

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-119

████████████████████
████████████████████

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the completed application on June 5, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 4, 2016, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant alleged that he is the veteran whose name appears below his name in the case caption above. The veteran enlisted in the Coast Guard on July 6, 1987, and was honorably discharged from active duty on June 7, 1991. The veteran's military records show that the veteran was born female and served in the Coast Guard with a female name.¹ The applicant alleged that he is the veteran and that a State court has legally changed his gender to male and his name to the male name shown in the case caption.

The applicant asked the Board to direct the Coast Guard to issue him a new discharge form, DD 214, with his new name. (DD 214s do not include a notation of gender.) The applicant stated that having to disclose his former name and gender when he presents his DD 214 for employment or benefit purposes constitutes an injustice because of the social stigma and discrimination that transgender people face. His DD 214 reveals his transgender status every time he has to show it to someone. The applicant stated that he legally changed his gender in 2010 but that it is in the interest of justice for the Board to consider his request and grant relief because "until recently, it was not possible to remedy this injustice."

¹ The Board notes that persons' names are considered "male" or "female" (or both) because of cultural tradition, not law. This decision labels the names at issue "male" or "female" in accordance with American cultural tradition.

In support of his allegations regarding his identity and name, the applicant submitted a photocopy of a State court order, dated December 10, 2010, which changes the veteran's female first and middle names to the applicant's male first and middle names. He also submitted a copy of his new birth certificate, issued on April 11, 2011, showing his new name and gender, as well as copies of his driver's license and passport, showing his new name and gender. The birth date shown on these documents is the same date as that of the veteran, and the place of birth and the names of the mother and father shown on the applicant's new birth certificate are the same as the place of birth and names of the veteran's mother and father in the veteran's military records. In addition, the birth certificate shows that it was a single birth (without a twin).

VIEWS OF THE COAST GUARD

On September 30, 2015, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case submitted by Commander, Personnel Service Center (PSC), who recommended that the Board grant relief.

PSC stated that although the application is not timely, PSC recommends that the Board consider the case on the merits in the interest of justice. PSC stated that the applicant's DD 214 is not erroneous because under Chapter 1.D.2.a. of COMDTINST M1900.4D, the manual for preparing DD 214s, entries on a DD 214 are supposed to be accurate as of the date of discharge. However, PSC stated, when transgender veterans present their DD 214s to receive veterans' benefits or for employment purposes, they are potentially subject to discrimination because the DD 214 reveals their prior gender because of their names. Therefore, PSC recommended that the Board order the Coast Guard to issue the applicant a new DD 214 with his current name "in the interest of privacy and justice."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 7, 2015, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. The applicant responded on October 14, 2015, stating that he agrees with the Coast Guard's recommendation to grant relief.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552. Although the applicant legally changed his gender in 2010 and applications are supposed to be filed within three years of the applicant's discovery of the alleged error or injustice, the Board finds that it is in the interest of justice to consider this case on the merits because of the potential for injustice to the applicant and recent decisions granting relief in similar cases issued by the Army, Navy, and Air Force correction boards.

2. The applicant alleged that he is the veteran whose female name is shown in the case caption above and that his DD 214 is erroneous and unjust because it does not reflect his new name and gender. The BCMR is authorized to correct both errors and injustices in military records.² The term “injustice” as used in 10 U.S.C. § 1552(a) “do[es] not have a limited or technical meaning and, to be made the basis for remedial action, the ‘error’ or ‘injustice’ *need not have been caused by the service involved*” (emphasis added).³ Therefore, even when the Coast Guard has not caused the alleged error or injustice—as in this case—the Board may correct it nonetheless. In considering allegations of error and injustice, the Board begins its analysis in every case by presuming that the disputed information in the veteran’s military record is correct, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties “correctly, lawfully, and in good faith.”⁵

3. The applicant has submitted copies of a court decision, new birth certificate, driver’s license, and passport, which show that his former name, his date of birth, his place of birth, and the names of his parents are the same as those of the veteran whose name appears second in the caption above. Therefore, the Board finds that the applicant has proven by a preponderance of the evidence that he is the veteran whose name appears second in the caption above and that he has changed his legal name and gender since his discharge from the Coast Guard.

4. Until recently, the military correction boards generally refused to reissue DD 214s when veterans have changed their name and gender because their DD 214s were accurate when they were issued, as required by policy.⁶ In late 2014, the Army BCMR began directing the Army to reissue DD 214s for transgender applicants in their new names based on a finding that denying relief might prevent or delay these veterans from receiving benefits.⁷ The Navy, Air Force, and Coast Guard correction boards have followed suit based on arguments of potential

² 10 U.S.C. § 1552(a).

³ 41 Op. Att’y Gen. 94 (1952), 1952 WL 2907.

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁶ Docket No. 20110019856 (Army BCMR, April 17, 2012); Docket No. 20060017156 (Army BCMR, July 10, 2007); Docket No. 20040007301 (Army BCMR, June 30, 2005); Docket No. 896-01 (Navy BCNR, April 6, 2001); Docket No. 7208-00 (Navy BCNR, May 21, 2001); Docket No. 1854-00 (Navy BCNR, June 7, 2001); Docket No. 99-00837 (Air Force BCMR, 1999); Docket No. 2000-151 (Coast Guard BCMR, May 17, 2001); Docket No. 2008-181 (Coast Guard BCMR, Feb. 26, 2009); *but see* Docket No. BC-2003-04051 (Air Force BCMR, 2004), in which the AFBCMR directed the issuance of a second DD 214 to a transgender retired veteran, finding that “the original DD Form 214 is a hindrance to the applicant should she be required to provide documents to a servicing facility for her needs, such as insurance companies, hospitals, places of employment, etc...[W]e are not inclined to provide this applicant with only an SOS [Statement of Service]. In our opinion, to do so would be arbitrary and capricious if the applicant is not also provided an additional DD Form 214, reflecting her current name and verifying military service.”

⁷ *See, e.g.*, Army BCMR Docket Nos. 20140003251, 20140021645, 20140001946.

employment discrimination and potential denial or delay of veterans' benefits.⁸ These decisions require the military services to retain the old DD 214 and the decision of the board in the applicant's military record for historical purposes.⁹

5. Although Chapter 1.D.2.a. of COMDTINST M1900.4D requires DD 214s to be accurate as of the date of discharge, this rule may have an unjust impact on transgender veterans, whose prior gender is revealed when they present their DD 214s. The disclosure of their prior gender exposes them to potential prejudice in gaining employment as well as to potential delay in gaining benefits. The impact of the rule in COMDTINST M1900.4D on transgender veterans is potentially much more severe and intrusive than it is on veterans who change their names for other reasons, such as marriage or divorce.¹⁰ Moreover, courts have found that a person has a privacy interest in his or her gender history, which is considered an intimate and "excruciatingly private" matter.¹¹

6. Therefore, the Board finds that to protect the applicant's privacy and in the interest of justice, relief should be granted by directing the Coast Guard to issue him a new DD 214 in his new name with no reference to his original name. His prior DD 214 should be retained in his record with a copy of this decision to explain why the name on his new DD 214 does not match the name on all his other military records.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁸ See, e.g., CGBCMR Docket No. 2015-090; AFBCMR Docket No. BC-2014-01340; Asst. Secretary of the Navy for Manpower & Reserve Affairs, BCNR FAQs, at http://www.secnav.navy.mil/mra/bcnr/Pages/FAQ_and_Key_Information.aspx#1.

⁹ *Id.*; AFBCMR Docket No. BC-2003-04051.

¹⁰ The Board notes that although disparate impact analysis has been applied primarily in employment law cases for protected groups, following *Griggs v. Duke Power Company*, 401 U.S. 424 (1971), by analogy, the legal reasoning in those decisions is applicable in this case.

¹¹ *Powell v. Schriver*, 175 F.3d 107, 112 (2nd Cir. 1999), citing *Whalen v. Roe*, 429 U.S. 589, 600 (1977) (citing *Griswold v. Connecticut*, 277 U.S. 438 (1965), and *Roe v. Wade*, 410 U.S. 113 (1973)).

ORDER

The application of former [REDACTED] USCG, now known as [REDACTED] for correction of his military record is granted. The Coast Guard shall issue him a new DD 214 in his current legal name, [REDACTED]. The Coast Guard shall also retain a copy of this decision with his old DD 214 in his military records.

March 4, 2016

