

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2025

DOCKET NUMBER: AR20240009501

APPLICANT REQUESTS:

- upgrade of her characterization of service from under other than honorable conditions (UOTHC) to honorable based on the repeal of the “Don’t Ask, Don’t Tell” (DADT) policy
- change to narrative reason from For the Good of the Service – In Lieu of Court-Martial to Secretarial Authority
- change in separation code from KFS to JFF
- change in reentry (RE) code to RE-1
- adjustment of separation date to provide constructive active-duty credit for the remaining period of service, or at a minimum two years of service

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

- DD Form 149 (Application for Correction of Military Record), 2 August 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 3 August 1998
- The Veterans Consortium brief, 5 August 2024
- Character statement, from Chief of Police J.A.M., 26 July 2024
- Character statement, from R.J.C., 30 July 2024
- The War Horse news article, DADT
- Three certificates, 25-year service certificate from the Police Association, distinguished service from the Chief of Police, and unsung heroes’ award
- National Personnel Records Center correspondence, 25 June 2024
- Official Military Personnel File (65 pages)

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 her request is based on the repeal of DADT policy because she was discharged solely based on DADT with no other misconduct. She was not given a homosexuality discharge though it was the basis for her discharge. After her discharge from the Army, she served and protected the citizens of Milwaukee as a police officer for over 25 years and is a child victim advocate for the Michigan State Police.

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

a. She enlisted in the Regular Army on 13 October 1987, for a 4-year period.

b. On 21 June 1988, she was recommended for disqualification from the Personnel Reliability Program (PRP) pending investigation for participation in a lesbian affair. She was pending action under the Uniform Code of Military Justice (UCMJ).

c. Her official military personnel file is void of the facts and circumstances pertaining to her discharge; however, her DD Form 214 shows she was discharged on 3 August 1988, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service), in the grade of E-1. She received an UOTHC characterization of service with separation code KFS and reenlistment code 3-3C. She was credited with 9 months and 21 days of net active service this period.

4. The applicant provides:

a. A request from the Veterans Consortium stating she was unjustly terminated due to the Army's anti-lesbian, gay, bisexual, transgender, and queer (LGBTQ) policy at the time of her discharge. Further requesting the applicant's request is based on the repeal of the DADT policy and the Stanley memorandum. Her only misconduct was admitting to a lesbian relationship, which is no longer a crime under the UCMJ.

b. Two-character statements one from the Chief of Police, J.H.M., summarizing the applicant's military service and professional career as a police officer. Stating the applicant had a distinguished career with many accolades and awards for her valiant service, she was a dedicated public servant and continues to serve the public in her current role as a victim advocate. He requests the applicant be granted an upgrade of her discharge. Another statement from R.C., the applicant's supervisor while assigned to the 164th Military Police Company, who summarized the applicant's military service as she was prompt, took her duties seriously, had a positive attitude, eager to learn. While being discharged, the applicant kept her dignity and job performance intact and she would have been an awesome Soldier had she not been discharged for her sexual preference.

c. A news article by the War House summarizing M. M.'s unjust discharge for her sexual preference. The applicant was referenced multiple times in the news article due to being M.M.'s romantic partner. The article references the two Soldiers being forced to plead guilty to the charges of sodomy and an indecent act to avoid a court-martial. The applicant and M.M. are still friends to this day.

5. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

1. 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.

2. 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, U.S. 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 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) states that separation codes are three-character alphabetic combinations that identify reasons for and types of separation from active duty. Separation codes and corresponding narrative reasons are aligned with applicable regulatory authority paragraphs. The regulation provides that the separation code "KFS" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, by narrative reason of "in lieu of trial by court-martial."

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

a. 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.

b. 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.

c. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have

been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

d. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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.

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

4. 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.

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 Discharge Review Boards (DRBs) and Service Correction of Military/Naval Records (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: (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 (Certificate of Release or Discharge from Active Duty) 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//