RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-03211

XXXXXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT REQUESTS THAT:

His narrative reason for separation, reentry (RE) code, and separation program designator (SPD) code be changed.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT CONTENDS THAT:

He is not now, nor has he ever been homosexual. He has never been engaged in a homosexual matter.

In support of his request, the applicant provides an expanded statement and a copy of his DD Form 214, *Certificate of Release or Discharge from Active Duty.*

The applicant’s complete submission, with attachments, is at Exhibit A.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATEMENT OF FACTS:

The applicant’s military personnel records indicate that he enlisted in the Regular Air Force on 9 Oct 97 in the grade of airman basic (E-1) for a period of four years.

On 30 Mar 98, the applicant’s commander notified him of his intention to recommend his discharge from the Air Force for homosexual conduct under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. The applicant acknowledged receipt of the action on 31 Mar 98 and offered a conditional waiver of his rights to an administrative discharge board in exchange for an entry-level separation (ELS).

On 9 Apr 98, the case was found to be legally sufficient and the discharge authority accepted the applicant’s conditional waiver on 15 Apr 98. On 16 Apr 98, the applicant was furnished an ELS and credited with six months and eight days of total active service. The DD Form 214, issued in conjunction with his 16 Apr 98 separation, reflects “Homosexual Admission” as the narrative reason for his separation.

The remaining relevant facts pertaining to this application are described in the letters prepared by the Air Force offices of primary responsibility (OPR) which are attached at Exhibits C and D.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AIR FORCE EVALUATION:

AFPC/DPSOS recommends denial, indicating there is no evidence of an error or injustice. Based on the documentation on file in the master personnel records, the discharge was consistent with the procedural and substantive requirements of the discharge instruction and was within the discretion of the discharge authority. The applicant did not submit any evidence or identify any error or injustice with respect to the discharge processing. While he states that he is not, nor has he ever been, a homosexual, the record indicates that he made a statement admitting to homosexual conduct. Being that he was discharged under the provisions of AFI 36-3208, paragraph 5.36.2, for making such a statement, whether or not he was ever a homosexual has no bearing on the basis of his discharge. As for his ELS, airmen are given ELS with uncharacterized service when separation is initiated in the first 180 days of continuous active service. The Department of Defense (DoD) determined it would be unfair to the member and the service to characterize their limited service when such service is less than 180 days.

A complete copy of the AFPC/DPSOS evaluation is at Exhibit C.

AFPC/DPSOA recommends denial, indicating there is no evidence of an error or injustice. The applicant’s 2C RE code is required in accordance with AFI 36-2606, *Reenlistments in the USAF*, Chapter 3, based on his ELS with uncharacterized service. The applicant does not provide any proof of an error or injustice with respect to the RE code he was issued in conjunction with his ELS with uncharacterized service.

A complete copy of the AFPC/DPSOA evaluation is at Exhibit D.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 11 Mar 11 for review and comment within 30 days. As of this date, no response has been received by this office (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.  Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant’s complete submission in judging the merits of the case; however, we find no evidence of an error or injustice that occurred in the discharge processing. Based on the available evidence of record, it appears the applicant’s entry-level separation (ELS) for homosexual admission was consistent with the procedural and substantive requirements of the discharge instruction and within the commander’s discretionary authority. Other than his own assertions, he has provided no evidence which would lead us to believe his ELS was improper or contrary to the authority under which it was effected; or that his narrative reason for separation and RE and SPD codes, all issued in conjunction with his separation, were erroneous or inappropriately assigned. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following members of the Board considered AFBCMR Docket Number BC-2010-03211 in Executive Session on 25 May 11, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

Exhibit A.  DD Form 149, dated 26 Aug 10, w/atchs.

Exhibit B.  Applicant's Master Personnel Records.

Exhibit C.  Letter, AFPC/DPSOS, dated 24 Jan 11.

Exhibit D.  Letter, AFPC/DPSOA, dated 25 Feb 11.

Exhibit E.  Letter, SAF/MRBR, dated 11 Mar 11.