

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-134

[REDACTED]
[REDACTED]
[REDACTED]

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 May 24, 2016, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 23, 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 enlisted in the Coast Guard on July 2, 1991, and was honorably discharged from active duty on June 30, 1995. The veteran's military records show that the veteran was born male and served in the Coast Guard with a male name.¹ The applicant alleged that she is the veteran and that a State court has legally changed her gender to female and her name to the female name shown in the case caption.

The applicant asked the Board to direct the Coast Guard to issue her a new discharge form, DD 214, with her new name. (DD 214s do not include a notation of gender.) The applicant stated that having to disclose her former name and gender when she presents her DD 214 for employment or benefit purposes constitutes an injustice and puts her at risk. The applicant stated that she legally changed her gender in 2011 but that it is in the interest of justice for the Board to consider her request and grant relief because she did not know that a remedy was possible until April 2016.

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 her allegations regarding her identity and name, the applicant submitted a photocopy of a State court order, dated April 27, 2011, which changes the veteran's male first and middle names to the applicant's female first and middle name. She submitted a copy of her passport showing her new name and gender and the same State and date of birth as that of the veteran whose name appears second in the case caption above. The applicant submitted a copy of her Social Security card, which bears her new name and the same Social Security number as that of the veteran. The applicant also submitted a copy of a letter from a doctor who states that the applicant underwent gender reassignment surgery from male to female on June 24, 2011, after undergoing appropriate clinical treatment for a gender transition.

VIEWS OF THE COAST GUARD

On November 17, 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, 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 her current name "in the interest of privacy and justice."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 18, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within thirty days. No response was received.

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 her gender in 2011 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 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.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 order, Social Security card, and passport, which show that her former name, her date of birth, and her State and date of birth 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.

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 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

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.

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/bcncr/Pages/FAQ_and_Key_Information.aspx#1.

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.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 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 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)

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 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.

March 23, 2017

