

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-224

████████████████████
████████████████████
MST2 (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case on September 19, 2018, after receiving the application and the applicant's military records 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 October 18, 2019, 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, and she has asked the Board to direct the Coast Guard to issue her a new discharge form DD 214 with her new name. The veteran's military records show that the veteran was born male and served in the Coast Guard with a male name.¹ The Social Security number in the veteran's records is the same as that shown on the application. In support of her application, she submitted a copy of a name change order issued by the Probate Court for the County of ██████████ in ██████████ in 2003. She did not explain why she waited nearly fifteen years after changing her name to submit an application to the Board.

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 "showing documents with your old name and gender on them often causes things such as discrimination in house buying, job hunting, and other things."

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.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 6, 1997, and was honorably discharged on October 9, 2002. Her Coast Guard DD 214 and other Coast Guard records reflect her former male name, which is not her current name.

APPLICABLE REGULATIONS

Article 1.D.2. of COMDTINST M1900.4D, the Commandant's instruction for preparing DD 214s, states that the DD Form 214 is an important record of service and all entries are for the current period of active duty. Article 1.K. states that corrections made to a DD 214 after issuance are to be issued on a DD 215. Article 1.L. provides that, in lieu of a DD 215, a DD 214 should be reissued when the form cannot be corrected by issuance of a DD 215, when two DD 215s have already been issued and a third correction is required, when the character of service has been upgraded, and when a derogatory Narrative Reason for Separation is being upgraded.

VIEWS OF THE COAST GUARD

On January 29, 2010, a judge advocate 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), and recommended that the Board administratively close the case because the applicant's record had been corrected by preparing a DD 215 with the applicant's current name. The DD 215 misspells the applicant's last name in block 1.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 4, 2019, 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 February 13, 2019, and indicated that she had no objection to the recommendation of the Coast Guard.

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 concerning this matter pursuant to 10 U.S.C. § 1552. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² In this case, the applicant was discharged in October 2002, legally changed her name in 2003, and submitted her application approximately fifteen years later. 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 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

2. The applicant alleged 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 submitted a copy of a court document showing a name change, and her former name is the same as that of the veteran whose name appears second in the caption above. Her application shows that her Social Security number is the same as that of the veteran. 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 since her discharge from the Coast Guard.

4. Until 2014, 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 issue a new DD 214 (rather than a DD 215) in the veteran’s new name and to retain the old DD 214 and the decision of the Board in the applicant’s military record for historical purposes and 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

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).

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).

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

⁹ *See, e.g.*, CGBCMR Docket Nos. 2017-118 (Decision of the Principal Deputy General Counsel, Jan. 9, 2018), 2015-090, 2015-117, 2015-119, 2016-058, 2016-134, 2016-179, 2017-057, 2017-063; 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; AFBCMR Docket No. BC-2014-01340.

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

5. Although Chapter 1.D.2. 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. After reviewing the applicant’s request for a new DD 214 reflecting her new name, the Coast Guard issued her a DD 215 with her last name misspelled in block 1 but her full new name correctly spelled in the correction block. The Coast Guard recommended that the Board administratively close the case. However, the Board finds that merely issuing her a DD 215 is inadequate relief because she would still need to show her DD 214 along with the corrected DD 215 to prove her military service, and the DD 214 continues to reflect her prior male name. Therefore, issuing the DD 215 did not correct the injustice in this case, and the DD 215 also misspelled the applicant’s last name in block 1.

7. Accordingly, 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. The applicant’s 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. But the DD 215 issued by the Coast Guard on January 24, 2019, must be voided and removed from her record.

(ORDER AND SIGNATURES ON NEXT PAGE)

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*, 277 U.S. 438 (1965), and *Roe v. Wade*, 410 U.S. 113 (1973)).

ORDER

The application of SN [REDACTED], USCG (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]. The Coast Guard shall also void and remove the DD 215 issued on January 24, 2019, from her record but retain a copy of this decision with her old DD 214 in her military records.

October 18, 2019

