

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 May 2025

DOCKET NUMBER: AR20240006617

APPLICANT REQUESTS: correction to his DD Form 214 (Report of Separation from Active Duty), to show:

- An upgrade of his characterization of service from under honorable conditions (general)
- A change to item 18a (Net Active Service this Period), to show credit for his previously terminated remaining period of service, or at minimum two years of service
- Change is narrative reason for discharge to "Secretarial Authority"
- Change his separation code to "JFF"
- Change his reentry code to RE-1

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

- DD Form 149 (Application for Correction of Military Record), 4 June 2024
- Letter from legal counsel, 6 June 2024
- Four pages from his military health record, covering the period from January 1966 to April 1966

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 defers to counsel. Counsel states the applicant is 78 years old and currently undergoing treatment for leukemia. He has suffered the consequences of an unjust discharge for 58 years, stemming solely from anti-Lesbian Gay Bisexual Transgender Queer policies during the Vietnam Era. Initially given an under other than honorable conditions discharge after admitting he was gay, his discharge was later upgraded to under honorable conditions (general) under the Department of Defense Special Review Program. The applicant now seeks an upgrade to Honorable based on the repeal of Don't Ask Don't Tell Repeal Act of 2010.

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

a. His Standard Form 88 (Report of Medical Examination) shows he underwent a medical examination for the purpose of induction into the Army of the United States on 28 October 1965. The applicant placed an "X" in the "No" box indicating he had no history of homosexual tendencies.

b. He was inducted into the Army of the United States on 31 January 1966.

c. On 18 May 1966, he underwent a psychiatric evaluation. The examining official noted the applicant stated he has had homosexual behavior since age 15 or 16 and has been on active and passive partner until the present time. The examining official opinioned the applicant was a homosexual and should be discharged under the provisions of Army Regulation (AR) 635-89 (Personnel Separations – Homosexuals).

d. His Standard Form 88 (Report of Medical Examination) shows he underwent a medical examination for the purpose of separation on 19 May 1966. The applicant placed an "X" in the "Yes" box indicating he had a history of homosexual tendencies.

e. On 23 May 1966, the applicant elected to waive a hearing before a board of officers under the provisions of AR 635-89 and accept discharge for the good of the service. He understood he could receive a discharge under conditions other than honorable, that he may be deprived of many rights and benefits as a veteran, and that he may expect to encounter substantial prejudice in civilian life. Additionally, he elected to not submit a statement concerning his discharge.

f. His record does not contain a formal recommendation for discharge from his unit commander. However, his record does contain recommendations from both his immediate and intermediate commanders, 26 May 1966 and 20 June 1966, showing they concurred with the recommendation that the applicant be discharged from service under the provisions of AR 635-89, for homosexuality.

g. On 18 July 1966, the separation authority approved the recommended discharge, under the provisions of AR 635-89, for homosexuality, and directed the applicant be issued an undesirable discharge certificate.

h. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged in the rank/grade of private/E-1 on 18 July 1966 under the provisions of AR 635-89. He completed 5 months and 18 days of net active service. His service was characterized as under other than honorable conditions. He was issued the separation program number "257".

i. On 27 September 1973, the Army Discharge Review Board (ADRB), after careful consideration of his service records and other evidence, determined the applicant was properly discharged and his request for a change in the type and nature of his discharge had been denied.

j. On 24 May 1977, the ADRB reconsidered the applicant's request for an upgrade of his characterization of service from under other than honorable conditions to honorable. The ADRB determined the applicant met the criteria to have his discharge upgraded to under honorable conditions (general). His record of service was not sufficiently meritorious to upgrade his discharge to honorable.

k. On 31 August 1978, the ADRB notified the applicant that Board affirmed his discharge up upgrade and issued him a new DD Form 214 showing his characterization of service as under honorable conditions.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that partial 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 acts. 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.

The Board also determined, however, that granting additional service credit is inappropriate. The Board found adding constructive service credit to a minimum of two years as requested would be speculative, because the applicant may or may not have completed her term of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: AR 635-200
- Separation Code: JFF
- Reentry Code: 1
- Narrative Reason for Separation: Secretarial Authority

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to granting additional service credit.

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, 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. AR 635-89, in effect at the time, prescribed the criteria and procedures for the separation of homosexual personnel from the Army.

a. Homosexual personnel, irrespective of sex, were not permitted to serve in the Army in any capacity. Prompt separation was mandatory. The regulation defined three classes of homosexuality:

- class I - involving an invasion of the rights of another person, as when the homosexual act is accompanied by assault or coercion, or where the person involved does not willingly cooperate or consent
- class II - cases in which homosexual military personnel have engaged in one or more homosexual acts not within the purview of class I
- class III - consists of homosexual individuals who have not engaged in homosexual acts while in active military service

b. When investigation clearly indicated an individual was a class II homosexual, he/she was be afforded the opportunity to accept a discharge. If not accepted, the commander was to forward the case to the general court-martial convening authority for action. Action could include retention, appropriate action under the UCMJ, or separation.

c. The separation approval authority determined the character of service, but honorable or general discharges were normally only awarded in cases where the Soldier had disclosed his/her homosexual tendencies when entering the service, if the Soldier served over an extended period of time, or if he/she performed in an outstanding or heroic manner. Upon discharge determination, the Soldier was reduced to private/E-1.

3. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Paragraph 5–3 (Secretarial plenary authority) provides that:

a. 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.

b. 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.

4. The 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 DRBs and Service 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 (Character of Service) - "Honorable"
- item 25 (Separation Authority) - "Army Regulation 635-200, paragraph 5-3"
- item 26 (Separation Code) - "JFF"
- item 27 (Reenlistment Code) - "RE-1"
- item 28 (Narrative Reason for Separation) - "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
- 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 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. It further directed that the DD Form 214 be reissued in lieu of the DD Form 215 (Correction of the DD Form 214), to avoid a continued record of the homosexual separation.

//NOTHING FOLLOWS//