

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2025

DOCKET NUMBER: AR20240007586

APPLICANT REQUESTS: a correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show the following:

- upgrade of her under other than honorable conditions discharge to honorable
- change in her narrative reason for separation and respective separation code
- change of her reentry code

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the U.S)
- 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 unfairly discharged from the Army due to her sexual orientation and the "Don't Ask Don't Tell" policy. Her performance and service to her country is not properly reflected in her current DD Form 214.
3. A review of the applicant's service record shows:
 - a. She enlisted in the Regular Army on 6 October 1981.
 - b. On 9 November 1983, a DD Form 458 (Charge Sheet) shows court martial charges were preferred on the applicant for being absent without leave on 8 October 1981 until on or about 7 November 1983.

c. On 9 November 1983, the applicant consulted with legal counsel and requested a discharge in lieu of trial by courts-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. She acknowledged:

- she was making the request of his own free will
- maximum punishment
- she was guilty of at least one or more of the charges against her or of a lesser included offense
- she does not desire further rehabilitation or further military service
- if her request for discharge was accepted, she may be discharged under other conditions other than honorable
- she would be deprived of many or all Army benefits, she may be ineligible for many, or all benefits administered by the Veterans Administration,
- she may be deprived of her rights and benefits as a Veteran under both Federal and State law
- she may expect to encounter substantial prejudice in civilian life
- she elected not to submit a statement in support of her request

d. On 12 December 1983, the separation authority approved the applicant's request for discharge for the good of the service. She would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted grade.

e. On 12 January 1984, she was discharged from active duty. Her DD Form 214 shows she completed 2 months and 8 days of active service with 2 years, and 3 days lost time. She was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service – In Lieu of Court-Martial" with reenlistment code RE-3, 3B.

4. On 23 October 1984, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied her request for a change in the character and/or reason of her discharge.

5. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

6. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

- Upgrade of her UOTHC Discharge to Honorable. Deny: The Board determined the applicant was charged with being absent without leave from 8 October 1981 until 7 November 1983, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, she consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's length of absence and found no evidence that she was separation as a result of the "Don't Ask, Don't Tell" policy. Therefore, based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust and denied relief.
- Change in her narrative reason for separation. Deny: The Board determined the applicant was charged with being absent without leave from 8 October 1981 until 7 November 1983, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, she consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated narrative reason for separation. The Board found no evidence that she was separation as a result of the "Don't Ask, Don't Tell" policy. Therefore, based on a preponderance of the evidence, the Board concluded that the narrative reason for separation the applicant received upon separation was not in error or unjust and denied relief.
- Change her separation code. Deny: The Board determined the applicant was charged with being absent without leave from 8 October 1981 until 7 November 1983, punishable under the Uniform Code of Military Justice with a punitive discharge. The Board found no error or injustice in the separation proceedings and designated separation code she received. Therefore, based on a preponderance of the evidence, the Board concluded that the separation code the applicant received upon separation was not in error or unjust and denied relief.

- Change of her reentry code. Deny: The Board determined the applicant was charged with being absent without leave from 8 October 1981 until 7 November 1983, punishable under the Uniform Code of Military Justice with a punitive discharge. The Board found no error or injustice in the separation proceedings and designated reentry code she received. Therefore, based on a preponderance of the evidence, the Board concluded that the reentry code the applicant received upon separation was not in error or unjust and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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 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. 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.
3. Army Regulation 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).
4. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Trial by Court-Martial" in accordance with AR 635-200, Chapter 10.
5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program), in effect at the time, governs eligibility criteria, policies and procedures for enlistment and processing of persons, with or without prior service, into the Regular Army and the U.S. Army Reserve. Reentry eligibility (RE) codes are used for administrative purposes only and are not to be considered derogatory in nature. They are codes used for identification of an enlistment processing procedure. Table 3-1 lists the following:
 - a. RE-1 applies to persons immediately eligible for reenlistment at time of separation.

b. RE-3 applies to persons who may be eligible with waiver-check reason for separation.

c. RE-4 applies to persons ineligible for enlistment.

6. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (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. Paragraph 3-7b (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 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

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.

7. 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.

8. 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

9. 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.

10. 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.

11. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-

martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//