

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2025

DOCKET NUMBER: AR20240011385

APPLICANT REQUESTS: in effect:

- upgrade of his undesirable discharge to honorable
- change the narrative reason to Secretarial Authority with corresponding separation code and reenlistment code

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

- DD Form 149 (Application for Correction of Military Record), 22 August 2024
- letter, Army Review Boards Agency, 1 August 2024

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 discharged for conditions other than honorable but was pardoned under the provisions of the President. The pardon was for U.S. Military Veterans who were discharged or convicted for consensual same-sex relations. He was granted a full pardon by President Biden based on unaggravated, consensual, private conduct with persons older than 18 years of age.
3. A review of the applicant's service records show the following:
 - a. On 17 January 1966, he enlisted in the Regular Army for 3 years following a brief period of inactive service in the U.S. Army Reserve. He attained the rank/grade of specialist 4/E-4 and he served in Korea for 11 months.
 - b. He accepted nonjudicial punishment on:
 - 17 February 1967, for a driving infraction and was given a warning
 - 23 March 1967, for a second driving infraction and forfeited some pay

c. On 6 January 1967, the final action of a report of investigation referenced his self-admission statements to multiple consensual incidents of same sex relations.

d. On 29 August 1967, he underwent a psychiatric evaluation; the result of which was the allegations of same-sex relations, which were not proven but it was the examiner's opinion that his statements were truthful. Clearance was granted for administrative separation.

e. On 26 December 1967, his commanding officer notified him of his intent to recommend his separation under the provisions of Army Regulation 635-89 (Homosexuality) (now rescinded and obsolete), and he advised him of his rights.

f. On 3 January 1968, he elected his rights and in so doing, he elected neither to present his case before a board of officers nor submit a statement in his own behalf.

g. The intermediate commanders recommended approval of his discharge.

h. On 10 February 1968, the separation authority approved his discharge, directed issuance of an Undesirable Discharge Certificate with his reduction to the lowest grade.

i. On 19 February 1968, he was discharged in the rank/grade of private/E-1. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) reflects a characterization of service of under other than honorable conditions, under the provisions of Army Regulation 635-89, with Separation Program Number (SPN) 257 (Unfitness, homosexual acts), Reenlistment Code RE-4.

4. The 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's) and Service Boards for Correction of Military/Naval Records (BCM/NR's) to follow when taking action on applications from former service members discharged under DADT or prior policies. This memorandum provided that, effective 20 September 2011, Service DRB's should normally grant requests in these cases to change the:

- character of service to honorable, if warranted
- separation authority to "Army Regulation 635-200, paragraph 5-3"
- separation program designator code to "JFF"
- reentry (RE) code to an immediately-eligible-to-reenter category
- narrative reason for discharge to "SECRETARIAL AUTHORITY"

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military record, the Board finds the applicant was discharged under other than honorable conditions on 19 February 1968 pursuant to the provisions of Chapter 15, Army Regulation 635-200, by reason of homosexual conduct. As a result of this characterization of service, the applicant was reduced to the grade of Private (E-1), and 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. 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:

- Reinstatement of rank/grade to Specialist Four (SP4)/E-4;
- 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:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), 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 19 February 1968, showing in:

- reinstatement of rank/grade to Specialist Four (SP4)/E-4;
- 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.

ADMINISTRATIVE NOTE(S):

The applicant's records contain sufficient evidence to support additional awards not shown on his DD Form 214 and should be administratively corrected to show award of the:

- National Defense Service Medal
- Korea Defense Service Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-14)

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 635-89 (Personnel Separations – Homosexuality), then in effect (15 July 1966), prescribed authority and criteria for the disposition of military personnel whoa were homosexuals and military personnel who engage in or are alleged to engage in such acts.
3. Army Regulation 635-208 (Personnel Separations – Discharge – Undesirable Habits and Traits of Character), in effect at the time, provide procedure and guidance in the elimination from the service of enlisted personnel having undesirable habits and traits of character. Recommendation for discharge because of undesirability would be made in the case of an enlisted person who gives evidence of habits and traits of character manifested by antisocial or amoral trend, chronic alcoholism, criminalism, drug addiction, pathological lying, or misconduct. Upon determination that an enlisted person is to be discharged from service with an undesirable discharged under the provisions of these regulations, the authority accomplishing the discharge will, if the individual concerned is in a grade above E-1, automatically reduce such individual to grade E-1. When discharged because of undesirable habits or traits of character, and Undesirable Discharge Certificate will be furnished.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time of the applicant's hearing (1 October 1982), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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. Chapter 15 [now obsolete and rescinded] provided military members would be separated for homosexuality. When the sole basis for separation was homosexuality, a discharge under other than honorable conditions could be issued only if such characterization was otherwise warranted and if there was a finding that during the current term of service the Soldier attempted, solicited or committed a homosexual act by using force, coercion or intimidation; with a person under 16 years of age; with a subordinate; openly in public view; for compensation; aboard a military vessel or aircraft; or in another location subject to military control if the conduct had, or was likely to have had, an adverse impact on discipline, good order or morale due to the close proximity of other soldiers of the Armed Forces. In all other cases, the type of discharge would reflect the character of the Soldier's service.

d. Chapter 5-3. Secretarial Authority. 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.

5. 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.

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

- narrative reason for discharge to "Secretarial Authority" (Separation Program Designator (SPD) Code JFF)
- characterization of discharge to honorable
- authority to "Army Regulation 635-200, paragraph 5-3"
- separation program designator code to "JFF"
- RE code to an immediately-eligible-to-reenter category

a. 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.

b. 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.

7. Under Secretary of Defense memorandum for Senior Pentagon Leadership, Defense Agency and DoD Field Activity Directors, dated 11 December 2023, subject: Actions to Address Potential Injustices within Service Records of Former Service Members Discharged Based on Sexual Orientation. The memorandum states that:

a. In 2011, upon the repeal of the DADT statute, which was codified in Title 10 U.S. Code § 654, the Under Secretary of Defense for Personnel and Readiness USD(P&R) Memorandum, "Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code," September 20, 2011, directed the Military Department Review Boards to affirmatively address any potential injustices arising from DADT or similar policies. However, many potentially eligible veterans have not yet filed applications for relief. In addition to existing initiatives that encourage Service members to seek relief through the Military Department Review Board processes, the Department is taking affirmative steps to ensure all potentially eligible Service members discharged during DADT are given due consideration by the appropriate Review Board pursuant to the statutory authority in section Title 10 USC section 1552(b).

b. To that end, I direct the USD(P&R) to provide further implementing guidance on the process established by this memorandum to identify those former Service members who may be eligible for relief related to their discharge. Once such cases are identified, the Secretaries of the Military Departments will review the identified military personnel records, and where they believe those records may contain an error or injustice warranting correction, submit a request for relief on behalf of that group of former Service members to their respective Board for Correction of Military/Naval Records (BCM/NRs). Once submitted to the appropriate BCM/NR, the personnel records of each Service member will be individually reviewed and granted relief, as appropriate, on a case-by-case basis.

c. For the purpose of this proactive review only, and to protect the privacy of individuals whose records are being reviewed and ensure a quick, uniform process, the Secretaries of the Military Departments shall temporarily suspend provisions of policies or regulations that require administrative or processing steps for group applications pursuant to this memorandum beyond the BCM/NR's panel review, to include notifications to individual group members, opt-out requirements, pre-and post-BCM/NR actions and notifications to individual group members, and exhaustion of administrative remedies requirements for group applications prior to applying to the BCM/NR. Furthermore, for purposes of the BCM/NR review, the date of discovery of the injustice shall be the date the DoD refers the former Service member's records to the appropriate Military Department for possible inclusion in a group application under Title 10 USC section 1552(b). Temporary suspension of these policies or regulations is applicable only to group applications pursuant to this memorandum and should not impact the ability of an individual group member to seek individual BCM/NR review.

d. The USD(P&R) is delegated the authority to issue, in coordination with the Secretaries of the Military Departments, DoD-wide implementing policy on this matter outside of the Department's normal issuance process established by DoD Instruction 5025.01, "DoD Issuances Program," including the authority to amend this memorandum in whole or in part.

8. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JFF" corresponded to "Secretarial Authority," and the authority, Army Regulation 635-200, paragraph 5-3.

//NOTHING FOLLOWS//