

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS  
RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240003192

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:

- item 12b (Separation Date This Period): constructive active duty credit for the remaining period of service or at a minimum 2 years of service
- item 26 (Separation Code) to "JFF"
- item 27 (Reentry Code) to "RE-1J"
- item 28 (Narrative Reason for Separation) to "Secretarial Authority" or "Convenience of the Government"

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

- DD Form 149 (Application for Correction of Military Record)
- Cover letter from the Veterans Consortium, 19 March 2024
- DD Form 214, for the period ending 24 October 2006

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 constructive service to show two years of active duty for purposes of eligibility for Department of Veterans Affairs healthcare and other benefits. She would not have been separated under current law now that Don't Ask, Don't Tell (DADT) has been repealed and she would have continued to serve her country honorably. She states that her service was unjustly terminated due to the DADT policy that was in place at the time of her discharge. She respectfully requests the Board to correct the injustice of having her military career end early due to DADT.
3. A review of the applicant's service record shows:
  - a. She enlisted in the Regular Army on 4 October 2005.

b. On 18 August 2006, the applicant received two developmental counseling forms, informing her she was being considered for separation due to homosexual conduct.

c. On 18 August 2006, she was flagged for elimination.

d. On 5 September 2006, the applicant completed a sworn statement, which states in effect, on 2 August 2006 she told her squad leader, sergeant N\_, that she was homosexual and that she wished to get out of the military to live that kind of lifestyle.

e. On 25 September 2006, the applicant's immediate commander notified her of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 15, for homosexual conduct. The commander listed the following reason for the proposed separation: She had a propensity to engage in homosexual acts. The commander informed the applicant that he was recommending she receive an honorable discharge and he explained her rights.

f. On 25 September 2006, 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 waived counsel and elected to submit statements in her own behalf.

g. On 25 September 2006, the immediate commander formally initiated separation under the provisions of AR 635-200, chapter 15, and recommended the applicant receive an honorable discharge. The intermediate commander echoed this recommendation.

h. The Brigade Judge Advocate reviewed the recommendation for separation and found it to be legally sufficient.

i. The separation authority approved the recommended discharge and directed the applicant be issued an honorable discharge, and stated the applicant was ineligible for transfer to the Individual Ready Reserve.

j. The applicant was discharged on 24 October 2006. Her DD Form 214 shows she was discharged under the provisions of AR 635-200, paragraph 15-3b, by reason of homosexual conduct (admission). Her service was characterized as honorable. She completed 1 year and 21 days of active service. This form also shows in:

- item 12 (Separation Date This Period): 24 October 2006
- item 26 (Separation Code): JRB
- item 27 (Reentry Code): 4

4. 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:**

1. After reviewing the application and all supporting documents, 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 review based on law, policy, regulation, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant was discharged from active duty due to homosexual conduct - admission. The Board found no error or injustice in her separation processing. However, the Board found based upon repeal of the "Don't Ask, Don't Tell" policy and a change in Department of Defense policy relating to homosexual conduct, an upgrade is appropriate if the original discharge was based solely on homosexuality or a similar policy in place prior to enactment of "Don't Ask, Don't Tell" and there were no aggravating factors in the record. The Board determined there were no aggravating circumstances and as a result, determined a change to the characterization of service, narrative reason for separation, and corresponding codes is appropriate.

2. The Board determined as it relates to the applicant's request for constructive active duty credit for the remaining period of service or at a minimum 2 years of service, there was no basis to grant relief. The Board concluded the applicant did not serve on active duty for that period of service and there was no evidence to show she would have continued on active duty if not separated for homosexual conduct. Therefore, the Board denied this portion of her request.

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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 24 October 2006 to show in:

- 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

2. The Board further determined that 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 granting constructive service credit.

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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 (AR) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set policies, standards, and procedures for the separation of enlisted personnel. Chapter 15 (Discharge for Homosexual Conduct) provided homosexual conduct was grounds for separation from the Army under the criteria set forth in paragraph 15-3. This includes preservice, prior service, or current service homosexual conduct. Paragraph 15-3b stated, a Soldier would be discharged if the Soldier has made a statement that he/she is a homosexual or bisexual, or words to that effect, unless there is further approved findings that the Soldier has demonstrated that he/she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.
3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 15-3b, for homosexual conduct (admission) would receive a separation code of "JRB."
4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.
  - RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
  - RE code "1J" applies to U.S. Air Force and persons eligible to reenlist, who are considered qualified for enlistment if all other applicable criteria are met.
  - RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
  - RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.
5. 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.

6. 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:

- narrative reason for discharge (the change should be to "Secretarial Authority")
- SPD Code to JFF
- characterization of the discharge to honorable
- RE code to an immediately-eligible-to-reenter category

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//