

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 May 2025

DOCKET NUMBER: AR20240007584

APPLICANT REQUESTS: in effect, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 16 July 2004 based on repeal of Don't Ask, Don't Tell (DADT).

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 The applicant states she was separated due to admission of homosexuality; however, "Don't Ask, Don't Tell" law was repealed and on 23 September 2023 the Department of Defense announced they would proactively review military records of such Veterans. She has not been eligible to receive benefits as a result of her separation, and would like to receive benefits such as the G.I. bill and home loans. She further noted she had experienced a sexual assault but did not report it and marked sexual assault as a condition related to her request.
3. A review of the applicant's service records shows:
 - a. She enlisted in the Regular Army on 9 September 2003.
 - b. A DA Form 3822-R (Report of Mental Status Evaluation) dated 22 April 2004, which shows she had the mental capacity to understand and participate in the proceedings. She had no mental health disorders, and she was cleared psychiatrically for administrative.

c. The service record includes the applicant's medical evaluation, dated 5 May 2004 for the purpose of administrative separation which indicated she was generally in good health. The applicant was marked qualified for service and separation.

- DD Form 2807-1 (Report of Medical History)
- DD Form 2808 (Report of Medical Examination)

d. A DA Form 2823 (Sworn Statement) dated 23 June 2004, shows the applicant made a statement to her chain of command which indicated she was homosexual.

e. On 28 June 2004, her immediate commander notified her of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Active Duty – Enlisted Administrative Separation), Chapter 15 for homosexual conduct. She acknowledged receipt of the notification on the same day.

f. She was advised by consulting counsel of the basis for the contemplated action to separate her for homosexual conduct under provisions of Chapter 15, AR 635-200 and its effects; of the rights available to her; and the effects of any action by her waiving her rights.

g. On 28 June 2004, the immediate commander initiated separation action against the applicant for homosexual conduct. He recommended that her period of service be characterized honorable. The intermediate commander recommended approval.

h. Consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 15, AR 635-200, for homosexual conduct. She would be issued an honorable characterization of service.

i. On 16 July 2004, she was honorably discharged from active duty. Her DD Form 214 shows she completed 10 months and 8 days of active service. It also shows:

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

4. On 24 March 2025, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims regarding MST and no records were found.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. Under Secretary of Defense (Personnel and Readiness) memorandum states that, effective 20 September 2011, 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, 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. An upgrade, if and when warranted, would entail a change to:

- narrative reason for discharge (to "Secretarial Authority" with the Separation Code of JFF)
- characterization of service to honorable
- the RE code to an immediately-eligible-to-reenter category

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the change in policy related to the applicant's separation and the current narrative reason for separation reflected on the applicant's DD Form 214, the Board concluded there was sufficient evidence warranting a change to the applicant's military record.

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 a recommendation for 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: No change
- Separation Authority: AR 635-200
- Separation Code: JFF
- Reentry Code: 1
- Narrative Reason for Separation: Secretarial Authority

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

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//