



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

SEP 20 2011

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code

Pursuant to the Don't Ask, Don't Tell Repeal Act of 2010, the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff have certified that the Department of Defense is prepared for the repeal of section 654 of title 10, United States Code, commonly referred to as Don't Ask, Don't Tell (DADT). Repeal will take effect on September 20, 2011. Upon repeal, some former Service members discharged under DADT or prior policies may request a correction of their military records from either their Service Discharge Review Board (DRB) or their Service Board for Correction of Military/Naval Records (BCM/NR). To help ensure consistency across the Services and to address what may be a large number of similar applications arising from the repeal of DADT, this memorandum provides supplemental policy guidance for DRB and BCM/NR action on such applications. As an initial matter, the repeal of DADT will be considered a sufficient basis to support reconsideration of such requests for applicants who have previously filed with either their Service DRB or BCM/NR.

The Service DRBs, provided for in section 1553 of title 10, United States Code, and governed by Department of Defense Directive (DoDD) 1332.41 and Department of Defense Instruction (DoDI) 1332.28, have a relatively limited scope of review and are authorized to provide only specified remedies. In general, if a DRB finds either an inequity or impropriety in a discharge action, it may change the narrative reason for the discharge, upgrade the character of discharge, or take both actions.

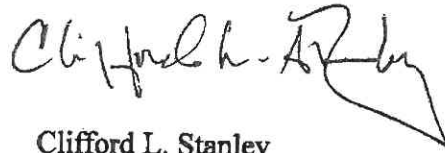
Effective September 20, 2011, Service DRBs should normally grant requests to change the narrative reason for a discharge (the change should be to "Secretarial Authority" (Separation program Designator Code (SPD) code JFF)), requests to re-characterize the discharge to honorable, and/or requests to change the reentry code to an immediately-eligible-to-reenter category (the new RE code should be RE code 1J) 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. Although each request must be evaluated on a case-by-case basis, the award of an honorable or general discharge should normally be considered to indicate the absence of aggravating factors.

Also effective September 20, 2011, with respect to requests in cases where there were multiple reasons for separation including DADT, Service DRBs normally should apply the policy in the previous paragraph to the DADT reason for separation and apply existing DRB policy to the remaining reason(s).

In contrast to the DRBs, the Service BCM/NRs, provided for in section 1552 of title 10, United States Code, and also governed by DoDD 1332.41, have a significantly broader scope of review and are authorized to provide much more comprehensive remedies than are available from the DRBs. Upon finding an error or injustice, BCM/NRs may fashion the remedy they find necessary and appropriate within applicable legal limits. Although the correction boards have wide latitude in determining what constitutes an error or injustice, it is DoD policy that broad, retroactive corrections of records from applicants discharged under DADT are not warranted. Although DADT is repealed effective September 20, 2011, it was the law and reflected the view of Congress during the period it was the law.

Similarly, DoD regulations implementing various aspects of DADT were valid regulations during that same period. Thus, consistent with what we understand is past board practice on changing standards, DADT's repeal may be a relevant factor in evaluating an application (such as requests to change the narrative reason for a discharge, requests to re-characterize the discharge to honorable, and/or requests to change the reentry code to an immediately-eligible-to reenter category) but the issuance of a discharge under DADT or the taking of an action pursuant to DoD regulations related to a discharge under DADT should not by itself be considered to constitute an error or injustice that would invalidate an otherwise proper action taken pursuant to DADT and applicable DoD policy. Thus, remedies such as correcting a record to reflect continued service with no discharge, restoration to a previous grade or position, credit for time lost, or an increase from no separation pay to half or full separation pay or from half separation to full separation pay, would not normally be appropriate.

This policy does not address situations where a correction board determines that DADT (or other prior policy) as applied under the circumstances of a particular case constituted an error or injustice. Under those circumstances, the BCMR would craft an appropriate remedy. Additionally, the Boards should also consider the guidance provided in my Repeal of DADT and Future Impact on Policy memorandum, dated January 28, 2011, (attached) in determining whether a specific requested record correction is necessary or appropriate.



Clifford L. Stanley

Attachment:
As stated

cc:
Chairman of the Joint Chiefs of Staff
Coast Guard, Commandant (CG1)
General Counsel of the Department of Defense