

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240002401

APPLICANT REQUESTS:

- upgrade of her under honorable conditions (general) discharge and narrative reason for separation
- remove "unsuitability-homosexual tendencies" from block 18 (Remarks) of her DD Form 214 (Report of Separation from Active Duty), 20 July 1976

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

- DD Form 149 (Application for Correction of Military Record), 27 February 2024
- DD Forms 214, for the periods ending 3 January 1974 and 20 July 1976

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 her discharge should be upgraded under current standards.
3. She provides copies of her DD Forms 214 for two periods of service.
4. A review of the applicant's service records show the following:
 - a. On 31 March 1972, she enlisted in the Regular Army. She was honorably discharged for immediate reenlistment on 3 January 1974.
 - b. On 4 January 1974 she reenlisted for 5 years. She attained the rank of sergeant.
 - c. On 28 March 1975, she accepted nonjudicial punishment (NJP) for being absent without leave from 22 March 1975 to 25 March 1975.

d. On 10 April 1975, she accepted NJP for failure to go at the time prescribed to her appointed place of duty.

e. On 10 June 1976, her commanding officer notified her of his intent to initiate proceedings to discharge her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-5(b)5 by reason of homosexuality, and advised her of her rights.

f. On the same date, her commanding officer recommended she appear before a board of officers to determine whether she should be discharged.

g. On 13 July 1976, she elected her rights, and acknowledged she understood she could receive an under honorable conditions (general) discharge, and could expect to encounter substantial prejudice in civilian life.

h. On 15 July 1976, the separation authority approved her discharge with an under honorable conditions (general) characterization of service.

i. On 20 July 1976, she was discharged. Her service was characterized as under honorable conditions (general), her DD Form 214 shows:

- the authority as Army Regulation 635-200, paragraph 13-5b(5)
- net active service this period-2 years, 6 months, and 14 days
- prior active service-1 year, 9 months, and 3 days
- in block 18 "unsuitability-homosexual tendencies"

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon thorough review of the applicant's petition and available military records, the Board determined that, under new guidance following the repeal of Don't Ask, Don't Tell, there is sufficient evidence to warrant the removal of the term "unsuitability-homosexual tendencies" from block 18 (Remarks) of her DD Form 214. The Board recognized that while the applicant was discharged under Army Regulation (AR) 635-200, paragraph 13-5b(5), the regulatory guidance at the time no longer aligns with current standards and intent. As a result, this correction is deemed appropriate to ensure consistency with updated policies.

2. However, after examining the circumstances surrounding the applicant’s service, the Board found insufficient evidence to warrant an upgrade from an under honorable conditions (general) discharge to an honorable discharge. The records indicate that the applicant went AAWOL during her second enlistment, which was a key factor in her discharge for unsuitability. Given her service history, the Board determined that her general discharge characterization is appropriate, as she did not meet the required standards of conduct and performance expected of Army personnel to receive an honorable discharge. Consequently, the Board granted partial relief, approving the removal of “unsuitability-homosexual tendencies” from her DD Form 214 but denying the request for an upgrade to an honorable discharge.

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 to show removal of "unsuitability-homosexual tendencies" from block 18 (Remarks) of her DD Form 214 dated, 20 July 1976.
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 upgrade of her under honorable conditions (general) discharge and narrative reason for separation.



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 (Personnel Separations – Enlisted Personnel) in effect as of 1973, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.
 - 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 13-5b(5). Separation for homosexuality (homosexual tendencies, desires, or interest but without overt homosexual acts). This paragraph was applicable to personnel who had not engaged in a homosexual act during military service, but who had a verified record of preservice homosexual acts. A General Discharge Certificate was normally directed under this paragraph.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) in effect as of 1982, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 15 [now obsolete and rescinded] provided military members would be separated for homosexuality. 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.

b. Chapter 5-3. Secretarial Authority. The separation of enlisted personnel for the convenience of the Government is the prerogative of the Secretary of the Army (SA). Except as delegated by this regulation or by special DA directives, it will be accomplished only by the SA's authority. The separation of any enlisted member of the Army under this authority will be based on an SA determination that separation is in the best interests of the Army.

4. The "Don't Ask, Don't Tell" policy was implemented in 1993 during the Bill 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.

5. 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.C, 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 Don't Ask Don't Tell (DADT) or prior policies. The memorandum states that, effective 20 September 2011, Service DRBs should normally grant requests, in these cases, to change the:

- narrative reason for discharge to "Secretarial Authority" (Separation Program Designator (SPD) Code JFF))

- characterization of discharge to honorable
- authority to "Army Regulation 635-200, paragraph 5-3"
- separation program designator code to "JFF"
- reentry (RE) code to an immediately-eligible-to-reenter category

a. 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.

b. 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.

6. Under Secretary of Defense memorandum for Senior Pentagon Leadership, Defense Agency and DoD Field Activity Directors, dated 11 December 2023, Subject: Actions to Address Potential Injustices within Service Records of Former Service Members Discharged Based on Sexual Orientation. The memorandum states that:

a. In 2011, upon the repeal of the DADT statute, which was codified in Title 10 U.S. Code § 654, the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) Memorandum, "Correction of Military Records Following Repeal of Section 654 of Title 10, U.S. Code," September 20, 2011, directed the Military Department Review Boards to affirmatively address any potential injustices arising from DADT or similar policies. However, many potentially eligible veterans have not yet filed applications for relief. In addition to existing initiatives that encourage Service members to seek relief through the Military Department Review Board processes, the Department is taking affirmative steps to ensure all potentially eligible Service members discharged during DADT are given due consideration by the appropriate Review Board pursuant to the statutory authority in section Title 10 U.S. Code §1552(b).

b. To that end, I direct the USD(P&R) to provide further implementing guidance on the process established by this memorandum to identify those former Service members

who may be eligible for relief related to their discharge. Once such cases are identified, the Secretaries of the Military Departments will review the identified military personnel records, and where they believe those records may contain an error or injustice warranting correction, submit a request for relief on behalf of that group of former Service members to their respective Board for Correction of Military/Naval Records (BCM/NRs). Once submitted to the appropriate BCM/NR, the personnel records of each Service member will be individually reviewed and granted relief, as appropriate, on a case-by-case basis.

c. For the purpose of this proactive review only, and to protect the privacy of individuals whose records are being reviewed and ensure a quick, uniform process, the Secretaries of the Military Departments shall temporarily suspend provisions of policies or regulations that require administrative or processing steps for group applications pursuant to this memorandum beyond the BCM/NR's panel review, to include notifications to individual group members, opt-out requirements, pre-and post-BCM/NR actions and notifications to individual group members, and exhaustion of administrative remedies requirements for group applications prior to applying to the BCM/NR. Furthermore, for purposes of the BCM/NR review, the date of discovery of the injustice shall be the date the DoD refers the former Service member's records to the appropriate Military Department for possible inclusion in a group application under 10 U.S. Code § 1552(b). Temporary suspension of these policies or regulations is applicable only to group applications pursuant to this memorandum and should not impact the ability of an individual group member to seek individual BCM/NR review.

d. The USD(P&R) is delegated the authority to issue, in coordination with the Secretaries of the Military Departments, DoD-wide implementing policy on this matter outside of the Department's normal issuance process established by DoD Instruction 5025.01, "DoD Issuances Program," including the authority to amend this memorandum in whole or in part.

//NOTHING FOLLOWS//