

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2025

DOCKET NUMBER: AR20240007113

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 25 January 2002 to show the following, based on the Don't Ask, Don't Tell (DADT) policy, in effect at that time:

- narrative reason for separation as "Secretarial Authority"
- separation code be shown as "JFF"
- reentry (RE) code be changed to RE-1
- removal of any indication that a correction was made to his DD Form 214

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214

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 there were no aggravating factors in his record for any misconduct. His discharge is inequitable because the sole reason for it was his admission of homosexuality. There were no aggravating factors in his discharge paperwork. Therefore, he has met the requirement that the sole reason for his discharge was due to homosexual admission (DADT). Please do not include any remarks on my new DD Form 214 that indicate that it was corrected. Under Secretary of Defense memorandum, dated 28 January 2011 it states that "sexual orientation is a personal and private matter ..." and remarks indicating that a correction was made may result in inquiries as to why. Having homosexual admission on his DD Form 214 has hurt his employment opportunities. He has been discriminated against countless times due to an unjust discharge narrative and RE code. Having his discharge upgraded and the narrative reason for discharge changed would lift many barriers in his life. In the

interest of justice, he requests consideration of his application. He was discharged 22 years ago and only recently learned he was able to apply for a records correction.

3. The applicant's service record shows:

a. The applicant enlisted in the Regular Army on 25 October 2000.

b. Memorandum, Subject: The Applicant Requests for Separation under the provisions of Army Regulation (AR) 635-200, Chapter 15, 11 January 2002. The applicant stated he was struggling with a moral dilemma. He is bisexual. He felt had a natural propensity to engage in sexual activity with members of the same sex. He requested discharge from the Army.

c. The applicant's immediate commander notified him on 15 January 2002 that he was initiating action to separate him for homosexual conduct under the provisions of Army Regulation 635-200, Chapter 15, based upon the applicant's statement. He further advised the applicant he was recommending he receive an honorable discharge. The acknowledged receipt of this notification on the same day.

d. The applicant consulted with legal counsel on 16 January 2002 and was advised of the basis for the contemplated separation action and its effects, the rights available to him, and he requested a personal appearance before an administrative separation board, and he requested consulting counsel.

e. The applicant's immediate commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, Chapter 15, by reason of homosexuality (homosexual conduct), the propensity to engage in sexual activity with members of the same sex, with an honorable discharge. The intermediate commander concurred with the recommendation.

f. The separation authority approved the recommended separation action and directed the applicant's service be characterized as honorable.

g. The applicant was discharged on 25 January 2002. His DD Form 214 shows completed 1 year, 3 months, and 1 day net active service. The DD Form 214 also shows:

- item 24 (Character of Service) Honorable
- item 25 (Separation Authority) Army Regulation 635-200, Paragraph 15-3b
- item 26 (Separation Code) JRB
- item 27 (Reentry Code) 4
- item 28 (Narrative Reason for Separation) Homosexual Admission

4. The applicant's record is void of any nonjudicial punishments, court-martials, or any disciplinary actions.

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 records, the Board determined the applicant's service was otherwise honorable, and his DD Form 214 reflects no record of misconduct or adverse performance. The Board noted based solely on the applicant's voluntary statement identifying as bisexual and expressing a propensity to engage in same-sex conduct. At the time, such admissions were grounds for separation under the DADT policy.

2. In accordance with current Department of Defense guidance, which recognizes that separations under DADT based solely on sexual orientation are no longer considered appropriate grounds for discharge. Based on these circumstances, the Board determines it is equitable and just to grant full relief. As such, the Board directed the following corrections to the applicant's military records:

- 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

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 25 January 2002. 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//

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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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JRB" was an appropriate code to assign to Soldiers separated under the provisions of Chapter 15 of Army Regulation 635-200, based on homosexual admission. Additionally, the SPD/Reentry (RE) Code Cross Reference Table established RE code "4" as the proper RE code to assign Soldiers separated under this authority and for this reason.
3. Army Regulation 635-200 in effect at the time, prescribed policies, and procedures for enlisted administrative separations.

a. An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and duty performance.

b. A under honorable conditions (general) discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5–3 (Secretarial plenary authority) provides 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.

d. At the time, Chapter 15 stated that 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.

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 United States 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 United States 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, United States Code, 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 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
- 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. The DD Form 214 should 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//