

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-057

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FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the application on January 6, 2017, 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 September 8, 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. She asked the Board to direct the Coast Guard to issue her a new discharge form DD 214 with her new name and to change her gender from male to female in the Defense Enrollment Eligibility Reporting System (DEERS).¹ The veteran's military records show that the veteran was born male and served in the Coast Guard with a male name.² In support of her application, she submitted the following documents as evidence of the name change:

- Copy of General Judgement and Change of Name and Order to Post issued by the Circuit Court of ██████████, which shows that the veteran has received a legal name change to the applicant's name. On this court order, the petitioner's residence is the same as that shown as the veteran's address on the veteran's DD 214.
- Copy of an operator license for the applicant's state of residency, which bears her new name and the date of birth of the veteran.
- Copy of a United States Uniformed Services retiree ID card which bears her new name.

¹ DEERS is a database of information on uniformed service members. See <https://www.tricare.mil/deers/> (last visited August 22, 2017).

² 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.

- Copy of the first page of a United States passport, issued on October 6, 2014, which indicates that the applicant's sex is female and that her date of birth is the same as that of the veteran..
- Copy of an undated, sworn statement from a doctor declaring that the applicant had been treated for gender dysphoria and has had "appropriate clinical treatment for gender transition" from male to female.

The applicant stated that she wants her DD 214 corrected to reflect her current name because the name on her DD 214 creates an injustice because of the social stigma and discrimination that transgender people face. She noted that her current DD 214 containing her previous name reveals her transgender status each time she shows someone the form and that "this injustice can be remedied by effectively issuing a correct DD 214 listing my current name."

The applicant argued that although she was discharged from the Coast Guard in 2009, 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.

SUMMARY OF THE RECORD

The applicant served on active duty in the U.S. Army for two years and after being honorably discharged she enlisted in the Coast Guard on March 14, 1989. She served in the Coast Guard for more than twenty years and retired with an honorable discharge on November 30, 2009. Her Coast Guard DD 214 and other Coast Guard records reflect her former male name, which is not her current name.

VIEWS OF THE COAST GUARD

On June 19, 2017, the Judge Advocate General (JAG) 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 different name on their DD 214 reveals their prior gender. 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 argued that the applicant's request to change her gender within DEERS should be denied because, PSC argued, she has not shown that it is inaccurate in denoting her previous male name and gender.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 29, 2017, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within thirty days. The Chair did not receive a response.

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. Under § 1552(b), applications are supposed to be filed within three years of the applicant's discovery of the alleged error or injustice, but the Board may waive the untimeliness of an application in the interest of justice. In this case, the applicant changed her name in [REDACTED] and the Board received her application more than three years later in January 2017. Therefore, her application was not timely filed. However, 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 numerous 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 argued that her DD 214 and information in DEERS 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.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 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 gender and legal name since her discharge from the Coast Guard. The applicant has submitted a copy of a court order showing that the veteran (with the same address) received a legal name change to the name of the applicant. In addition, the applicant's driver's license and passport show that the applicant has the same date of birth as the veteran.

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. In the past, the military correction boards generally refused to reissue DD 214s when veterans have changed their name and gender, noting that their DD 214s were accurate when they were issued, as required by policy.⁷ In late 2014, however, 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 DEERS to reflect her new name and gender. The JAG recommended that this request be denied because the applicant has not shown that the DEERS entry is inaccurate in denoting her previous male name and gender. The Board finds, however, that leaving DEERS uncorrected would be unjust. The applicant is a Coast Guard

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.*, Coast Guard BCMR 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.

¹⁰ *Id.*; Air Force BCMR 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*, 381 U.S. 473 (1965), and *Roe v. Wade*, 410 U.S. 113 (1973)).

retiree, and if DEERS lists her gender as male, then she or her dependents could encounter difficulty trying to obtain health benefits under TRICARE.¹³ In addition, changing a transgender retiree's name and gender in DEERS to facilitate the receipt of health benefits is consistent with the Board's prior decision in BCMR Docket No. 2008-181.

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, and changing her name and gender to her new name and gender within DEERS. 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 her other military records.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹³ TRICARE is a program designed to provide health care services to active duty and retired members of the United States military who are enrolled in DEERS, <http://tricare.com/what-is-tricare/> (last visited August 22, 2017).

ORDER

The application of [REDACTED], USCG (Retired), formerly 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] make the same correction of her name in DEERS; and change any notation of her gender in DEERS from male to female. The Coast Guard shall also retain a copy of this decision with her old DD 214 in her military records.

September 8, 2017

