

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2016-032**



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**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 application on December 12, 2015, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 28, 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 she is the veteran whose name appears below her name in the case caption above. The veteran's military records show that the veteran was born male and served in the Coast Guard with a male name.<sup>1</sup> The applicant asked the Board to direct the Coast Guard to issue her a new discharge form, DD 214, and an honorable discharge certificate (DD 256 CG) with her new name. (DD 214s and DD 256s do not include a notation of gender.) She noted that although she did not legally change her name through the courts, she changed her name in 2000 through a common law name change. She alleged that her state of residency at the time, [REDACTED],<sup>2</sup> "has long recognized that this method is a valid and legal way of changing one's name, and that a court order is not required for the name change to be effective." The

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<sup>1</sup> 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.

<sup>2</sup> See, e.g., *Piotrowski v. Piotrowski*, 71 Mich. App. 213, 215-16 (Mich. Ct. App. 1976) (finding that "[u]nder the common law a person may adopt any name he or she wishes, without resort to any court and without any legal proceedings, provided it is not done for fraudulent purposes. See *Kruzel v. Podell*, 67 Wis.2d 138, 151, 226 N.W.2d 458, 464 (1975), *Petition of Hauptly*, Ind. App., 312 N.E.2d 857, 859 (1974), *Egner v. Egner*, 133 N.J. Super, 403, 406, 337 A.2d 46, 48 (1975), *Application of Lawrence*, 133 N.J. Super. 408, 411, 337 A.2d 49, 51 (1975); *In re Marriage of Banks*, 42 Cal. App.3d 631, 637, 117 Cal. Rptr. 37, 41 (1974), *Application of Halligan* 46 A.D.2d 170, 171, 361 N.Y.S.2d 458, 459 (1974). There is no requirement that any person go through the courts to establish a legal change of name.").



applicant argued that since she effected the common law name change in 2000, no state or federal agency has refused to accept her new name. In support of her application, she submitted the following documents as evidence of the name change:

- A notarized affidavit as to change of name signed in the State of [REDACTED] on April 21, 2000.
- A notarized copy of a [REDACTED] operator license which bears her new name and the same date of birth as that of the veteran.
- A notarized copy of a Social Security Card that bears her new name and the same Social Security number as that of the veteran.
- A notarized copy of a Department of Veteran's Affairs identification card that bears her new name and a photograph of the applicant.
- A copy of a National Guard Report of Separation and Record of Service form, NGB Form 22 which bears her new name and the same name as that of the veteran.

The applicant also asked the Board to ensure that her former name is not entered in Block 18 (Remarks) of the new DD 214 or on the DD 256 CG. She also asked the Board to correct her DD 214 to show that she earned the National Defense Service Medal (NDSM) and the Army Service Ribbon, both of which she received while serving in the U.S. Army after her discharge from the Coast Guard. Finally, the applicant asked the Board to correct several spelling mistakes that appear on her old DD 214.

The applicant stated that she wants her DD 214 to reflect her current name because before and during her Coast Guard service she was "not able to contemplate or to undertake gender transition" without fear of being disqualified for enlistment or other adverse consequences, including a less than honorable discharge. She also argued that the name inconsistency between her DD 214 and other documents works an injustice by revealing her to be transgender and potentially subjecting her to harassment and discrimination.

The applicant argued that although she was discharged from the Coast Guard in 1987 and changed her name in 2000, the Board should consider it in the interest of justice to consider her application. She argued that the Board should excuse the untimeliness because given the government's previous policies against reissuing the DD 214 for transgender veterans, she reasonably believed that a name change request from a transgender individual such as herself would be refused. She stated that after the Army and Navy BCMRs issued decisions in 2014 that reversed such long-standing policy, she believed that she could successfully get her name changed in her military records.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on July 5, 1983, and was honorably discharged on July 2, 1987, and released into the Reserve. Her discharge form DD 214, DD 256, and other Coast Guard records reflect her former name, which is not her current name. The applicant enlisted in the [REDACTED] Army National Guard in 1989 under her former name, was honorably discharged in 1992, and received the NDSM and the Army Service Ribbon during her Army

service. According to the applicant, she effected a common law name change in 2000 and has been living under her new name ever since.

### VIEWS OF THE COAST GUARD

On May 20, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the [REDACTED] and analysis provided in a memorandum on the case submitted by Commander, Personnel Service Center (PSC), who recommended that the Board grant partial relief.

PSC stated that although the application is not timely, the Board should 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 her current name "in the interest of privacy and justice." PSC also recommended that certain spelling errors on the DD 214 be corrected when the new DD 214 is created. Neither the JAG nor PSC addressed the applicant's request for a corrected DD Form 256 CG.

Regarding the applicant's request to have her Army Service Ribbon and NDSM listed on her DD 214, PSC recommended that this request be denied. PSC argued that the Army Service Ribbon should not be included on her DD 214 because she received the ribbon after she was discharged from the Coast Guard, and the DD 214 reflects data for the current period of active duty during and prior to issuance of the DD 214, and not awards received after separation. In addition, PSC argued that the applicant's request to have the NDSM included on her DD 214 should also be denied because the medal was earned during her Army service and not during her Coast Guard service. Moreover, PSC noted that the applicant served in the Coast Guard from 1983 to 1987, and the Coast Guard Medals and Awards Manual states that the NDSM is awarded to members who honorably served from June 27, 1950, to July 28, 1954; from January 1, 1961, to August 14, 1974; from August 2, 1990, to November 30, 1995; or from September 12, 2001, to a date to be determined by the Secretary of Defense.

### APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 31, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within thirty days. The applicant responded on June 28, 2016, and agreed with the JAG's recommendation that relief be granted with respect to her change of name and correcting the typographical errors on the DD 214. The applicant also agreed with the JAG's recommendation that relief should be denied with respect to the two medals/ribbons that she received during her Army service. The applicant, however, expressed concern that the Coast Guard did not [REDACTED] her request to have a new DD Form 256 prepared reflecting her current name. She argued that the reasoning set forth in the Coast Guard's advisory opinion supports granting this relief, and she assumes the Coast Guard does not object to it.



Finally, the applicant disagreed with the JAG's argument that she did not provide evidence of a legal name change. She argued that this is incorrect because the affidavit of name change that she provided is evidence of a legal name change effected on April 21, 2000. Also, the copies of her driver's license, Social Security card, Department of Veteran's Affairs ID card, and her NGB-22 in her current name are all evidence of a legal name change that is duly recognized as such by state and federal authorities.

### 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 changed her name in 2000 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 military correction boards.

2. The applicant alleged that she is the veteran whose male name is shown in the case caption above and that her DD 214 and DD Form 256 CG are erroneous and unjust because they do not reflect her new name and gender. The BCMR is authorized to correct both errors and injustices in military records.<sup>3</sup> 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).<sup>4</sup> 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.<sup>5</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties "correctly, lawfully, and in good faith."<sup>6</sup>

3. The applicant has submitted a notarized copy of an affidavit of name change executed in the State of ██████████ which shows that on April 21, 2000, she changed her name from that of the veteran to her current name. Under ██████████ law, the affidavit was sufficient to legally change her name,<sup>7</sup> and the validity of such a name change has been recognized in federal

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<sup>3</sup> 10 U.S.C. § 1552(a).

<sup>4</sup> 41 Op. Att'y Gen. 94 (1952), 1952 WL 2907.

<sup>5</sup> 33 C.F.R. § 52.24(b).

<sup>6</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>7</sup> See *Piotrowski*, 71 Mich. App. 215-16.



court.<sup>8</sup> The notarized copy of the [REDACTED] driver's license shows that the State of [REDACTED] has recognized her name change. The applicant also submitted a copy of a Social Security card bearing the veteran's SSN and her current name. Therefore, the Board finds that the applicant has proven by a preponderance of the evidence that she is the veteran whose name appears second in the caption above and that she has changed her legal name and gender since her 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.<sup>9</sup> 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.<sup>10</sup> The Navy, Air Force, and Coast Guard correction boards have followed suit based on arguments of potential employment discrimination and potential denial or delay of veterans' benefits.<sup>11</sup> 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 or to explain why the name on the new DD 214 does not match the name on the rest of the veteran's military records.<sup>12</sup>

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 a potential delay or denial of 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.<sup>13</sup> Moreover, courts have found that a

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<sup>8</sup> *United States vs. Cox*, 593 F.2d 46, 48-49 (6<sup>th</sup> Cir. 1979) (finding that "[t]he statutory name change procedure in Michigan, M.C.L.A. s 711.1, is not exclusive; it merely provides an additional method for effecting a name change as a matter of public record. 71 Mich. App. at 216, 247 N.W.2d 354. There was no showing that the defendant assumed the name Stein for fraudulent purposes. In the absence of such proof he was legally entitled to use that name as his own.").

<sup>9</sup> 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."

<sup>10</sup> *See, e.g.*, Army BCMR Docket Nos. 20140003251, 20140021645, 20140001946.

<sup>11</sup> *See, e.g.*, the military correction boards' decisions CGBCMR Docket No. 2015-119, 2015-117, 2015-090; AFBCMR Docket No. BC-2014-01340; and Asst. Secretary of the Navy for Manpower & Reserve Affairs, BCNR FAQs, at [http://www.secnav.navy.mil/mra/bcncr/Pages/FAQ\\_and\\_Key\\_Information.aspx#1](http://www.secnav.navy.mil/mra/bcncr/Pages/FAQ_and_Key_Information.aspx#1).

<sup>12</sup> *Id.*; AFBCMR Docket No. BC-2003-04051.

<sup>13</sup> 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 to transgender veterans.

person has a privacy interest in his or her gender history, which is considered an intimate and “excruciatingly private” matter.<sup>14</sup> Therefore, the Board finds that it is in the interest of justice to direct the Coast Guard to issue the applicant a new DD 214 and DD 256CG with her new name.

6. The applicant also asked the Board to correct her DD 214 to show that she received the NDSM and the Army Service Ribbon. The Board finds that this request should be denied because she received the NDSM and the Army Service Ribbon from the Army several years after she was discharged from the Coast Guard, and COMDTINST M1900.4D states that the DD 214 reflects data for the period of active duty during and prior to issuance of the DD 214, and not awards received after separation. Although Article 1.E. of COMDTINST M1900.4D states that Block 13 should list all medals awarded or authorized for all periods of service, the applicant had not yet received these two medals at the time of her discharge from the Coast Guard in 1987 and they should not be included on the DD 214 documenting her Coast Guard service.

7. 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 her a new DD 214 and DD 256CG in her new name with no reference to her original name and without the typographical errors (“SHOOL,” “MATE AND 2ND,” and “COMMENDATIONS”) identified on her DD 149. Her prior DD 214 should be retained in the applicant’s military record with a copy of this decision to explain why the name on her new DD 214 does not match the name on all her other military records.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>14</sup> *Powell v. Schriver*, 175 F.3d 107, 112 (2d Cir. 1999).

**ORDER**

The application of former [REDACTED] USCG, now known as [REDACTED], for correction of her military record is granted in part. The Coast Guard shall issue her a new DD Form 214 and DD Form 256 CG in her current legal name, [REDACTED], without repeating the typographical errors in the original DD Form 214. The Coast Guard shall also retain a copy of this decision with her old DD Form 214 in her military records. All other requests are denied.

October 28, 2016

