

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2025

DOCKET NUMBER: AR20240013261

APPLICANT REQUESTS: upgrade of her under other than honorable conditions (UOTHC) discharge to honorable, based on the repeal of Don't Ask, Don't Tell (DADT). Additionally, she requests appearance before the Board, via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- List of health issues shows she has been diagnosed and received treatment for various injuries and illnesses, including depression and insomnia

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 signed with the intention of serving for a lifetime. Her hopes were dashed due to the betrayal. Her ex-girlfriend told ranking officers of her sexuality. While awaiting a hearing, she was placed on full-time kitchen and latrine duty; her monthly pay was held. She didn't receive any backpay, nor is she eligible for any Veterans benefits.
3. On her DD Form 149, the applicant notes post-traumatic stress disorder, and other mental health issues are related to her request.
4. A review of the applicant's service record reflects the following:
  - a. She enlisted in the Regular Army on 30 September 1988.
  - b. She received formal counseling on 18 December 1988, for being involved in lesbian activity with another Soldier.

c. She underwent a mental status evaluation, on 5 January 1989. She was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

d. On 19 January 1989, she accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for disobeying a lawful command from her superior officer, on or about 11 January 1989. Her punishment included reduction to E-1, forfeiture of \$163.00, and seven days restriction and extra duty.

e. Her commander notified her on 19 January 1989, that she was initiating actions to separate her under the provisions of Army Regulation 635-200, (Personnel Separations – Enlisted Personnel), Chapter 15, for homosexuality. As the specific reasons, the commander noted the applicant engaged in and intimate relationship with an individual of the same sex and admitted to a sexual relationship with the same individual.

f. She consulted with legal counsel and was advised of the basis for the contemplated separation action and its effects, the rights available to her, and the effects of a waiver of her rights. She further understood that she would be ineligible to apply for enlistment in the Army for a period of two years after discharge.

g. On 31 January 1989, her commander formally recommended her separation from service, under the provisions of Army Regulation 635-200, Chapter 15. The commander recommended she receive a discharge UOTHC.

h. By legal review on 31 January 1989, her separation action was found to be legally sufficient for further processing.

i. She received formal counseling on 3 February 1989, for a possible suicide attempt.

j. Consistent with the chain of command's recommendations, the separation authority approved her discharge on 7 February 1989, and directed issuance of a discharge UOTHC.

k. The applicant was discharged on 2 March 1989. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) 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 UOTHC. She completed 4 months and 6 days of net active service this period with 27 days of lost time.

5. 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.

6. 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.

7. 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 under other than honorable conditions on 2 March 1989, for admission of homosexuality/bisexuality. 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.

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/admission 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 grants relief with the following corrections to the applicant's military records:

- Reinstatement of rank/grade to Private Two (PV2)/E-2;

- 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

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 issuing the applicant a new DD Form 214 for the period ending 2 March 1989, showing in:

- reinstatement of rank/grade to Private Two (PV2)/E-2;
- 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 //SIGNED//

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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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
  - a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
  - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right

to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 3-7a provides that 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 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.

d. 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.

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 (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.

6. 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.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//