

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20240004580

ON BEHALF OF THE APPLICANT, COUNSEL REQUESTS: changes to her DD Form 214 (Certificate of Release or Discharge from Active Duty) as follows:

- Item 24 (Character of Service) upgrade from Entry Level Status to Honorable
- Item 25 (Separation Authority) remove AR 635-200 Para 15-3b and replace it with appropriate authority for completion of active duty service
- Item 26 (Reentry Code) remove JRB and replace it with JFF
- Item 27 (Reenlistment Code) remove RE-4 and replace it with RE-1J
- 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)
- Legal Brief with Exhibits A thru C

Exhibit A: Attorney Authorization for Release of Information

Exhibit B: Legal brief

Exhibit C: Official Military Personnel file, Personal Statement, Restoration of Honor Act Award Letter, Two (2) Under Secretary of Defense memoranda

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. Counsel states, via legal brief:

a. On Block 35(f) of her Enlistment Contract, the applicant indicated "No" to "Have you ever engaged in homosexual activity." She reaffirmed that she did not have any gay relationships (homosexual activity). By all accounts, and supported by her record, the applicant was a good Soldier and did not cause any disciplinary problems. On her sworn statement, she stated that she informed her drill instructors, after being pressed,

that she was homosexual approximately one week after arrival at basic training. Further stating that she could not promise silence on the matter or promise to refrain from sexual relations with another female. The applicant reported that she did not make any advances or sexually contact towards any females while at basic training.

b. The applicant reports her persecution as a gay person in the military as a "witch hunt" with one of her sergeants going so far as to call her a "maggot of society." Even though she was forced to admit to homosexuality in the beginning of basic training, her drill instructors made her complete the entirety of basic training, bringing her all the way up to the point of the graduation ceremony, just so they could make her watch her peers graduate, and only thereafter, process her for separation.

c. Due to the applicant's entry level discharge and inability to attend Apalachin State University under the "split training option", she was unable to attend college immediately post separation. She asked about attempting to update her discharge in the late 80s and early 90s, but no one would assist her and finally gave up. She eventually attended college and even earned an advanced degree in her 30s, but according to her, that was a very long hard road. She has earned a master's degree from the University of [REDACTED], and a PhD in Cultural Studies from [REDACTED] University. On July 7, 2017, she legally changed her name from [REDACTED] She currently works as a [REDACTED]

3. The applicant states, via personal statement addressed to the Board, in effect:

"I served in the Army National Guard during my senior year of high school and then went to Fort Jackson, South Carolina for my basic training (active duty for training) on May 17, 1983. My service ended abruptly when I was discharged from the service on August 18, 1983 due to "Admission of Homosexuality/ Bisexuality."

At some point in the middle of basic training, however, rumors went around that I was gay. I did not demonstrate any perceived gay behaviors, make any gay advances, or have any gay relationships while in service. But once the rumors began, and I was regularly harassed by drill sergeants and our first sergeant to admit to being gay. I was systematically verbally abused and harassed to the point that I finally give in and admitting that I was gay on paper, writing exactly what they wanted me to write, to simply end the harassment. But even then, as I stated, within my sworn statement, I did not want to terminate my duty and service to my country. I was still only a 17-year old female recruit so you can imagine how hard it was for me to endure that kind of pressure by adult male drill sergeants at such a young age back in 1983, when verbal abuse was typical - but above and beyond for me. Given the military homophobic culture back then, it should be of no surprise to any long-term military personnel that I could easily have been bullied into acquiescing to their requests.

This discharge, and all the verbal abuse leading up to it, caused me considerable stress and mental anguish, especially having not even been a legal adult when this occurred. My parent allowed me to enter the service, but the way I was treated in the service after the rumors began {these were the days of a practical witch-hunt of gay people} was particularly horrendous, given I was still a teenager. Even though I felt forced to admit to homosexuality in the beginning of basic training, one of the things that really hurt is how they made me complete the entirety of basic training, bringing me all the way up to the point of the graduation ceremony, just so they could make me watch my peers graduate, and only thereafter discharge me. Also, on my discharge papers, one sergeant went so far as to write that I was a "maggot of society" (as a gay person). The venom with which this one sergeant spoke to me and wrote about me in my discharge papers was particularly hurtful and left a lasting harmful impression.

There was no other official reason listed for my separation other than Chapter 15-3B admission of homosexual/bisexual conduct which has dramatically changed the entire trajectory of my life. Not only was I discharged from the service, but I also lost my chance to go to college at the time and pursue a military career. I even tried to re-enlist; but I got the run-around by the military in the late 1980s and early 1990s. I have been haunted by this discharge ever since 1983 (and I kept all the records with me for the last 40 years). It was especially hard on me after "don't ask, don't tell" went into effect and then finally when one's sexuality was no longer an issue at all. Had the rules been what they are today, back in 1983, I believe I would have excelled within the military, college, ROTC, and then as an officer.

Thankfully, the [REDACTED] recently enacted a law allowing veterans discharged for being gay to apply for a restoration of honor. I applied and gratefully received an award letter shortly after they reviewed my application. But while my benefits as a Veteran have been restored at the State level, given the events that led to my discharge, I respectfully request that my discharge is amended to reflect my honorable service to our Nation by this honorable Board."

4. Counsel provides:

a. Exhibit A: Attorney Authorization for Release of Information, dated 19 March 2024, reflects the applicant authorized The Department of Defense, to include subordinate Military Departments of the Army, Navy, Air Force, Marines, Coast Guard and Space Force to release/disclose any and all of her records to The [REDACTED] Department of Veterans' Services [REDACTED]

b. Exhibit B: Legal brief

c. Exhibit C: Official Military Personnel File (OMPF), Personal Statement, Restoration of Honor Act Award Letter, and Two (2) Under Secretary of Defense

memoranda. The applicant's case separation file, which will be further detailed in paragraph 4, is also included in the OMPF.

5. A review of the applicant's service record shows:

a. She enlisted in the [REDACTED] Army National Guard on 16 December 1982. She entered active duty on 7 June 1983 and was assigned to Fort Jackson, SC for training.

b. On 25 July 1983, the applicant's immediate commander notified the applicant he was initiating action to discharge her from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 15 (Homosexuality). Specifically, the applicant admitted homosexual tendencies and refusal to change these tendencies.

c. On 28 July 1983, the applicant consulted with counsel. Following consultation with legal counsel, she understood her rights and acknowledged the following:

- she could request to have her case considered by an administrative separation board
- she could request to have a personal appearance before an administrative separation board
- she could submit statements on her own behalf
- she could request consulting counsel and representation by counsel for representation or as military counsel
- she understood that her willful failure to appear before the administrative separation board by absenting without leave would constitute a waiver of her rights to a personal appearance before the board
- she understood that she may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued

d. Following the applicant's acknowledgement, the applicant's immediate commander initiated separation action to discharge her from the Army under the provisions of AR 635-200, Chapter 15 (Homosexuality). Specifically, the applicant stated she is a homosexual or bisexual.

e. On 12 August 1983, the separation approving authority directed the applicant be discharged under the provisions of AR 635-200, chapter 15, homosexuality, with an uncharacterized separation.

f. Her DD Form 214 reflects the applicant was discharged on 18 August 1983 under the provisions of AR 635-200, chapter 15, Admission of Homosexuality/Bisexuality, character of service of entry level status, SPD Code of JRB, and a Reenlistment Code of 4. She completed 2 months and 2 days of net active service this period.

g. Office of The Adjutant General orders 175-13, dated 30 August 1983, reflects the applicant was discharged from the Army National Guard, effective 18 August 1983, with an uncharacterized discharge.

6. The applicant's military record does not contain any record of misconduct.

7. Army Regulation 635-200, in effect at the time, prescribed criteria and procedures for the investigation of homosexual personnel and their discharge from the Army.

BOARD DISCUSSION:

The applicant's military record does not contain any record of misconduct. After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, and the reason for separation. The evidence shows the applicant was released from active duty for training due to homosexual admission. Her separation processing was conducted in accordance with applicable law and regulation in effect at the time. The Board found no error or injustice in her separation processing. However, the Board also noted that, based upon repeal of the DADT policy, and a change in DoD policy relating to homosexual conduct, an upgrade is appropriate if 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 Board determined there were no aggravating circumstances and as a result, determined a change to the character of service, narrative reason for separation, and corresponding codes is 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 amending the applicant's DD Form 214 for the period ending 18 Augst 1983 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

11/18/2024

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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, 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, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-4a (2), entry level status, states service will be uncharacterized, and so indicated in block 24 of DD Form 14.

b. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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.

c. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Chapter 11 (Entry Level Status Performance and Conduct) sets the policy and provides guidance for the separation of personnel because of unsatisfactory, performance or conduct (or both) while in entry level status.

e. Chapter 15, in effect at the time, prescribed the criteria and procedures for the investigation of homosexual personnel and their discharge from the Army. 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.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states SPD codes are three-character alphabetic combinations which identify reasons for and types of separation from active service. The SPD code of "JRB" was the correct code for Soldiers separating under chapter 15 for homosexuality.

4. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the RA and the United States Army Reserve. Table 3-1 included a list of the RA RE codes. RE codes are numbered 1, 3, and 4.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at the time of separation, but the disqualification is waivable; those individuals are ineligible unless a waiver is granted
- RE-4 applies to Soldiers ineligible for reentry

5. DADT policy was implemented in 1993 during the 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.

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. 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" with the SPD code of JFF)
- characterization of service to honorable
- the RE code to an immediately-eligible-to-reenter category

7. 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.

8. 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//