

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240004071

APPLICANT REQUESTS: in effect, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period 18 June 1991 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 149 (Application for Correction of Military Record)
- DA Form 2A (Personnel Qualification Record, Part I)
- DA Form 2-1 (Personnel Qualification Record)
- DA Form 4980-18 (The Army Achievement Medal (AAM) Certificate), 19 October 1989
- Recommendation for Promotion, 27 February 1990
- Defense Language Proficiency Test III (DLPT III), 7 May 1990
- DA Form 2442 (Certificate of Achievement (COA)), 12 June 1990
- DA Form 4980-18, 7 September 1990
- DA Form 4980-18, 20 September 1990
- DA Form 4980-18, 15 November 1990
- DA Form 4980-18, 15 January 1991
- DA Form 2442, 1 April 1991
- DA Form 3822-R (Report of Mental Status Evaluation), 21 May 1991
- Memorandum, subject: Separation Under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 15, 28 May 1991
- Memorandum, subject: Captain (CPT) M_'s Recommendation Concerning Specialist (SPC) M_'s Conditional Waiver, 30 May 1991
- Memorandum, subject: Separation Under AR 635-200, Chapter 15, 30 May 1991
- DD Form 214, 18 June 1991
- DD Form 257A (General Discharge Certificate), 18 June 1991

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 was discharged in 1991, prior to DADT, and believes she is eligible to have her discharge changed from under honorable conditions, general to honorable, based on her service record. At the time of her discharge, the initial recommendation was that she be given a dishonorable discharge. She submitted a request for a conditional waiver to have the discharge characterized as a general discharge based on her service record.
3. The applicant's complete military service records are not available for review. However, there are sufficient documents to conduct a fair and impartial review of this case.
4. The applicant provides:
 - a. DA Form 2-1, which shows she enlisted in the Regular Army on 8 November 1988.
 - b. An AAM certificate, dated 19 October 1989, which shows she was awarded for attaining one of the highest averages in the course of instruction for her military occupational specialty, and achieving the maximum score on the Army Physical Fitness Test (APFT).
 - c. A recommendation for promotion, dated 27 February 1990, by her chain of command for being one of the few Soldiers who demonstrated the desire to excel both technically and professionally. Her chain of command stated that she had been performing at the SPC/E-4 level since becoming a part of 2nd platoon.
 - d. DLPT III, dated 7 May 1990, which shows she was rated as having a listening skill level of 3 and a reading skill level of 3 for the language of Spanish.
 - e. A COA dated 12 June 1990, which shows the applicant was awarded for distinguishing herself by exemplary service as an Electronic Warfare (EW)/Signals Intelligence (SIGINT) Voice Interceptor Operator.
 - f. An AAM certificate, dated 7 September 1990, which shows she was awarded for distinguishing herself by exemplary achievement as the Soldier of the Year.

g. A COA dated 20 September 1990, which states she achieved an outstanding score of 98 percent on the 98G Skill Qualification Test.

h. An AAM certificate, dated 15 November 1990, which shows she distinguished herself as an EW/SIGINT Voice Interceptor/Transcriber, and her superior linguistic and technical abilities enabled her to perform complex mission tasks with no supervision, thereby allowing assigned personnel to complete critical mission tasks during periods of severe manning shortages.

i. An AAM certificate, dated 15 January 1991, which states she accounted for the transcription of 97 files which dealt with a highly volatile situation, during a period of increased target activity.

j. A COA dated 1 April 1991, for achieving the maximum score of 300 points on the APFT.

k. A Report of Mental Status Evaluation dated 21 May 1991, which shows she had the mental capacity to understand and participate in the proceedings. She had no mental health disorders, and she was cleared psychiatrically for administrative action.

l. A memorandum dated 28 May 1991, wherein the applicant's immediate commander recommended she be separated from active duty under AR 635-200, chapter 15, for engaging in a homosexual act and admitting to being a homosexual. He recommended that she receive a general, under honorable conditions discharge.

m. A memorandum dated 30 May 1991, which states the Brigade Judge Advocate called the applicant's commander to obtain his recommendation concerning a conditional waiver that was submitted by the applicant after the chapter packet had been forwarded. The applicant agreed to waive her right to appear before an administrative separation board contingent upon her receipt of a general discharge under honorable conditions. The applicant's commander supported accepting the conditional waiver.

n. A memorandum dated 30 May 1991, which shows the separation authority approved the conditional waiver and directed that she be separated from the U.S. Army prior to the expiration of her term of service under the provisions of AR 635-200, paragraph 15-3b, based on her admission of being a homosexual, with characterization of her service as general, under honorable conditions.

o. DD Form 214, which shows the applicant was discharged on 18 June 1991, under the provisions of AR 635-200, paragraph 15-3b. Her service was characterized as under honorable conditions (general). She completed 2 years, 7 months, and 11 days of net active service during this period. Her DD Form 214 shows in:

- Item 12a (Date Entered Active Duty This Period): 8 November 1988
- Item 26 (Separation Code): JRB
- Item 27 (Reentry Code): 4
- Item 28 (Narrative Reason for Separation): Admission of Homosexuality/Bisexuality

5. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding her discharge.

6. 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.

7. 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 and all supporting documents, the Board determined 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 DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant was discharged from active duty due to homosexual admission. The Board found no error or injustice in the separation processing. However, the Board found based upon repeal of the "Don't Ask, Don't Tell" policy and a change in DoD 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 narrative reason for separation and corresponding codes is appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the FSM's DD Form 214 to show:

- 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 Authority

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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//