

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2025

DOCKET NUMBER: AR20240006546

APPLICANT REQUESTS:

- an upgrade of her uncharacterized discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 discharge due to "Don't Ask Don't Tell" (DADT). She would like to see if she can possibly be eligible for benefits and remove the discharge and upgrade it too honorable.
3. A review of the applicant's service record shows:
 - a. She enlisted in the Hawaii Army National Guard (HIARNG) on 24 June 1998. She entered active duty on 14 January 1999.
 - b. On 9 August 1999 she was discharged under the provisions (UP) of Army Regulation (AR) 635-20, Homosexual Admission, chapter 15. Her period of service was uncharacterized.
 - c. Accordingly, her NGB Form 22 shows she was discharged from the HIARNG with an uncharacterized character of service on 9 August 1999, she completed 6 months, and 26 days net active service this period.

d. The applicant annotated Post Traumatic Stress Disorder (PTSD), and other mental health conditions related to her request. The available service record is void the details and circumstances surrounding her discharge.

e. On 27 June 2006 she was honorably discharged from the United States Army Control Group (AT) Army Reserves (orders D-06-614979).

4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to her uncharacterized discharge. The applicant contends that her request is related to her experience of “don’t ask, don’t tell” (DADT) policies and other mental health conditions including PTSD that impacted the circumstances of her discharge. 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 Hawaii Army National Guard (HIARNG) on 24 June 1998 and entered active duty on 15 January 1999; 2) The applicant’s separation documents were not available for review; 3) The applicant was discharged on 9 August 1999, Chapter 15- Homosexual Admission. She completed 6 months and 26 days of net active service. Her military service was uncharacterized; 4) According to a US Army HRC memorandum dated 27 June 2006, she was honorably discharged from the United States Army Reserves effective the same day, though no DD-214 was available for review.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA’s Joint Legacy Viewer (JLV) was also reviewed. No additional medical documentation was provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts she experienced other mental health conditions including PTSD and was subject to the DADT policy during her active service, which impacted her discharge from active service. There is insufficient evidence that the applicant reported or was diagnosed with PTSD or any other mental health conditions while on active service.

d. The VA’s Joint Legacy Viewer (JLV) was examined, and no relevant results were found. The applicant has not been diagnosed with a service-connected mental health condition, and she does not receive service-connected disability for a mental health condition at this time.

e. Based on the available information; it is the opinion of the Agency Medical Advisor that there is insufficient evidence at this time that the applicant was experiencing a mental health condition including PTSD during service to opine on the impact of her mental health on her discharge status. In addition, there is insufficient evidence surrounding the events resulting in the applicant's discharge to provide an appropriate opine on mitigation as the result of her reported mental health condition(s) or experience(s). However, in the absence of additional information, there is evidence that the applicant was administratively separated during the period of DADT for homosexuality and that is sufficient for the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts mental health conditions including PTSD and the policy of DADT are related to her request to change her uncharacterized discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends she experienced other mental health conditions including PTSD and the policy of DADT at the time of her active service related to her request to change her uncharacterized discharge.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Yes, there is insufficient evidence beyond self-report that the applicant had a mental health condition, including PTSD during her active service that would impact the circumstances of her discharge. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of her reported mental health condition or experience. However, in the absence of additional information, there is sufficient evidence of the applicant was administratively separated for homosexual admission during DADT, which is sufficient for the board's consideration.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence at this time that the applicant was experiencing a mental health condition including PTSD during service to opine on the impact of her mental health on her discharge status. However, the opine noted, in the absence of additional information, there is evidence that the applicant was administratively separated during the period of DADT for homosexuality and that is sufficient for the Board's consideration.

2. The Board determined the applicant was discharged from active duty due to homosexual admission. The Board found no error or injustice in his 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 characterization of service, narrative reason for separation, separation program designator, and corresponding codes is appropriate. As such, relief is granted.

3. The Board considered to the following Kurta Questions under liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts mental health conditions including PTSD and the policy of DADT are related to her request to change her uncharacterized discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends she experienced other mental health conditions including PTSD and the policy of DADT at the time of her active service related to her request to change her uncharacterized discharge.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Yes, there is insufficient evidence beyond self-report that the applicant had a mental health condition, including PTSD during her active service that would impact the

circumstances of her discharge. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of her reported mental health condition or experience. However, in the absence of additional information, there is sufficient evidence of the applicant was administratively separated for homosexual admission during DADT, which is sufficient for the board's consideration.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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 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 9 August 1999 to show in:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority) Army Regulation 635-200, chapter 5-3
- item 26 (Separation Code) JFF
- item 28 (Narrative Reason for Separation) Secretarial Authority
- Reentry Code: 1

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 635-200 (Active Duty Enlisted Administrative Separation), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. 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.

b. 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.

c. Chapter 11 sets policy and provides guidance for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. It states when separation of a member in entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, the member normally will be separated per this chapter. This separation policy applies to Soldiers who enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve who are in entry level status and, before the date of initiation of separation action, have completed no more than 180 days of creditable continuous active duty or IADT by the date of separation and have demonstrated they are not qualified for retention for one or more of the following reasons:

- cannot or will not adapt socially or emotionally to military life
- cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation or self-discipline
- have demonstrated character and behavior characteristics not compatible with satisfactory continued service
- failed to respond to counseling

d. 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. AR 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.

4. 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 "JML" was the correct code for Soldiers separating under chapter 15 for homosexuality.

5. 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

6. 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.

7. 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

8. 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.

9. 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.

10. Section 1556 of Title 10, United States Code, 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.

//NOTHING FOLLOWS//