

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-181

████████████████████
████████████████████ ██████████

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 application after receiving the applicant's completed application on July 2, 2012, and subsequently assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c), with the assistance of staff member ██████████

This final decision, dated April 15, 2013, is 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 discharge under other than honorable conditions from the Coast Guard on January 29, 1970, for homosexual conduct, asked the Board to upgrade his discharge to "honorable." The applicant argued that his discharge should be upgraded because military policy recently changed with the repeal of Don't Ask, Don't Tell (DADT)¹, and his service record now meets the current standards to receive an honorable discharge.

Although he was discharged in 1970, the applicant stated that he did not become aware of a possible injustice in his record until DADT was repealed on September 20, 2011. He argued that if the Board determines that his application is untimely, it is in the interest of justice to waive the three-year statute of limitations because the official memoranda that followed the repeal of DADT suggest that changes to DD 214s would be allowed for members who were discharged under DADT and previous policies.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 19, 1969, and after completing basic training he was transferred to ██████████. On November 28, 1969, his Commanding Officer (CO) notified the applicant that he was being considered for an

¹ 10 U.S.C. § 654, "Policy concerning homosexuality in the Armed Forces."

“undesirable discharge” from the Coast Guard because of his “admitted homosexual involvement.” The applicant acknowledged the notification and waived his right to an Administrative Discharge Board. On December 24, 1969, the Commandant ordered that the applicant receive an “undesirable discharge by reason of unfitness” pursuant to Article 12-B-12 of the Coast Guard Personnel Manual. The applicant was discharged on January 20, 1970, and his DD 214 shows that he was discharged under other than honorable conditions for unfitness, received an RE-4 reentry code (ineligible for reenlistment), separation program designator (SPD) code 257, and an other than honorable discharge certificate (DD 258 CG).

VIEWS OF THE COAST GUARD

On January 2, 2013, 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). Although it recommended granting relief, PSC argued that the application is untimely because the applicant was discharged in 1970 and did not submit his application until 2012. However, PSC stated that the Board may conclude that it is in the interest of justice to review the case in light of recent changes in federal law and military policy regarding discharges for homosexuality.

PSC noted that Coast Guard policy in 1970 allowed for an individual to be discharged based solely on their sexual orientation. However, the U.S. military has since revised its policies, homosexuality is no longer a disqualifying factor for entering military service, and service members are no longer subject to administrative separation on the basis of gay, lesbian, or bisexual conduct.

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-1J”²
- (5) Remove any references to a DD 258 CG discharge certificate.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 4, 2013, the BCMR sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. He responded on January 8, 2013, and indicated that he agreed with the Coast Guard’s recommendation.

² The Coast Guard’s Program Separation Program Designator Handbook (past and present) does not authorize the use of the RE-1J reenlistment code.

APPLICABLE LAW AND REGULATIONS

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 1970, he stated that he did not become aware of the error in his Coast Guard record until DADT was repealed on September 20, 2011. Therefore, the Board finds that his application is timely.
3. The applicant was discharged from the Coast Guard in 1970 in accordance with then-extant policy after admitting to engaging in homosexual conduct. 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 1970 was based solely on DADT or similar policy in place prior to DADT, and there are no aggravating factors in the record, such as misconduct. The Board agrees and finds that the applicant is entitled to the relief recommended by the JAG, except as explained below.

5. The JAG, apparently relying on the guidance in the September 20, 2011, memorandum from the Under Secretary of Defense, recommended that the applicant's reentry code be changed from RE-4 to RE-1J. However, although DoD may use the RE-1J code, the Coast Guard does not. The Coast Guard's SPD Handbook authorizes only the use of the RE-1 or RE-4 reenlistment code for members discharged pursuant to Secretarial Authority with separation code JFF. Therefore, the Board will order the Coast Guard to correct the applicant's reentry code to RE-1.

6. The Board finds that the applicant has proven by a preponderance of the evidence that his record contains an error. He is entitled to relief.

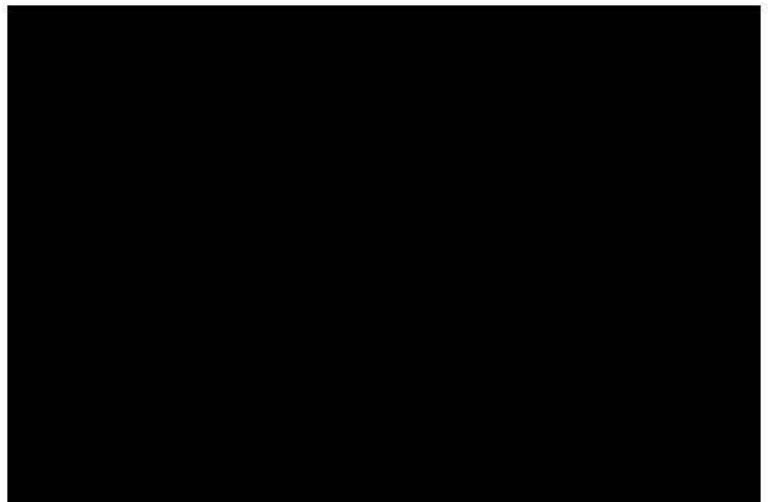
[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [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 Unfitness.
- The Coast Guard shall issue him a new DD 214 reflecting these corrections, rather than issuing him a DD 215.
- 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 258 CG discharge certificate, and shall issue him an honorable certificate, DD Form 256 CG, instead.



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* The third member of the Board was unavailable. However, pursuant to 33 C.F.R. § 52.11(b), two designated members constitute a quorum of the Board.