

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 August 2024

DOCKET NUMBER: AR20230014050

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release of Discharge from Active Duty) ending on 20 March 2003 to show a different reentry eligibility (RE) code
- personal appearance before the board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 for the period ending 20 March 2003

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 RE code reflecting a bar to reenlistment should be changed because Don't Ask Don't Tell (DADT) is no longer the law. The injustice was discovered in 2011 when DADT was overturned, and homosexual admission no longer prevented service or reenlistment.
3. Following service in the Regular Army (915 October 1986 to 13 October 1988), the applicant enlisted in the U.S. Army Reserve (USAR) on 3 August 2000.
4. The applicant entered active duty on 7 March 2003. He was assigned to Fort Bragg, NC.
5. The applicant's separation proceedings are not available. However, his DD Form 214 for the period ending 20 March 2003 shows he entered active duty on 7 March 2003 in support of Operation Enduring Freedom and was discharged on 20 March 2003. The DD Form 214 further shows in:

- block 24 (Character of Service), honorable
- block 25 (Separation Authority), Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), paragraph 15-3b
- block 26 (Separation Code), JRB
- block 27 (Reentry Code), RE-4
- block 28 (Narrative Reason for Separation), homosexual admission

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 relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's separation packet is not available for review. His DD Form 214 shows he was honorably discharged from active duty due to homosexual admission. Since the applicant's discharge was based solely on DADT or a similar policy in place prior to enactment of DADT, and since there were no aggravating factors in the available record, such as misconduct (given that he received an honorable discharge), the Board determined his narrative reason for separation and corresponding codes should be upgraded in accordance with DOD policy guidance.

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 amending the applicant a DD Form 214 for the period ending 20 March 2003, as follows:

- Separation Authority: AR 635-200
- Separation Code: JFF
- Reentry Code: 1
- Narrative Reason for Separation: Secretarial Authority

8/8/2024

X █

CHAIRPERSON
█

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 635-200, chapter 15 (Discharge for Homosexual Conduct), in effect at the time, governed the separation of Soldiers for homosexual conduct. The regulation states that separation was required when, among other circumstances, the Soldier stated that he or she was homosexual or bisexual.

3. 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, United States 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.

4. 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" (Separation Program Designator (SPD) Code JFF)
- characterization of the discharge to honorable
- the RE code to an immediately eligible to-reenter category (RE Code 1)

5. 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

6. 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 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 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.

7. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a

military record. Paragraph 2-11 states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//