

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-058

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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 March 5, 2016, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 13, 2017, 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 male and served in the Coast Guard with a male name.¹ The applicant asked the Board to direct the Coast Guard to issue her a new discharge form, DD 214, with her new name and ensure that her former name is not listed in the remarks section of the DD 214. She also asked that her DD 214 reflect her current gender.² In support of her application, she submitted the following documents as evidence of the name and gender change:

- Copy of name change decree issued by a State Superior Court on October 23, 2007, changing the veteran's name to her new name.
- Copy of gender change decree issued by the State Superior Court on February 23, 2012, changing the applicant's legal gender from male to female.
- A birth certificate issued by another State on September 20, 2012, with the veteran's place, date of birth, and parents' names but the applicant's new name and female gender.

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.

² DD 214s do not include a notation of gender.

- Copy of a driver's license for the applicant's State of residency which bears her new name and the same date of birth as that of the veteran.
- Copy of a U.S. Department of Veterans Affairs healthcare ID card which bears her new name.
- Copy of a private pilot's license issued by the Federal Aviation Administration which bears her new name and the same date of birth and Social Security Number as those of the veteran.
- Copy of letter from a physician declaring that the applicant had undergone an irreversible surgical procedure on December 9, 2013, for the purpose of permanently transitioning from male to female.

The applicant stated that she wants her DD 214 to reflect her current name because the current name on her DD 214 has caused her to experience injustice and discrimination. She noted that it is particularly distressing for her to explain the mismatch of her current name to the name on her DD 214 to healthcare workers or government representatives.

The applicant argued that although she was discharged from the Coast Guard in 1985, the Board should consider it in the interest of justice to consider her application because until recently she was unaware that veterans could request to have their records corrected to reflect a new name and gender. She argued that if her records are corrected then she will feel less at risk when she needs to disclose her DD 214 to obtain the benefits and services she earned as a veteran of the Coast Guard.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 24, 1976, and was honorably discharged on May 23, 1980, and released into the Reserve. Her discharge form DD 214 and other Coast Guard records reflect her former name, which is not her current name.

VIEWS OF THE COAST GUARD

On July 20, 2016, 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, 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."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 3, 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 August 10, 2016, and agreed with the JAG's recommendation.

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. Applications to the Board are supposed to be filed within three years of the applicant's discovery of the alleged error or injustice. 10 U.S.C. § 1552(b). Although the applicant changed her name in 2007 and her gender in 2012, 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 is erroneous and unjust because it does not reflect her new name and gender. The BCMR is authorized to correct both errors and injustices in military records.³ 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).⁴ 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.⁵ Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties "correctly, lawfully, and in good faith."⁶

3. The applicant has submitted copies of court documents, licenses, and a birth certificate showing she has changed her name and gender change and that her Social Security Number, date of birth, and parents' names 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 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.

³ 10 U.S.C. § 1552(a).

⁴ 41 Op. Att'y Gen. 94 (1952), 1952 WL 2907.

⁵ 33 C.F.R. § 52.24(b).

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

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.⁷ 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.⁸ 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.⁹ 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.¹⁰

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.¹¹ 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.¹²

6. The applicant also asked the Board to correct her DD 214 to reflect her new gender. The record shows that she enlisted in the Coast Guard and was discharged as a male, but she provided copies of a court order and birth certificate which show that her gender has been legally changed from male to female. However, no denotation of gender appears on a DD 214 and so no correction of gender on the DD 214 is required.

⁷ 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."

⁸ *See, e.g.*, Army BCMR Docket Nos. 20140003251, 20140021645, 20140001946.

⁹ *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.

¹⁰ *Id.*; AFBCMR Docket No. BC-2003-04051.

¹¹ 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.

¹² *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*, 391 U.S. 470 (1968), and *Roe v. Wade*, 410 U.S. 113 (1973)).

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 in her new name with no reference to her original name. Her prior DD 214 should be retained in her 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)

ORDER

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

January 13, 2017

