

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 May 2025

DOCKET NUMBER: AR20240011677

APPLICANT REQUESTS: Upgrade of his 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 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), reflecting his service from 12 April 1984 to 22 April 1985
- Memorandum from the Under Secretary of Defense for Personnel and Readiness, dated 20 September 2011, subject: Correction of Military Records Following Repeal of Section 654 of Title 10, U.S. Code, providing policy guidance for Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR)

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 due to his sexual orientation. This is an injustice upon his service, and he was removed from the military through discriminatory practices.
3. A review of the applicant's available service record reflects the following:
 - a. He enlisted in the Regular Army on 12 April 1984.
 - b. He was reported as absent without leave (AWOL) from on or about 2 February 1985, and remained absent until on or about 4 February 1985.

c. He accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice on 14 February 1985 for being AWOL. His punishment included reduction to E-1, forfeiture of \$144.00, and 14 days extra duty and restriction.

d. A statement dated 15 March 1985, by the applicant's first sergeant (1SG) shows asked the applicant point blank if he was homosexual. The applicant stated yes. The 1SG then told the applicant that if he wanted out of the Army then he needed to write a statement and openly admit to being a homosexual.

e. An undated statement shows the applicant admitted to being a homosexual. He stated he could no longer deal with the pressures of the Army and his homosexual desires.

f. He underwent a mental status evaluation, on 3 April 1985. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

g. His immediate commander notified him on 9 April 1985, that he was initiating actions to separate him under the provisions of Army Regulation 635-200, (Personnel Separations – Enlisted Personnel), Chapter 15, for alleged homosexual conduct, or a demonstrated tendency to engage in homosexual conduct.

h. He consulted with legal counsel and was advised of the basis for the contemplated separation action and its effects, the rights available to him, and the effects of a waiver of his rights. He elected not to submit a statement in his own behalf.

i. His commander formally recommended his separation from service, under the provisions of Army Regulation 635-200, Chapter 15. The commander noted the applicant admitted to indulging in homosexual acts.

j. Consistent with the chain of command's recommendations, the separation authority approved the applicant's discharge on 12 April 1985, and directed issuance of a DD Form 257A (General Discharge Certificate).

k. The applicant was discharged on 22 April 1985. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 15-3b, for admission of homosexuality/bisexuality. His service was characterized as under honorable conditions (general). He completed 1 year and 8 days of net active service this period.

4. 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.

5. The DADT Repeal Act of 2010 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.

6. 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:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the circumstances leading to the applicant's separation being changed by policy after his separation, the Board concluded there is evidence of an injustice warranting a change to the applicant's discharge information.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: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 a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: AR635-200
- Separation Code: JFF
- Reentry Code: 1
- Narrative Reason for Separation: 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, 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 DRBs and Service BCM/NRs 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//