

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-211

██████████
██████████ ██████████

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application after receiving the applicant's completed application on September 26, 2014, and assigned it to staff member ██████████ to prepare the draft decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 11, 2015, 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, who received a general discharge under honorable conditions from the Coast Guard on November 24, 1989, for homosexual conduct, asked the Board to upgrade his discharge to "honorable," to remove any reference to homosexuality from his discharge and to upgrade his reenlistment code from RE-4 to RE-1. He stated that he did not apply for an upgrade earlier because he was unaware that there was a process to do so until 2014.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 10, 1972. On April 30, 1984, his Commanding Officer (CO) notified the applicant that he was initiating action for a court-martial pursuant to Article 12-B-33 of the Personnel Manual (class II homosexual). An Administrative Discharge Board was convened on August 15, 1984, to determine the applicant's suitability for continued service in the Coast Guard. The board recommended that the applicant be retained by the Coast Guard, that he seek counseling to learn the reasons for his "homosexually biased writing," and that he be transferred. Subsequently, the applicant was transferred to Air Station Clearwater. On July 9, 1987, the applicant was orally reprimanded for the wrongful appropriation of government property.

On July 14, 1987, the applicant was notified that he was being recommended for discharge. The notification states that the recommendation was "based solely on evidence . . . of

Class III homosexual tendencies” as defined by Article 12-B-33 of the Personnel Manual. On February 18, 1988, the applicant requested to conditionally waive his right to a hearing before an Administrative Discharge Board, provided that he received an honorable discharge, could remain on active duty for six more months, and the Coast Guard stipulated that the allegations were never substantiated. The applicant’s CO concurred with the conditions.

The conditional waiver was denied, and an Administrative Discharge Board was expeditiously ordered. On October 18, 1989, the board recommended the applicant be given a general discharge. The stated reason was for “[m]isconduct due to homosexuality.” The Commandant ordered that the applicant receive a “general discharge by misconduct” pursuant to Article 12-B-18 of the Coast Guard Personnel Manual.

The applicant was discharged on November 24, 1989, and his DD 214 shows that he was discharged under honorable conditions for misconduct, received an RE-4 reentry code (ineligible for reenlistment), a separation code of HKC, and a DD 257 CG general discharge certificate. He had served more than 17 years on active duty.

VIEWS OF THE COAST GUARD

On March 25, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief. The JAG adopted the facts and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Service Center (PSC).

PSC argued that the applicant’s discharge warrants correction because it was based solely on a violation of a policy similar to DADT. It noted that the applicant’s previous misconduct should not preclude the correction because it was unrelated to his discharge and not an aggravating factor.

PSC recommended that the applicant’s DD 214 be corrected as follows:

- (1) Character of discharge changed to “Honorable”
- (2) Narrative Reason for Discharge changed to “Secretarial Authority”
- (3) SPD Code “JFF”
- (4) Reentry Code changed to “RE-1”
- (5) Remove any references to a DD 257 CG discharge certificate
- (6) Remove any reference to “homosexual” on discharge documentation and paperwork
- (7) Block 18, Remarks, should state “Action taken pursuant to order of BCMR.”
- (8) Applicant should be issued an honorable discharge certificate, DD 256 CG

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 30, 2015, the BCMR sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. The applicant requested and received a 14-day extension.

He responded on May 8, 2015, and indicated that he had no objection to the Coast Guard's recommendation.

APPLICABLE POLICY

On September 20, 2011, the Under Secretary of Defense issued a memorandum announcing the repeal of the law commonly known as "Don't Ask, Don't Tell." The memorandum states, *inter alia*, that effective immediately, "sexual orientation may not be a factor in accession, promotion, separation, or other personnel decision-making."

The memorandum also states that upon repeal of DADT, some former service members discharged under DADT or prior policies may request a correction of their military records from either their Discharge Review Board (DRB) or their Board for Correction of Military Records (BCMR). The memorandum notes that effective September 20, 2011, DRBs and BCMRs should grant requests to change entries on a former member's DD 214, including the narrative reason for discharge, the separation program designator (SPD) Code, character of discharge, and/or the reenlistment code, when both of the following conditions are met:

- (1) The original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT; and,
- (2) There were no aggravating factors in the record, such as misconduct.

The memorandum states that when correcting the information on a former member's DD 214, the following information should be used, assuming the above conditions have been met:

Narrative reason for discharge – change to Secretarial Authority
SPD Code – change to JFF
Character of discharge – change to Honorable
Reentry code – change to RE-1J

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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. Under 10 U.S.C. § 1552(b) an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record. Although the applicant was discharged in 1989, he stated that he did not become aware of a vehicle to correct the error in his Coast Guard record until sometime after DADT was repealed on September 20, 2011. The application was received by the BCMR on August 14, 2014, within three years of the repeal of DADT. Therefore, the Board finds that his application is timely.

3. The applicant was discharged from the Coast Guard in 1989 in accordance with then-extant policy after an Administrative Discharge Board found a violation of the policy that preceded DADT and mandated the separation of homosexual members. On September 20, 2011, the Under Secretary of Defense (USD) announced the repeal of DADT, and stated that service members would no longer be subject to administrative separation on the basis of gay, lesbian, or bisexual conduct.

4. The JAG recommended granting relief, arguing that the applicant meets the current requirements for an honorable discharge because his separation in 1989 was based solely on DADT or similar policy in place prior to DADT, and there are no aggravating factors in the record of relevance. The Board agrees. With respect to upgrading discharges, the delegate of the Secretary informed the Board on July 7, 1976, by memorandum that it “should not upgrade a discharge unless it is convinced, after having considered all the evidence ... that in light of today’s standards the discharge was disproportionately severe vis-à-vis the conduct in response to which it was imposed.”¹ Pursuant to this policy, the applicant is entitled to the relief recommended by the JAG.

5. The Board finds that the applicant has proven by a preponderance of the evidence that his general discharge is unjust and should be upgraded to honorable. The corrections recommended in the September 20, 2011, memorandum and by the Coast Guard should be made to the applicant’s record and he should receive an honorable discharge certificate. The Board notes that because the Coast Guard does not authorize an RE-1J reenlistment code, he should receive an RE-1 reenlistment code as PSC stated.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹ Memorandum of the General Counsel to J. Warner Mills, et al., Board for Correction of Military Records (July 8, 1976).

ORDER

The application of former [REDACTED], for correction of his military record is granted. The Coast Guard shall issue him a new DD 214 with the following corrections:

- His Character of Service shall be changed to Honorable.
- The Separation Authority shall be PERSMAN Article 12-B-12.
- The Separation Code shall be JFF.
- The Reentry Code shall be RE-1.
- The Narrative Reason for Separation shall be "Secretarial Authority," rather than Misconduct.
- The following notation shall be made in block 18 of the new DD 214: "Action taken pursuant to order of BCMR."

The Coast Guard shall also remove any reference to a DD 257 CG discharge certificate, and shall issue him an honorable certificate, DD Form 256 CG, instead.

June 11, 2015

