the authority and narrative reason for her separation was appropriate.

b. The applicant initially enlisted on 20 November 1980 and served under the last name V\_\_. On 27 September 1983, the applicant requested the Army change her records to reflect her married name H\_\_. She served under the new name until she was separated on 20 July 1990. Her DD Form 214 correctly listed the name she used at the time of separation. The applicant now contends that she divorced her former husband in 1989, and, in 1994, she reverted back to her maiden name. However, she provides no post-discharge court-order confirming the name change. Therefore, the Board determined there is insufficient evidence to change the last name listed on her DD Form 214.



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 635-200, in effect at the time, prescribed policies and procedures for the administrative separation of enlisted personnel. Chapter 15 (Discharge for Homosexual Conduct) stated homosexual conduct was incompatible with military service and provided sufficient grounds for separation. Commanders could consider preservice, prior service, and current service homosexual conduct when determining if a Soldier should be separated.

a. The regulation defined a homosexual as a person, regardless of sex, who engaged in, desired to engage in, or intended to engage in homosexual acts. A homosexual act meant bodily contact, actively or passively permitted, between members of the same sex for sexual satisfaction.

b. When the sole basis for separation was homosexuality, separation authorities could issue a character of service that reflected the quality of the Soldier's service; the exception was for Soldiers who had performed homosexual acts using force, coercion, or intimidation; the homosexual acts were performed with a person under 16 years of age; the acts were committed with a subordinate; or the acts were done in public view or for compensation. Under those circumstances, the Soldier was to receive an under other than honorable conditions discharge.

3. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

a. Concerning item 1, the regulation instructed DD Form 214 preparers to enter the name in all capital letters.

b. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For the RE code, preparers were to use the code associated with the SPD, as listed on the SPD/RE Code Cross Reference Table.

4. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 15-3b, AR 635-200 were to receive an SPD of "JRB" and have, "Admission of Homosexuality/Bisexuality" entered in item 28 of their DD Form 214.

5. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers; the table shows the SPD code and its corresponding RE code. The SPD code of "JRB" has a corresponding RE code of "4."

6. The Army implemented the Don't-Ask-Don't-Tell policy in 1993 during the Clinton administration; this policy banned the military from investigating service members about their sexual orientation. Service members could 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.

7. A memorandum by 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).

a. The memorandum states that, effective 20 September 2011, Service DRBs and BCM/NRs should normally grant requests for upgrade of an adverse character of service and make the following changes:

- change narrative reason for separation to "Secretarial Authority" and SPD code to "JFF"
- revise character of service to honorable, if appropriate
- amend RE code to an immediately-eligible-to-reenter (i.e. RE-1)

b. The memorandum recognized the following:

(1) While BCM/NRs have a significantly broader scope of review and have the authorization to provide much more comprehensive remedies than are available from the DRBs, it is nonetheless the Department of Defense (DOD) policy that broad, retroactive corrections of records from applicants discharged under "Don't-Ask-Don't-Tell" [or prior policies] are not warranted. Although "Don't-Ask-Don't-Tell" is repealed effective 20 September 2011, it was the law and reflected the view of Congress during the period it was the law.

(2) Similarly, DOD regulations implementing various aspects of "Don't-Ask-Don't-Tell" (or prior policies) were valid regulations during those same or prior periods. Thus, Boards should not consider the issuance of a discharge under "Don't-Ask-Don't-Tell" (or prior policies), by itself, as constituting an error or injustice sufficient to invalidate an otherwise properly taken discharge action.

8. AR 15-185, currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//