

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2025

DOCKET NUMBER: AR20240009340

APPLICANT REQUESTS: in effect, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) based on the repeal of Don't Ask, Don't Tell (DADT), by amending:

- item 25 (Separation Authority) to "Army Regulation 635-200, paragraph 5-3"
- item 26 (Separation Code (SPD)) to "JFF"
- item 27 (Reentry/Reenlistment Code (RE)) to "1"
- item 28 (Narrative Reason for Separation) to "Secretarial Authority"

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 is requesting correction of her DD Form 214, by removing all information that discloses her sexual orientation. This information, as reflected on her DD Form 214, has caused unnecessary disclosure of private information, and harassment when presented. She is proud of her service, this information however, is embarrassing.
3. A review of the applicant's service record shows:
 - She enlisted in the Regular Army on 27 April 1977
 - On 1 July 1981, the Criminal Investigation Command (CID) initiated an investigation on the applicant, for suspected sodomy and homosexuality; she was provided her rights, and she waived those rights
 - Additionally on 1 July 1981, she stated under oath that she considers herself bisexual, and she did not commit any acts of sodomy; this statement includes explicit details about her relationships

- On 25 July 1981, the findings of the CID investigation provided, in effect, that [applicant], engaged in acts of romantic and/or sexual nature with persons of the same gender
- On 19 August 1981, her acting commander, advised her that action is initiated against her for misconduct under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 15, due to homosexuality
- On 27 August 1981, the applicant requested her case be consideration by a board of officers, and representation by counsel; she did not request to submit statements on her own behalf
- On 14 September 1981, her commander recommended she be eliminated from the Armed Forces because of homosexuality
- On 16 September 1981, her battalion commander recommended approval of the separation action against her, due to homosexuality not being conducive to good order and discipline
- On 18 September 1981, her brigade commander, also recommended approval of her separation action; he further stated that continuance on active duty would seriously impair unit discipline, good order, morale and security of the unit
- The applicant provided five character references on her behalf, which attested to her accomplishments, professionalism, dedication to duty and leadership
- On 5 January 1982, after consulting with counsel, the applicant waived consideration of her case by a board of officers, waived a personal appearance before a board of officers, and waived representation by counsel
- On 18 January 1982, the separation authority, approved the waiver of board of officers, and directed her discharge under the provisions of Army Regulation 635-200, Chapter 15, with an honorable characterization of service
- On 26 January 1982, she was honorably discharged pursuant to Army Regulation 635-200, paragraph 15-4a (Engaged, attempted to engage in or solicited another to engage in homosexual act(s)) with RE "4", and SPD "JKC"
- The applicant completed 4 years, and 9 months of honorable active federal service

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board determined that applicant did not have any misconduct and was erroneously and unjustly discharged. As a result, the Board determined there was error and an injustice and granted full relief.

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 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 26 January 1982 to show in:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200, paragraph 5-3"
- item 26 (Separation Code): JFF
- item 27 (Reentry/Reenlistment Code (RE)) to "1"
- item 28 (Narrative Reason for Separation): Secretarial Authority

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 (Armed Forces), United States Code (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 Army Board for Correction of Military Records (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 (Personnel Separations - Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 15 prescribed the criteria and procedures for the investigation of homosexual personnel and their discharge from the Army 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. In all cases, the type of discharge would reflect the character of the Soldier's service.

b. 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.

3. The Don't Ask Don't Tell (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.

4. The DADT Repeal Act of 2010 (Title 10 (Armed Forces), United States Code (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.

5. 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 (Armed Forces), United States Code (USC), provides policy guidance for Service Discharge Review Board (DRB) and Service Board for Correction of Military/Naval Records (BCM/NR) 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 DD Forms 214 (Certificate of Release or Discharge from Active Duty) to reflect the following:

- item 24 (Character of Service) to "Honorable"
- item 25 (Separation Authority) to "Army Regulation 635-200, paragraph 5-3"
- item 26 (Separation Code) to "JFF"
- item 27 (Reentry/Reenlistment Code) to "1"
- item 28 (Narrative Reason for Separation) to "Secretarial Authority"

b. For the above upgrades to be warranted, the memorandum states both of the following conditions must have been met: (1) the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT and (2) 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 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, 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.

6. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and the United States Army Reserve (USAR). Table 3-1 included a list of the Regular Army 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

7. 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 "JKC" was the appropriate code to assign to Soldiers separated under the provisions of Chapter 15 of Army Regulation 635-200, based on homosexuality. 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.

8. 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//