

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2025

DOCKET NUMBER: AR20240005948

APPLICANT REQUESTS:

a. Correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 24 April 2006 based on repeal of Don't Ask, Don't Tell (DADT) as follows:

- change item 26 (Separation Code) to "JFF"
- change item 27 (Reentry Code) to "1"
- change item 28 (Narrative Reason for Separation) to "Secretarial Authority"

b. Department of Veterans Affairs (VA) benefits.

c. A personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- DD Form 214, 24 April 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 joined the Army to serve and was faced with a decision in Advanced Individual Training to either admit to being a homosexual or risk a dishonorable discharge. She knew extensively of the DADT policy when she joined and took every measure to keep her sexuality private. Unfortunately, she was labeled as gay by her peers and subsequently brought before her superiors. She intended to serve the six years that she signed up for. She would like to have her service records changed to reflect the new laws and her reentry code updated so she can rejoin the service.

3. The Board will not consider the applicant's request to receive VA benefits. The Board does not have jurisdiction to grant Veterans benefits. Requests for Veterans benefits eligibility should be directed to the Department of Veterans Affairs.

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

a. She enlisted in the Regular Army on 25 August 2006.

b. DA Form 2823 (Sworn Statement) shows on 14 February 2006, she admitted to being a homosexual.

c. A memorandum from her Battalion Chaplain, dated 9 March 2006, shows the applicant revealed in counseling that she had been involved in homosexual liaisons and at the time she was pursuing a legally binding relationship with her partner. She had no intention of changing or altering her lifestyle. The Chaplain recommended that the chain of command consider chaptering her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 15, for homosexual conduct.

d. On 20 March 2006, her commander notified her of his intent to separate her under the provisions of AR 635-200, chapter 15, paragraph 15-3b, for homosexuality. The commander listed the following reasons for the proposed separation: admission of homosexuality and intent to marry. She acknowledged receipt on 20 March 2006.

e. 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 effect of any action she took in waiving her rights.

f. The chain of command recommended approval, with an honorable characterization of service.

g. On 14 April 2006, the separation authority approved the separation and directed she receive an honorable discharge.

h. Accordingly, she was honorably discharged on 24 April 2006. Her DD Form 214 shows she completed 8 months of net active service this period. This form also shows in:

- Item 25 (Separation Authority): AR 635-200, paragraph 15-3b
- Item 26 (Separation Code): JRB
- Item 27 (Reentry Code): 4
- Item 28 (Narrative Reason for Separation): Homosexual (Admission)

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. Upon review of the applicant's petition and available military record, the Board finds that the applicant was honorably discharged on 24 April 2006 in accordance with the provisions of Chapter 15, Army Regulation 635-200, solely on the basis of admission of homosexuality. The Board recognizes that the legal and policy framework regarding military policies concerning sexual orientation has since changed significantly.
2. In light of the repeal of DADT and accompanying policy revisions, it is now the policy that individuals discharged solely due to consensual homosexual conduct shall have their discharge characterization, separation code, RE code, and narrative reason for separation reviewed and, when appropriate, corrected to reflect current standards of equity and justice.
3. The applicant was serving honorably at the time of separation, and the discharge action stemmed exclusively from a policy that is no longer in effect and is now considered inconsistent with the current standards of military equity and justice. In accordance with applicable guidance and based on the principle of equity, the Board determines it is appropriate to grant full relief. The applicant's discharge shall be corrected to reflect the narrative reason for separation, separation code, and reentry code to align with current Department of Defense policies.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	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 24 April 2006, 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

X //SIGNED//

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 (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.

7. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

c. The Board's jurisdiction under Title 10, U.S. Code, section 1552, extends to any military record of the Department of the Army. The ABCMR may return an application without action if the Board does not have jurisdiction to grant the requested relief.

//NOTHING FOLLOWS//