

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2025

DOCKET NUMBER: AR20240011091

APPLICANT REQUESTS: upgrade of her under honorable conditions (general) discharge, based on the repeal of Don't Ask, Don't Tell (DADT).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for period ending 20 September 1983

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 has been married for 20 years. Correction is warranted because she was discharged for homosexuality/bisexuality.
3. A review of the applicant's service record reflect the following:
  - a. She enlisted in the Regular Army on 17 November 1981.
  - b. A DA Form 4126-R (Bar to Reenlistment Certificate) dated 21 July 1983, shows her commander recommended she be barred from reenlistment due to an investigation for sodomy. She acknowledged she had been counseled and advised of the basis for this action. She declined to submit a statement in her own behalf.
  - c. Her immediate commander notified her on 26 July 1983, that he was initiating actions to separate her under the provisions of Army Regulation 635-200, (Personnel Separations – Enlisted Personnel), Chapter 15, for homosexuality.

d. Her commander formally recommended her separation from service, under the provisions of Army Regulation 635-200, Chapter 15, on 3 August 1983. The commander noted the applicant admitted to participating in homosexual acts.

e. She acknowledged she had been advised by her consulting counsel of the basis for the contemplated action, to accomplish her separation for homosexuality, and its effects; of the rights available to her; and the effect of any action taken by her in waiving her rights. She indicated she understood she could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to her. She declined to submit a statement in her own behalf.

f. She underwent a mental status evaluation, on 9 September 1983. She was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

g. Consistent with the chain of command's recommendations, the separation authority approved the applicant's discharge, and directed issuance of a DD Form 257A (General Discharge Certificate).

h. The applicant was discharged on 20 September 1983. Her DD Form 214 confirms she was discharged under the provisions of Army Regulation 635-200, paragraph 15-3b, for admission of homosexuality/bisexuality. Her service was characterized as under honorable conditions (general). She completed 1 year, 10 months, and 4 days of net active service this period.

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

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military record, the Board finds the applicant was discharged with an under honorable (general) conditions on 20 September 1983 pursuant to the provisions of Chapter 15, Army Regulation 635-200, for admission of homosexuality/bisexuality. As a result of this characterization of service, the applicant was issued a separation code of JRB and a Reenlistment Eligibility (RE) code of 4. The discharge proceedings were conducted in accordance with the laws and policies in effect at that time.

2. However, the Board recognizes that the legal and policy framework regarding homosexuality in the military has since changed significantly. In light of the repeal of DADT and accompanying policy revisions, it is now the policy that individuals discharged solely due to consensual homosexual conduct shall have their discharge characterization, separation code, RE code, and narrative reason for separation reviewed and, when appropriate, corrected to reflect current standards of equity and justice.

3. The applicant was serving honorably until the discharge, which stemmed solely from consensual conduct reported by another servicemember. The record indicates no other misconduct. Based on these circumstances, the Board determines it is equitable and just to grant full relief. As such, the Board directs the following corrections to the applicant’s military records:

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

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by issuing the applicant a new DD Form 214 for the period ending 20 September 1983, showing in:

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

X	
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 635-200 (Personnel Separations – Enlisted Personnel) sets 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. Chapter 15 provided for the separation of members who engaged in homosexual conduct or who, by their statements, demonstrated a tendency to engage in homosexual conduct.

3. The 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, U.S. Code, 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, U.S. Code, provides policy guidance for Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy 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 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:

- the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT
- 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.

//NOTHING FOLLOWS//