

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2003-04051
INDEX CODE: 100.01

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His name be changed from XXXX to XXX and gender changed from male to female in his military personnel records.

APPLICANT CONTENDS THAT:

He desires to obtain a statement of service (SOS) that lists his correct gender (female) and direction for DEERS and the Defense Finance and Accounting Service (DFAS) to correct their database to reflect the same. He feels the service he has received as a retiree has been earned and his quality of life is hindered by databases being incorrect. These errors have the potential to cause problems with medical insurance or other issues.

Applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 21 May 1973 and continued to reenlist contracting his last enlistment on 5 September 1989, in the grade of master sergeant for a period of four years.

On 31 August 1993, the applicant retired in the grade of master sergeant. He served 20 years, 3 months, and 10 days of total active military service.

An order of the District Court, 116th Judicial District, Dallas County, dated 23 February 1999, ordered the applicant's name changed from and ordered the applicant's gender identification changed from male to female.

A Notification of Change in Service Member's Official Records, AF Form 281, indicates the name change was completed under the provisions of AFI 36-2608 and Denton County, Texas, decree,

granting the change of name of adult. Copies of the notice were forwarded to the Federal Bureau of Investigation (FBI) and the National Personnel Record Center (NPRC).

On 30 December 2003, HQ AFPC/DPSFCM advised the applicant his request to change his name from [redacted] and to change his gender from male to female had been completed. They indicated because he had a continuing affiliation with the Air Force as a retiree, they updated his name in the military personnel data system (MilPDS). The update would flow to his retiree pay file. They provided an AF Form 281, Notification of Change in Service Member's Official Records as a source document for the update. They further advised they were unable to make an update to his gender, as the Air Force has no procedures in place in regard to gender changes.

AIR FORCE EVALUATION:

AFPC/DPS recommended denial. They indicated they reviewed the action taken by the Navy Board for Correction of Military Records (NBCMR) and the Navy found the existence of an injustice warranting partial relief in the cases the applicant enclosed. They, however, did not see an injustice in the applicant's personnel record. The Air Force personnel record correctly reflects the applicant's name and gender during the period of service and on the date of retirement. The current name and gender information does not mirror the name and gender information contained in the personnel record. Therefore, correcting the applicant's historical records is an unjustified action. Additionally, an SOS has no significance when verifying military service. Any organization attempting to verify the applicant's service will ask for the DD Form 214. In this case, the information on the DD Form 214 is correct as of the date the applicant retired from the United States Air Force. As such, the applicant would have to provide the organization additional information concerning the discrepancy between the DD Form 214 and present circumstances. Therefore, they believe issuing an SOS, similar to the ones issued by the Navy, is an inappropriate action to take on this application. The Air Force and Department of Defense have no procedures in place in regard to this type of change. The applicant's records correctly reflect the legal name/gender under which the applicant served and retired.

The evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the evaluation and indicated she is not asking the Board to correct her DD Form 214 or any other part of the historical service records since the records correctly show that a male [applicant's original name] served in the Air Force

from 21 May 1973 until retirement on 31 August 1993. She is aware a statement of service has no significance when verifying military service. It is because of her continuing affiliation with the Air Force as a retiree that her name could be updated and why her gender marker should be also.

Applicant's response, with attachments, is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Sufficient relevant evidence has been presented to demonstrate the existence of an injustice warranting partial relief. The applicant contends her quality of life has been hindered by DFAS databases being incorrect. She feels these errors have the potential to cause a variety of problems. After reviewing the evidence of record, the Board believes the applicant should be provided a document that not only reflects her current name but also indicates her active duty service. We understand we should not change the applicant's original DD Form 214 (Certificate of Release from Active Duty) because it accurately reflects the applicant's information during the period of active duty service and should not be altered because of post-service name and gender changes. On the other hand, we believe 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. We note the Board for Correction of Naval Records (BCNR) considered a similar case and provided that individual with a Statement of Service (SOS), but apparently made no further correction to the individual's records. We have not been provided a copy of that SOS, therefore we cannot comment regarding what is included on the form. Regardless, we are not inclined to provide this applicant with only an SOS. 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. As the applicant indicates, the SOS does not verify military service. We have been advised that we have the authority to issue an additional DD Form 214 denoting the applicant's current name. We believe this will provide the applicant with adequate documentation to reflect her active duty service using her current name. Presumably this should prevent embarrassing questions and hopefully ensure the applicant's privacy to the extent she wishes. Therefore, we recommend the records be corrected to the extent indicated below.

5. In regard to the applicant's request to have her DEERS record reflect a change in gender, the applicant is advised that those records are controlled at the Department of Defense level and as such, the Board is not authorized to change these records. If the applicant believes her gender is not correct on the DEERS records, she may wish to apply for a correction of her records under the provisions of the Privacy Act. We have been advised the applicant should forward her request to the following address: , Defense Manpower Data Center West, DOD Center, Monterey Bay, 400 Giglind Road, Seaside, CA 93555-6771. The applicant may wish to include a copy of the court order regarding her gender change and other relevant documentation.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected, as an exception to policy, by issuing an additional DD Form 214 (Certificate of Release from Active Duty), reflecting in block 1, Name: , and blocks 2 through 30 reflect the identical information as indicated on the original DD Form 214 issued on the occasion of retirement, effective 31 August 1993, currently in the applicant's record.

It is further recommended the original DD Form 214 issued on the occasion of retirement, effective 31 August 1993, be maintained in the applicant's records.

The following members of the Board considered AFBCMR Docket Number BC-2003-04051 in Executive Session on 21 April 2004, under the provisions of AFI 36-2603:

Mr. Thomas S. Markiewicz, Chair
Mr. Frederick R. Beaman III, Member
Mr. Vance E. Lineberger, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 1 December 2003, w/atchs.
- Exhibit B. Applicant's Military Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPS, dated 18 March 2004.
- Exhibit D. Letter, SAF/MRBR, dated 26 March 2004.
- Exhibit E. Letter, Applicant, undated, w/atchs.

THOMAS S. MARKIEWICZ
Chair