

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2025

DOCKET NUMBER: AR20240011121

APPLICANT REQUESTS: Through counsel, in effect, correction of his 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)
- Retainer Agreement
- Legal Brief in Support of Application
- VA Form 21-22a (Appointment of Individual as Claimant's Representative)
- Background on Department of Defense (DOD) Policy
- Five Letters of Appreciation
- DA Form 2823 (Sworn Statement)

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, through counsel, states in effect, his discharge was exclusively based on a policy that was in effect prior to the implementation of DADT. On his DD Form 214, item 26 shows SPD code of JRB, which denotes homosexual conduct, while item 28 shows a narrative reason for separation as admission of homosexuality/bisexuality.
 - a. He takes pride in having served in the Army as a Military Policeman (MP). During his service, he upheld a commendable reputation, as evidenced by numerous letters

from fellow military personnel expressing their appreciation for his unparalleled professionalism, his dedication, and commitment. There are no aggravating factors present in his military record, as demonstrated by his honorable discharge. He was fully capable of serving his country as an MP. He was a decorated Soldier, and a distinguished MP during his service.

b. He respectfully asks the Board to correct his DD Form 214, by amending the narrative reason for separation and the SPD code to reflect "Secretarial Authority" and "JFF," respectively, as his current discharge status represents an error or injustice.

3. The applicant, through counsel, provides and the service record shows:

- On 4 November 1982, he enlisted in the Regular Army
- On 18 September 1982, he was questioned by the Criminal Investigation Division (CID), about his sexuality; the CID agent asked the applicant if he was a homosexual, the applicant said yes, and further clarified that he is bisexual and that at the time he was dating a female
- The applicant understood that he can no longer serve as an MP, and expressed to the CID agent that he wished to continue his service and fulfill his military obligation, so he later can pursue his education
- On 6 September 1984, he was notified that separation action was initiated against him under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), chapter 15 (Separation for Homosexuality) paragraph 15-3; he acknowledged receipt of the of the separation action
- On 2 October 1984, his brigade commander directed that he be separated from the Army with an honorable discharge, with a reason and authority of Army Regulation 635-200, paragraph 15-3b, and SPD code of JRB
- On 4 October 1984, he was issued separation Orders 195-16, which show a separation date of 5 October 1984
- His DD Form 214 shows that on 9 October 1984, he was honorably discharged, due to admission of homosexuality/bisexuality; he completed 1 year, 11 months and 6 days of active federal service

4. The applicant's record is void of any additional disciplinary, or derogatory documents not pertaining to his admission of homosexuality/bisexuality.

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 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 admission. The Board found no error or injustice in his 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, a correction 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 separation authority, narrative reason for separation, separation program designator, and corresponding codes is appropriate..

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 9 October 1984 to show in:

- item 25 (Separation Authority) to Army Regulation 635-200, paragraph 5-3
- item 26 (Separation Code) to JFF
- item 27 (Reentry/Reenlistment Code) 1
- item 28 (Narrative Reason for Separation) to 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 policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.

a. Chapter 15 (Separation for Homosexuality) prescribed that homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a tendency to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the armed forces to maintain discipline, good order, and morale; to foster mutual trust and confidence among members; to insure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of members who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the armed forces; to maintain the public acceptability of military service; and to prevent breaches of security.

b. Paragraph 15-3 provides the criteria for separation may include preservice, prior service, or current service conduct or statements. A member will be separated per this chapter if one or more of the following approved findings is made:

(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act unless there are approved further findings that:

- Such conduct is a departure from the member's usual and customary behavior; and
- Such conduct is unlikely to recur because it is shown, for example, that the act occurred because of immaturity, intoxication, coercion, or a desire to avoid military service; and
- Such conduct was not accomplished by use of force, coercion, or intimidation by the member during a period of military service; and

- Under the particular circumstances of the case, the member's continued presence in the Army is consistent with the interest of the Army in proper discipline, good order, and morale; and
- The member does not desire to engage in or intend to engage in homosexual acts

(2) The member has stated that he or she is a homosexual or bisexual, unless there is a further finding that the member is not a homosexual or bisexual.

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the member is not a homosexual or bisexual (such as, where the purpose of the marriage or attempt to marry was the avoidance or termination of. Military service).

c. Paragraph 5-3 (Secretarial Authority), in effect at the time, provides that the separation of enlisted personnel for the convenience of the Government is the prerogative of the Secretary of the Army (SA). Except as delegated by this regulation or by special DA directives, it will be accomplished only "by the SA,'s authority. The separation of any enlisted member of the Army under this authority will be based on an SA determination that separation is in the best interests of the Army.

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), in effect at the time, prescribes eligibility criteria governing the enlistment of persons, with or without prior service, into the Regular Army (RA) and the US Army Reserve (USAR). Provides policies and procedures to process applicants for enlistment in the RA, delayed entry program (DEP), and USAR. Table 3-6 included a list of the Armed Forces Reenlistment Eligibility Codes Regular Army Reenlistment Eligibility (RE) Codes. RE codes are numbered 1, 2, 3, and 4.

- RE-1 applies to persons who were fully qualified when last separated; fully qualified for enlistment

- RE-2 applies to persons separated for the convenience of the government, under chapter 5, Army Regulation 635-200, whose reenlistment is not contemplated; fully qualified for enlistment
- RE-3 applies to persons who are not qualified for continued Army service, but the disqualification is waivable; fully qualified, but ineligible to enlist in the RA within 93 days after date of separation
- RE-4 applies to persons separated from last period of service with a nonwaivable disqualification; ineligible for enlistment

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 "JRB" 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.

//NOTHING FOLLOWS//