

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240002846

APPLICANT REQUESTS: in effect, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period 31 January 1990 based on repeal of Don't Ask, Don't Tell (DADT) as follows:

- change item 24 (Character of Service) to "Honorable."
- change item 26 (Separation Code) to "JFF."
- change item 27 (Reentry Code) to "1."
- change item 28 (Narrative Reason for Separation) to "Secretarial Authority."

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214, 31 January 1990

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, she is requesting that her discharge be upgraded. She should have never been discharged under DADT policy. She knows that circumstances have changed since her discharge, and she asks that it be upgraded.
3. A review of the applicant's service records show:
 - a. On 29 July 1987, she enlisted in the Regular Army.
 - b. A Report of Mental Status Evaluation, dated 20 November 1989, shows the applicant was seen on 15 November 1989 for psychiatric evaluation. She revealed a long-standing history of alcohol abuse, depression, and past family problems. Her depressed mood and alcohol problems continued, and she verbalized that she lacked

motivation for further military duty. The Psychiatric Clinical Nurse Specialist noted that it would be in the best interest of the U.S. Army and the applicant to discharge her from the military, if deemed appropriate by the Command.

c. DA Form 751 (Telephone or Verbal Conversation Record), dated 7 December 1989, shows the applicant's commander related to the applicant that she was not a candidate for any chapter action that he was aware of and suggested that she read AR 635-200 (Personnel Separations – Enlisted Personnel) to know about chapter actions. Her commander stated that her duty performance was commendable and not in the least unsatisfactory.

d. On 8 December 1989, the applicant submitted a statement which shows, in pertinent part, she admitted to having engaged in several homosexual acts during the period of September 1988 to the present date. She stated that the sexual acts were a common part of her customary behavior, and she had no intention of changing her sexual preference. She was a committed married lesbian and she liked herself just the way she was. Her main reason for turning herself in had a great deal to do with her desire to be reunited with her civilian wife.

e. A Report of Mental Status Evaluation, dated 21 December 1989, shows the applicant was referred for evaluation concerning her admission that she was a practicing homosexual, who was married to another woman in the Continental United States. The applicant stated that it was becoming increasingly difficult to function in an environment that did not recognize her sexual preference. The Behavioral Science Noncommissioned Officer recommended administrative efforts be directed towards discharge of the applicant and that she be treated in the interim for an apparent alcohol problem, which he felt may influence her judgment/objectivity. She was psychiatrically cleared for any action deemed necessary by the Command.

f. A Report of Mental Status Evaluation, dated 9 January 1990, shows she had the mental capacity to understand and participate in the proceedings.

g. A memorandum dated 9 January 1990, shows the applicant's medical records were reviewed under provision of AR 40-501 (Medical Services – Standards of Medical Fitness), and determination was made that a medical examination was not required prior to separation from service.

h. On 11 January 1990, the applicant's immediate commander notified her of his intent to separate her under the provisions of AR 635-200, chapter 15, by reason homosexuality. The specific reason for the proposed separation was the applicant's admission of homosexuality to the commander and written confirmation of the same. The commander informed the applicant that he was recommending she receive an

honorable discharge and he explained her rights. She acknowledged receipt of the notification the same day.

i. On 11 January 1990, the applicant acknowledged she was advised of the basis for the contemplated separation action; she acknowledged she was informed of the rights available to her and the effect of waiving those rights. She elected not to submit a statement in her own behalf. She acknowledged that she understood that she may expect to encounter substantial prejudice in civilian life if a general discharge were issued to her.

j. On 12 January 1990, the intermediate recommended approval of the separation with characterization of service as honorable.

m. On 17 January 1990, the separation authority approved the applicant's discharge under the provisions of AR 635-200, chapter 15, paragraph 15-1, with characterization of her service as general, under honorable conditions, and stated the applicant would not be retained in the Individual Ready Reserve.

l. The applicant was discharged on 31 January 1990 under the provisions of AR 635-200, chapter 15. Her service was characterized as under honorable conditions. She completed 2 years, 6 months, and 2 days of net active service during this period. Her DD Form 214 shows in:

- Item 26 (Separation Code): JRB
- Item 27 (Reentry Code): 4
- Item 28 (Narrative Reason for Separation): Admission of Homosexuality or Bisexuality

4. There is no indication she petitioned the Army Discharge Review Board for an upgrade of her discharge within that Board's 15-year statute of limitation.

5. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant was discharged for homosexuality in accordance with governing regulation at the time. The Board found no aggravating circumstances in the form of misconduct in the applicant's records. Based upon repeal of DODT, a change in DoD policy relating to

homosexual conduct, the Board concluded that making the changes to the applicant's DD Form 214 was 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 a new DD Form 214 for the period ending 31 January 1990 showing in:

- 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 Authority2.

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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, 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 at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-3 (Secretarial Plenary Authority) provided that:

(1) 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.

(2) 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.

b. Chapter 15 (Separation for Homosexuality) stated homosexuality was incompatible with military service and provided for the separation of members who engaged in homosexual conduct or who, by their statements, demonstrated a tendency to engage in homosexual conduct.

3. The "Don't Ask - Don't Tell" (DADT) policy was implemented in 1993 during the Clinton administration. 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.

4. 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.

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

- item 24 to "Honorable"
- item 25 to "Army Regulation 635-200, paragraph 5-3"
- item 26 to "JFF"
- item 27 to "1"
- item 28 to "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 and there were no aggravating factors in the record, such as misconduct. 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.

c. 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 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.

//NOTHING FOLLOWS//