

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 2 September 2025

DOCKET NUMBER: AR20240011956

APPLICANT REQUESTS: an upgrade of her under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT 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 she is a lesbian and enlisted when the "Don't Ask, Don't Tell " (DADT) policy was in place. She was accused of homosexuality and harassed and belittled until she was charged with homosexuality and discharged. She committed no acts of a sexual nature while in the Army; therefore, she feels she was wrongly discharged, and her discharge should be upgraded.
3. The applicant enlisted in the Regular Army on 7 January 2002. She served in military occupational specialty 92G (Food Service Specialist).
4. Her Official Military Personnel File contains a Report of Mental Status Evaluation, dated 3 September 2002, which shows she was considered for discharge under Chapter 15, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). There was no evidence of any mental disease or defect, which would warrant a disposition through medical/psychiatric channels. The applicant reported no suicidal or homicidal thoughts, and she was cleared for any administrative action deemed appropriate by the command.
5. On 4 April 2003, court-martial charges were preferred against the applicant for being absent without leave (AWOL) from the U.S. Army from on or about 24 October 2002 to 11 February 2003.

6. On 7 April 2003, she consulted with legal counsel, and he was advised of the basis for the contemplated trial by court-martial for an offense punishable by a bad conduct or dishonorable discharge, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a request for discharge, and the procedures and rights available to her. Following consultation with legal counsel, she requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation 635-200, Chapter 10.

7. In her request for discharge, she acknowledged she was making the request of her own free will and she had not been subjected to any coercion whatsoever by any person. She understood, in effect, by requesting a discharge she was admitting guilt to the charges against her or of lesser-included offenses that also authorized the imposition of a bad conduct discharge or a dishonorable discharge. She acknowledged she understood if her discharge request was approved, she may be deprived of many or all Army benefits. She acknowledged she may be ineligible for many, or all benefits administered by the Department of Veterans Affairs, and she could be deprived of her rights and benefits as a veteran under both Federal and State laws. She stated that under no circumstances did she desire further rehabilitation or to perform further military service. She did not provide a statement on her own behalf.

8. On 17 April 2003, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial in accordance with Chapter 10 of Army Regulation 635-200 and directed the applicant be issued an under other than honorable conditions discharge.

9. On 24 April 2003, the applicant was discharged. The DD Form 214 she was issued shows she was discharged in lieu of trial by court-martial under the provisions of Chapter 10, Army Regulation 635-200 with an under other than honorable conditions characterization of service. She completed 11 months and 27 days of net active service during this period with lost time from 24 October 2002 to 11 February 2003. Her DD Form 214 shows in:

- Item 25 (Separation Authority), AR 635-200, Chap 10
- Item 26 (Separation Code), KFS
- Item 27 (Reenlistment Code), RE-4
- Item 28 (Narrative Reason for Separation), In Lieu of Trial by Court-Martial

10. There is no evidence indicating she applied to the Army Discharge Review Board for an upgrade of her discharge within that board's 15-year statute of limitations.

11. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of the regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

12. DADT 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.

13. The Board should consider the applicant's statements and the evidence she provides in accordance with the 25 July 2018, Under Secretary of Defense for Personnel and Readiness guidance to Military Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations.

BOARD DISCUSSION:

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 charged with being absent without leave from on or about 24 October 2002 to 11 February 2003, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, she consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant requested a chapter 10 for being AWOL and not sexual orientation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XX	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.

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 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of the regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. Paragraph 3-7b states that 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.

3. Army Regulation 635-200, Chapter 15, at the time prescribed the criteria and procedures for the investigation of homosexual personnel and their discharge from the Army. 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.

4. DADT 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.

5. 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 DRBs and BCM/NRs to follow when acting 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" with the SPD code of JFF)
- characterization of service to honorable
- the RE code to an immediately-eligible-to-reenter category

6. 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.

7. 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.

8. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 contains guidance on the burden of proof. It states, in pertinent part, that the ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

b. 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.

//NOTHING FOLLOWS//