

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240003949

APPLICANT REQUESTS: in effect, upgrade of her entry level status (ELS) discharge, based on the repeal of Don't Ask, Don't Tell (DADT).

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

- DD Form 149 (Application for Correction of Military Record), 1 February 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 22 March 1988

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 did not submit a statement in support of her request; however, she indicates mental health issues are related to her request.
3. A review of the applicant's service record shows the following:
 - a. She enlisted in the Regular Army on 28 October 1987, for a 4-year period.
 - b. On 26 January 1988, she submitted a DA Form 2823 (Sworn Statement) stating in effect, she was a homosexual and had engaged in homosexual acts after enlisting in the military. Additionally adding, she felt uncomfortable living with females, having to perform military duties and being close to females affected her abilities to perform those duties.
 - c. On 3 March 1988, her immediate commander notified her of the intent for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 15 (Separation for Homosexuality). Further recommending she receive an under honorable conditions (general) discharge.

d. She was advised by consulting counsel of the basis for the contemplated action to separate her and its effects; of the rights available to her; and the effects of any action by her waiving her rights.

e. On 8 March 1988, her intermediate commander recommended approval of the proposed action for separation.

f. On 16 March 1988, the separation authority approved separation and further directed issuance of an ELS (Uncharacterized) discharge.

g. Her DD Form 214 shows she was discharged on 22 March 1988, under the provisions of AR 635-200, Chapter 15, for admission of homosexuality/bisexuality. Her service was uncharacterized with separation code JRB and reenlistment code 4. She was credited with 4 months and 25 days of net active service this period. She was not awarded a military occupational specialty.

4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to her uncharacterized discharge. She contends the policies of "Don't Ask Don't Tell" (DADT) and the experience of mental health conditions are related to her request. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 28 October 1987; 2) On 26 January 1988, the applicant submitted a Sworn Statement stating, in effect, she was a homosexual and had engaged in homosexual acts after enlisting in the military; 3) On 22 March 1988, the applicant was discharged, Chapter 15-for admission of homosexuality/bisexuality. Her service was determined to be uncharacterized, and she was credited with 4 months and 25 days of active service. She was not awarded a military occupational specialty.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts the policies of DADT and the experience of mental health conditions are related to her request to change her uncharacterized discharge. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and she does not receive any service-connected disability for a mental health condition.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had been administratively separated solely as a result of her disclosure of her sexual orientation during the period of DADT. However, there is insufficient evidence the applicant was experiencing a mental health condition at the time of her active service, which is related to her request for a change to her uncharacterized discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts she was administratively separated as a result of her disclosure of her sexual orientation. There is sufficient evidence the applicant disclosed her sexual orientation during her initial training, and she was administratively separated in accordance with DADT policy. The applicant also asserts mental health conditions are related to her request for a change to her uncharacterized discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was administratively separated as a result of her disclosure of her sexual orientation. There is sufficient evidence the applicant disclosed her sexual orientation during her initial training, and she was administratively separated in accordance with DADT policy. The applicant also asserts she experienced mental health conditions during her active service, which is related to her request for a change to her uncharacterized discharge.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence the applicant disclosed her sexual orientation during her initial training, and she was administratively separated in accordance with DADT policy. However, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition during active service.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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. The governing regulation states that a separation initiated while a Soldier is in entry-level status will be described as an entry-level separation with uncharacterized service. Upon review of the applicant's petition, available military records, and medical review, the Board concurred with the advising official opinion of the Agency Medical Advisor, finding sufficient evidence that the applicant was administratively separated solely due to disclosure of her sexual orientation during her period of service.

However, the advising official determined insufficient evidence exists to support that the applicant was experiencing a mental health condition during active service that would substantiate her request to change the uncharacterized discharge.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts she was administratively separated as a result of her disclosure of her sexual orientation. There is sufficient evidence the applicant disclosed her sexual orientation during her initial training, and she was administratively separated in accordance with DADT policy. The applicant also asserts mental health conditions are related to her request for a change to her uncharacterized discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was administratively separated as a result of her disclosure of her sexual orientation. There is sufficient evidence the applicant disclosed her sexual orientation during her initial training, and she was administratively separated in accordance with DADT policy. The applicant also asserts she experienced mental health conditions during her active service, which is related to her request for a change to her uncharacterized discharge.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence the applicant disclosed her sexual orientation during her initial training, and she was administratively separated in accordance with DADT policy. However, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition during active service.

2. The Board acknowledged that an uncharacterized discharge does not negatively reflect a Soldier's military service, but rather indicates that the Soldier did not serve long enough for their character of service to be rated as honorable or otherwise. The applicant did not complete training or receive a military occupational specialty (MOS) before separation. However, the Board agreed that the applicant's admission of her sexual orientation to leadership directly influenced the discharge determination. Given these circumstances and new laws, the Board found it equitable to correct the applicant's narrative reason, separation code, and reentry code. As such, relief is granted.

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 22 March 1988 showing in:

- item 25 (Separation Authority): Army Regulation 635-200, paragraph 5-3
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

6/20/2025

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, 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5–3 (Secretarial plenary authority) provides 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. At the time, Chapter 15 stated that 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.

4. The Don't Ask Don't Tell (DADT) policy was implemented in 1993. This policy banned the military from investigating service members regarding their sexual orientation. Under the previous policy, service members may have been 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. The DADT Repeal Act of 2010 (Title 10, USC, Section 654) was a landmark U.S. federal statute enacted in December 2010 that established a process for ending the DADT policy, thus allowing gays, lesbians, and bisexuals to serve openly in the U.S. Armed Forces. It ended the policy in place since 1993 that allowed them to serve only if they kept their sexual orientation secret and the military did not learn of their sexual orientation.

6. Under Secretary of Defense for Personnel and Readiness memorandum, dated 20 September 2011, Subject: Correction of Military Records Following Repeal of Section 654 of Title 10, USC, 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. This memorandum provided that effective 20 September 2011, Service DRBs and BCM/NRs 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: (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.

c. 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.

d. 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, Department of Defense 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.

e. The DD Form 214 should be reissued in lieu of the DD Form 215 (Correction of the DD Form 214), to avoid a continued record of the homosexual separation.

7. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRB and BCM/NR when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//