

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2025

DOCKET NUMBER: AR20240010074

APPLICANT REQUESTS:

- Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to change the separation authority, narrative reason, and Reentry (RE) Code
- Verification of 28 days paid leave upon separation from active duty
- Verification of per diem pay for service in Iraq
- An appearance before the Board via telephone or video

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 30 September 2004

FACTS:

1. Request the Board only address the applicant's request for change to the separation authority, narrative reason and RE code. The applicant will need to contact the Defense Finance and Accounting Service for verification of the 28 days paid leave upon separation from active duty and per diem compensation for service in Iraq.

2. 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.

3. The applicant states, in pertinent part:

- Due to new guidelines in place for "Don't Ask Don't Tell, he asks that his discharge reason be corrected
- Additionally, he wants to verify if he was paid for the 28 days of leave upon separation and per diem while deployed in Iraq

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

- On 8 January 2002, he enlisted in the Regular Army
- On 30 August 2004, an investigation was conducted finding him in violation of Army Regulation 635-200 (Personnel Separations Enlisted Personnel), Chapter 15 intent to engage in homosexual acts, including the possible marriage to a member of the same sex
- Separation proceedings were initiated for homosexual conduct under the provisions of Army Regulation 635-200, Chapter 15 with the recommendation for an honorable discharge
- He consulted with legal counsel and was advised of the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, Chapter 15 and waived consideration of his case by an administrative separation board, provided he received an honorable discharge
- Consistent with the chain of command recommendations, the separation authority approved his discharge on 13 September 2004, under the provisions of Army Regulation 635-200, Chapter 15
- DD Form 214, for the period ending 30 September 2004 reflect an honorable discharge from active duty with service from 8 January 2002 to 30 September 2004 for a net active service of 2 years, 8 months, and 23 days
 - Item 26 (Separation Code) shows JRB (Homosexual Conduct)
 - Item 27 (Reentry Code) shows 4 (Not eligible to reenlist)
 - Item 28 (Narrative Reason for Separation) shows Homosexual Admission
- His record is void of adverse counseling, disciplinary action, misconduct, lost time, court-martial, or any derogatory information

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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 enlisted in the Regular Army on 8 January 2002 and was honorably discharged from active duty on 30 September 2004 as a result of homosexual admission. 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, a change to his separation authority, narrative reason, and RE Code was appropriate.

2. The Board denied so much of the application that pertains to the applicant's request for paid leave days and per diem, he is being referred to DFAS customer service.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 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 30 September 2004 to show in:

- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code) 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

2. As it pertains to the applicant's request for paid leave days and per diem he is being referred to DFAS customer service.

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 (AR) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, prescribed the policies, standards, and procedures to ensure readiness and competency of the fore while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 15 (Discharge for Homosexual Conduct) contained general policies concerning homosexual conduct, including statutory provisions, pertinent definitions, and commander guidelines for fact-finding inquiries.

b. Paragraph 15-2 (Discharge policy) states homosexual conduct is grounds for separation from the Army under the criteria in paragraph 15-3.

c. Paragraph 15-3 (Criteria for discharge) states, in pertinent part, a Soldier will be discharged if the Soldier has made a statement that he/she is a homosexual or bisexual, or words to that effect, unless there is further approved finding that the Soldier has demonstrated that he/she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

3. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the U.S. 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

4. The "Don't Ask, Don't Tell" 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.

5. 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.

a. The memorandum states that, effective 20 September 2011, Service DRBs should normally grant requests, in these cases, to change the:

- narrative reason for discharge (the change should be to "Secretarial Authority" (Separation Program Designator (SPD) Code JFF))
- characterization of the discharge to honorable
- the RE code to an immediately-eligible-to-reenter category

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. 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. 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 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//