



DEPARTMENT OF THE ARMY
ARMY BOARD FOR CORRECTION OF MILITARY RECORDS
251 18TH STREET SOUTH, SUITE 385
ARLINGTON, VA 22202-3531

January 05, 2015

[REDACTED]

Ms. [REDACTED]
[REDACTED]
[REDACTED]

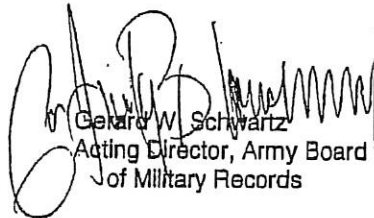
Dear Ms. [REDACTED]:

The Army Board for Correction of Military Records rendered a decision on your application to correct your military records. Full relief to your request was granted. Enclosed is a copy of the Record of Proceedings of the Board for your information.

The approved Record of Proceedings has been forwarded to the Army Review Boards Agency Case Management Division. They will take action to correct your records and will provide you with official notification as soon as the directed correction has been made. However, due to the large number of cases in process, please be advised that it may be several months before corrections are completed.

A copy of the Board's decision and proceedings has been furnished to the counsel you listed on your application, Mr. Stephen Lessard, Orrick Herrington & Sutcliffe LLP, 51 West 52nd Street, New York, NY 10019-6142.

Sincerely,



Gerard W. Schwartz
Acting Director, Army Board for Correction
of Military Records

Enclosure

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2014

DOCKET NUMBER: [REDACTED]

THE BOARD CONSIDERED THE FOLLOWING EVIDENCE:

1. Application for correction of military records (with supporting documents provided, if any).
2. Military Personnel Records and advisory opinions (if any).

THE APPLICANT'S REQUEST, STATEMENT, AND EVIDENCE:

1. The applicant, through Counsel, requests correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show a name of "[REDACTED]" instead of "[REDACTED]"
2. The applicant defers to Counsel.
3. The applicant provides a DD Form 214.

COUNSEL'S REQUEST, STATEMENT AND EVIDENCE:

1. Counsel requests correction of the applicant's DD Form 214 to show a name of "[REDACTED]" instead of "[REDACTED]" pursuant to a judicial order.
2. Counsel states:
 - a. The applicant enlisted in the U.S. Army in December 1985 under the name "[REDACTED]". She served honorably for 20 years. The applicant's personal awards include the Meritorious Service Medal (2nd Award), Army Commendation Medal (5th Award), Army Achievement Medal (6th Award), Army Good Conduct Medal (6th Award), National Defense Service Medal, and the Humanitarian Service Medal. She also achieved the highest awards available to Army Recruiters, achieving the Glenn E. Moral award for recruiting excellence. She retired on 31 December 2005 with an honorable characterization of service.

b. On 15 February 2013, the applicant was granted a court order changing her name to "[REDACTED]" from her previous name. A veteran is permitted to request correction of a DD Form 214 to correct an error or injustice. It is in the interest of justice that she requests her DD Form 214 be corrected to reflect her current legal name.

c. It is estimated that as many as 140,000 of the nation's approximately 26 million veterans may be transgender. Notwithstanding their honorable service in the military, these veterans can encounter substantial burdens in obtaining post-service benefits because their names and genders memorialized on their military service discharge documents no longer match their names and genders following release from service. The DD Form 214 is commonly required by employers, particularly for employment in positions which have a preference for veteran candidates. There is no federal law that consistently protects transgender individuals from employment discrimination. Only 17 states and the District of Columbia provide protection from employment discrimination on the basis of gender expression. As a result, transgender veterans face serious possibilities of discrimination in employment, including being fired, being denied a promotion and experiencing harassment on the job. A recent study found 47 percent of the transgender individuals surveyed had experienced an adverse job outcome, such as being fired, not hired or denied a promotion because of being transgender and that 90 percent of those surveyed reported experiencing harassment, mistreatment or discrimination on the job or took actions like hiding who they are to avoid it.

d. The DD Form 214 is also crucial for veterans to prove their record of service in connection with various veterans' benefits including, among other things, applying for educational opportunities, applying for benefits for their dependents, and for accessing the same benefits they had while on active duty status. Transgender veterans may be systematically denied access to such benefits and services due to the incongruities between the names (and implied genders) that appear on their DD Form 214s and their current and correct names and genders otherwise reflected accurately in court orders, state identification cards, and revised birth certificates. Alternatively, even in the event that a transgender veteran is eventually allowed access to these benefits, this access may have been delayed or obtained only after the veteran was subjected to difficult and embarrassing administrative burdens requiring an explanation of these discrepancies.

e. The applicant understands that it has been the past policy of the Board not to change the name, gender, or social security number on a veteran's military records to conform to any change after discharge from the military, even if it is

court ordered, because the Board views such records as historical documents which record facts during the time the veteran served in the military. This is the same argument that was used more than four decades by those opposed to allowing transgender individuals to change their names or genders on their birth certificates. Given that this position is merely a policy of the Board and not required by higher authority (such as Army regulations, Department of Defense (DOD) Instructions, or statutory law), the applicant believes the Board can amend its own policy in order to prevent an injustice.

f. Current statutory law generally permits transgender individuals in nearly all of the fifty states to change their name and gender on their birth certificate and receive a new or amended birth certificate. Most states will grant transgender individuals a new birth certificate, others grant an amended birth certificate, often one marked "amended" but without specifying the amended items. The laws permitting such changes to birth certificates are evidence of the legal conclusion that birth certificates, once argued to be historical documents that record facts at the time of birth, are not, and need not be, treated as such perfect proof of a particular fact that countervailing values in having them changed should be ignored. It has long been recognized that the reasoning behind these rules permitting record changes is that if information contained therein is of little interest to the public and if preservation of that data might harm the individual, the records may be changed to enable the person to acquire respectability in the community. For example, if the parents of an illegitimate child eventually marry, the child's birth certificate will be changed so that he will be able to acquire the status of a child born in lawful wedlock. A logical extension of such reasoning would mandate similar treatment for the challenge of a transgender veteran's DD Form 214, since disclosure of the veteran's former name may well subject him or her to more harassment and discrimination than would a revelation of illegitimacy.

g. Similarly, the U.S. Department of State permits transgender individuals to amend their "Consular Report of Birth Abroad of a Citizen of the United States of America" (Form FS-240), which is the equivalent of a federal birth certificate for U.S. citizens born outside of the United States, for name and gender changes. The policy for amending U.S. passports for name and gender changes is the same. Military records, such as the DD Form 214, are one of the documents that may be presented as evidence of the changed name. Thus, the Board's policy that a DD Form 214 cannot be changed because, like a birth certificate, it is a historical document that records facts at the time it is issued is contrary to the policies of 47 states and other agencies of the federal government with respect to similar historical documents.

h. Because the refusal to amend a DD Form 214 for a name change is merely a policy of the Board that is not mandated by higher authority, the Board has the power to modify this policy in order to prevent an injustice. The issue presented in this case is similar to the issue addressed by the Air Force Board for Correction of Military Records (AFBCMR) in a 2004 decision that provided a transgender veteran the relief requested with regard to a name change to the veteran's DD Form 214. In doing so, the AFBCMR struck an appropriate balance between its interests in preserving the accuracy of military records and remedying an injustice to the transgender applicant. The AFBCMR concluded that the application presented sufficient evidence demonstrating the existence of an injustice warranting relief. Although the AFBCMR recognized its existing practice rejecting changes to "the applicant's original DD Form 214," the AFBCMR concluded that the applicant's original DD Form 214 was "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." Moreover, the AFBCMR concluded that providing the applicant with an alternative document such as a Statement of Service (SOS) would be insufficient because that form "would not serve to officially verify military service." The AFBCMR concluded that it had the legal authority to issue an additional DD Form 214, reflecting the change in name. The AFBCMR directed that the applicant's original DD Form 214 be maintained in the applicant's military records. Thus, in the AFBCMR's view, the only way to fully address these burdens, including the administrative barriers to accessing benefits, experienced by transgender veterans on account of discrepancies in present identification and the name (and implied gender) as documented in the veteran's DD Form 214 is to issue a new DD Form 214 reflecting these changes. As importantly, the AFBCMR's decision recognized and accommodated the United States military's interest to maintain the accuracy of its historical records. The applicant's military record file still includes the original DD Form 214, along with a newly issued revised DD Form 214.

i. This AFBCMR decision presents a legally viable path for the Board to accommodate the request of a transgender veteran to change the name on the DD Form 214, as well as a just one. The Board's decision to deny a request to amend a DD Form 214 to account for such a change in name does not differentiate between the Board's authority to "correct" factual and legal errors and its authority to "remove" injustices. The Board is correct to conclude that because an applicant's DD Form 214 correctly reflects the name of the applicant "during the period of the applicant's service," no amendment of the form to correct an "error" is warranted; however, for the Board to stop its consideration of the applicant's request at this point completely abrogates the Board's authority to correct the form to remove an injustice. This application of the law by the Board is untenable. The statute's distinction between correction of errors and removal

of injustice precludes the Board from collapsing the inquiry into a single correction of errors test.

j. Historically, BCMRs have claimed that neither individual military branches, nor the DoD itself, have established policies to amend military records accounting for a change in name or gender occurring after discharge or retirement and that internal guidance restricts their authority to amend DD Forms 214 in the absence of any "error." The first rationale is beside the point. Nothing in the statute or the guidance of higher authority limits the Board's power to amend records only in those circumstances specifically and affirmatively delineated in the written guidance. As to the second rationale, the BCMRs have based their determinations on the military's interest in "preserving the accuracy of military records." While this rationale is applicable in cases of amending records where factual errors do not exist, this interest is tempered in cases of injustice. For cases where the interests of justice dictate that an amendment should be made, preservation of historical accuracy is secured simply by keeping a copy of the corrective action with the original DD Form 214 in the personnel file. Furthermore, as noted above, this justification impermissibly collapses the two statutory standards into one.

k. Thus, while a discrepancy in name and gender, or explicit reference to former names used, may not be a factual "error," these determinations usually do not analyze an applicant's case independently in order to determine if a record should be amended to remove an "injustice" specifically. In a prior decision concerning a name and gender change, the Board correctly separated the concepts of "error" and "injustice" in order to consider taking corrective action for the applicant "as a matter of compassion" where a factual error does not exist. In only granting partial relief to the applicant's request to amend her DD Form 214, however, the Board appears to have failed to recognize or appreciate the differing importance placed on a DD Form 214 and a Transcript of Military Record (DA Form 1569) when a veteran seeks civilian employment or veterans benefits; the DD Form 214 is often the only document requested and accepted by civilian employers and government agencies. Additionally, the veteran would be forced to explain why he or she cannot provide a DD Form 214 instead of a DA Form 1569. In a later decision, the Board recognized that its DA Form 1569 remedy may be ineffective in that it will not necessarily cure the difficulties faced by transgender veterans, especially when civilian employers refuse to accept such documentation. Thus, in spite of the Board's attempt to show compassion through alternative relief, transgender veterans may continue to be systematically denied access to the benefits, services, and preferences to which they are entitled because of their military service.

l. Far from being merely a historical document that is filed in an archive and rarely examined, a DD Form 214 is an identity document, like birth certificates and other similar documents, which must be produced in many situations. The DD Form 214 identifies an individual as a veteran to potential employers and to government agencies providing benefits. Getting through life with inaccurate or inconsistent identity documents is a bureaucratic nightmare with far-reaching consequences. Without identity documents that accurately reflect who they are and that do not unnecessarily call attention to the fact that the individual is transgender, transgender people are simply unable to live, work and participate fully in society.

m. It is the veteran, not the veteran's name (present or former) or gender, who has served his or her country and who has earned the benefits, services, and preferences that come from military service. A name or gender change does not change the honorable service of a veteran. If the Board believes that every veteran who has honorably served their country should be entitled the benefits and privileges they have earned, then the interests of justice dictate that the Board should take whatever action it can to ensure that every veteran has an unfettered opportunity to claim such benefits and privileges. For these reasons, we respectfully request the Board grant full relief to the applicant with respect to this application.

n. Additionally, the applicant understands that current Army regulations provide that if a name change has occurred during military service, the other names of record should be listed in block 18 (Remarks) of the DD Form 214. However, at the time the applicant's DD Form 214 was prepared, preparation of the DD Form 214 was governed not by Army Regulation 635-8 (Separation Processing and Documents), but by Army Regulation 635-5 (Separation Documents), Army Regulation 635-10 (Processing Personnel for Separation), and Army Pamphlet 600-8-11 (Military Personnel Office Separation Processing Procedures). Of this guidance, only Army Regulation 635-5 provided specific guidance on the preparation of the DD Form 214 and it merely provided the instruction to "[c]ompare ERB/ORB to contract for possible name change" but contained no requirement that former names used be listed in block 18 of the DD Form 214. Nor has the applicant found any guidance existing at the time of her retirement (or at the time her name was legally changed) that required the former names used to be listed in block 18 of the DD Form 214. Thus, the applicant does not believe that there is any authoritative guidance compelling the Board to require that any other name used by the applicant be listed in block 18 of her DD Form 214. The inclusion of the applicant's former name in block 18 of her DD Form 214 could lead to the injustice of employment discrimination or delayed benefits and privileges. We respectfully request that, in order to prevent

a potential injustice, any former name used by the applicant not be listed in block 18 or her amended DD Form 214.

3. Counsel provides:

- an 8-page brief
- DD Form 214
- Final Judgment of Change of Name (Adult)

CONSIDERATION OF EVIDENCE:

1. The applicant enlisted in the Regular Army on 27 December 1985. Item 1 (Name – Last, First, Middle) of the applicant's DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States) shows the name "[REDACTED]."

2. The applicant retired honorably in the rank/grade of first sergeant/E-8 on 31 December 2005. Item 1 (Name) of the DD Form 214 shows the applicant's name as "[REDACTED]."

3. Counsel provides a State of Florida Final Judgment of Change of Name (Adult) which shows the applicant's name was legally changed on 15 February 2013 from "[REDACTED]" to "[REDACTED]."

4. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, prescribes the transition processing function of the military personnel system, including preparation of the DD Form 214. It states:

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge.

b. For block 1, compare with the original enlistment contract or appointment order and review the official record for possible name changes. If a name change has occurred, list other names of record in block 18 (Remarks).

c. For block 18, in part, when a DD Form 214 is administratively issued or reissued, enter "DD FORM 214 ADMINISTRATIVELY ISSUED/REISSUED ON (date)." However, do not make this entry if the appellate authority; Executive Order; or Headquarters, Department of the Army, directs otherwise.



d. On direction of the ABCMR or Army Discharge Review Board, or in other instances when appropriate, the Deputy Assistant Secretary of the Army, Army Review Boards Agency, is authorized to issue or reissue DD Forms 214. Once a DD Form 214 has been issued, it will not be reissued except under specified circumstances including when it is determined that the original DD Form 214 cannot be properly corrected by issuance of a DD Form 215 (Correction to DD Form 214).

DISCUSSION AND CONCLUSIONS:

1. Counsel accurately notes that in the past the ABCMR has denied similar applications on the basis that the DD Form 214 is a historical document that should reflect the record as it existed at the time the DD Form 214 was created. The underlying reasoning has been that a post-service name change does not retroactively create an error on the DD Form 214. This is still true; however, counsel has provided a compelling description of the unique circumstances of transgender individuals and how those circumstances may prevent or delay receipt of benefits for which these individuals must provide a DD Form 214 as proof of military service.

2. Considering the unique circumstances of transgender personnel, it would be appropriate to issue the applicant a new DD Form 214 for the period ending 31 December 2005 with the name in item 1 entered as shown on his Final Judgment of Change of Name (Adult). No entries should be made in block 18 of the reissued DD Form 214 listing her previous name or indicating that the DD Form 214 was administratively reissued. Doing so would undermine the purpose of granting relief by drawing attention to her previous gender. This proposed relief is limited to the DD Form 214 in question and does not extend to any other documents in the applicant's military records.

BOARD VOTE:

<u> </u>	<u> </u>	<u> </u>	GRANT FULL RELIEF
<u> </u>	<u> </u>	<u> </u>	GRANT PARTIAL RELIEF
<u> </u>	<u> </u>	<u> </u>	GRANT FORMAL HEARING
<u> </u>	<u> </u>	<u> </u>	DENY APPLICATION



BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that the Department of the Army records of the individual concerned be corrected by reissuing a DD Form 214 for the period ending 31 December 2005 with the name in item 1 entered as the name shown on the applicant's Final Judgment of Change of Name (Adult). No entries should be made in block 18 of the reissued DD Form 214 listing her previous name or indicating that the DD Form 214 was administratively reissued.


CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

