

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2025

DOCKET NUMBER: AR20240010689

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Report of Separation from Active Duty) for the period ending 17 December 1975 based on repeal of Don't Ask, Don't Tell (DADT) as follows:

- change item 9c (Authority and Reason) to "Secretarial Authority"
- change item 9c (Separation Program Designator (SPD)) to "JFF"
- change item 9e (Character of Service) to "Honorable"
- change item 10 (Reenlistment Code) to "1"

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 he was accused of something he did not do. He was accused of cashing someone's check and of having sex with another Soldier, which was not true.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 4 September 1974.
 - b. On 15 December 1974, the applicant was interviewed concerning his involvement in homosexual acts which occurred in the Federal Republic of Germany. In the interview the applicant admitted of his own free will that he was a homosexual and that he had been involved in homosexual acts. He indicated that he was a homosexual by signing a statement.

c. A DA Form 2823 (Sworn Statement), dated 29 May 1975, shows the applicant received a government check in the mail which he opened and saw it was made out to D_M_, in the amount of \$274.00. He knew the check was not his because he had received his check for the month already, but he decided to attempt to cash the check anyway because he needed the money. He forged the name of D_M_ on the check and received \$274.00 in cash from the teller at Citizens National Bank.

d. Statements from private first class (PFC) B_, PFC N_, and PFC B_, which states on 14 August 1975, the applicant engaged in homosexual acts.

e. On 18 September 1975, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for sleeping while posted as a sentinel. He was reduced to private/E3, suspended for a period of 90 days, when, unless sooner vacated, no further action would be taken.

f. On 6 October 1975, the applicant signed a statement admitting to being a homosexual and felt he should be discharged from the service.

g. On 28 October 1975, his immediate commander recommended he be discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 13, for unfitness. The commander's recommendation was based on the following: The applicant had been involved in at least two homosexual acts in the unit. In a statement to his former commander, he admitted he was a homosexual. He was involved in the illegal cashing of a government check, which was being investigated by the U.S. Secret Service Agency. He was being considered for elimination when he gave the statement to his former commander, however, there was no evidence available to substantiate his statement.

h. On 29 October 1975, the intermediate commander recommended approval. He stated that in the applicant's initial statement claiming homosexuality, there was no evidence supporting his claim, but recently two Soldiers were found guilty before a Special Court-Martial for engaging in homosexual acts with the applicant as the active partner.

i. On 19 November 1975, the applicant acknowledged that he had been advised by consulting counsel of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

j. On 3 December 1975, the applicant underwent a psychiatric evaluation for the purpose of separation. The Division Psychiatrist noted the data from the clinical interview did not indicate the presence of homosexual tendencies. The data conflicted with some information contained in the packet which the psychiatrist was required to

review. Therefore, he could not make a definitive statement on the presence or absence of homosexual tendencies.

k. On 9 September 1975, the separation authority approved the separation under the provisions of AR 635-200, paragraph 13-5a, unfitness, and directed he be issued an undesirable discharge certificate.

l. Accordingly, he was discharged under other than honorable conditions on 17 December 1975. His DD Form 214 shows he completed 1 year, 3 months, and 14 days of net active service this period. This form also shows in:

- Item 9c (Authority and Reason):
 - AR 635-200, paragraph 13-5a (7): unfitness - homosexual acts
 - SPD: JLC
- Item 10 (Reenlistment Code): RE-3, RE-1B
- Item 18b (Prior Active Service): 3 months, 28 days

BOARD DISCUSSION:

1. 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. The applicant was separated for unfitness with the commander citing chapter 13, for unfitness. The commander's recommendation was based on the following: The applicant "... had been involved in at least two homosexual acts in the unit. In a statement to his former commander, he admitted he was a homosexual. In addition, he was involved in the illegal cashing of a government check, which was being investigated by the U.S. Secret Service Agency". Therefore, the Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assign and liberal consideration, the Board determined a change in the characterization of service to honorable was not warranted and denied relief.

a. Authority and Reason: Deny. The Board found no error or injustice in the authority and reason the applicant

received upon his separation. The Board noted he voluntarily admitted his sexuality and his fraudulent activity by illegally cashing a government check. Therefore, the Board concluded the reason and authority was appropriate. The Board concluded that there is no error or injustice and denied relief.

b. Separation Code: Deny. The Board found no error or injustice in the separation code the applicant received upon separation. Pursuant to Army Regulation, the code he received accurately reflects his reason for separation; therefore, the Board determined there was no error or injustice and denied relief.

c. Reenlistment Code: Deny. The Board found no error or injustice in the reenlistment code the applicant received upon separation. Pursuant to Army Regulation, the reenlistment code he received was the appropriate code for his separation. Therefore, the Board concluded there was no error or injustice and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.

[REDACTED]

[REDACTED]

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 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. 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.

b. 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.

c. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

d. Chapter 13 established policy and provided procedures and guidelines for eliminating enlisted personnel found to be unfit or unsuitable for further military service. Paragraph 13-5a (7) (Unfitness), states, an individual is subject to separation under the provisions of this chapter for unfitness due to homosexual acts.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 13-5a (7), for unfitness - homosexual, would receive a separation code of "JLC."

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met

- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

5. The "Don't Ask - Don't Tell" (DADT) policy was implemented in 1993 during the Clinton administration. 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.

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")
- SPD Code to JFF
- characterization of the discharge to honorable
- 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: 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.

c. 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.

7. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

8. 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.

a. 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

c. The Board's jurisdiction under Title 10, U.S. Code, section 1552, extends to any military record of the Department of the Army. The ABCMR may return an application without action if the Board does not have jurisdiction to grant the requested relief.

//NOTHING FOLLOWS//