

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2020-02902

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable.

### APPLICANT'S CONTENTIONS

His discharge was unjust because his only offense was failing to report another military person as possibly being a homosexual. He was not then, nor is he now a homosexual, nor was he investigated as such by the Air Force.

Whether it was good policy in 1964, in 2020, current military standards/regulations have not, and do not, consider the failure to report a possible homosexual as being a dischargeable action or even a disciplinary offense. During his term of service, and for more than fifty years, he has conducted himself in a manner respectful of the United States Air Force (USAF) and the United States of America.

The character of his service and discharge should reflect his honorable USAF service.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman second class (E-3).

On 21 Aug 64, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 35-66, *Discharge of Homosexuals*. The specific reasons for the action were:

- a. Predicated upon a sworn statement made by the applicant.
- b. Applicant was not the subject of investigation.

On 27 Aug 64, the Staff Judge Advocate found the discharge action legally sufficient.

On 2 Sep 64, the discharge authority directed the applicant be discharged with a general service characterization. Probation and rehabilitation was considered, but not offered.

On 11 Sep 64, the applicant received a general (under honorable conditions) discharge. His narrative reason for separation is "(SDN 256) AFR 36-19 and 2nd Ind (C) Hq 15th AF, 2 Sep 64 to Ltr 456 OMS, 21 Aug 64" and he was credited with 3 years total active service.

For more information, see the excerpt of the applicant's record at Exhibit B.

## **APPLICABLE AUTHORITY/GUIDANCE**

On 20 Sep 11, with the repeal of the law commonly known as “Don’t Ask, Don’t Tell” (DADT), 10 U.S.C. § 654, the Department of Defense (DoD) issued supplemental policy guidance on correcting military records of former service members who had been discharged under that law or a precursor. The guidance applied to the following types of requests: changing the narrative reason for a discharge; re-characterizing service as honorable; changing a reentry code to one allowing immediate eligibility to reenter service. The guidance directed that such requests should normally be granted when both of the following conditions are true: (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. For meritorious cases, the guidance further directed the use of “Secretarial Authority” as the new narrative reason for separation, with Separation Program Designator (SPD) code “JFF” and reentry code “1J.” Finally, the guidance noted that while each request must be evaluated individually, an honorable or under honorable conditions (general) discharge should normally be considered to indicate the absence of aggravating factors.

The complete DoD policy is at Exhibit C.

## **APPLICANT’S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE**

The Board sent a copy of the DoD policy to the applicant on 19 Jul 22 for comment (Exhibit D), but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an injustice. While the Board finds no error in the original discharge process, the Board recommends relief based on the repeal of 10 U.S.C. § 654. The absence of aggravating factors in the applicant’s record meets the criteria of the DoD policy on records correction following the repeal of DADT. Therefore, the Board recommends correcting the applicant’s record as indicated below.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board’s understanding of the issues involved.

## **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show the DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, issued on 11 September 1964, be amended to reflect he was discharged with service characterized as Honorable, a Separation Code of “JFF”, a Narrative Reason for Separation of “Secretarial Authority”, and a Reentry code of “1J”.

## **CERTIFICATION**

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2020-02902 in Executive Session on 16 Sep 22:

, Panel Chair

, Panel Member  
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, dated 27 Jul 20.

Exhibit B: Documentary Evidence, including relevant excerpts from official records.

Exhibit C: DoD Policy on Correcting Military Records after Repeal of DADT, 20 Sep 11.

Exhibit D: Notification of DoD Policy, SAF/MRBC to applicant, dated 19 Jul 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

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Board Operations Manager, AFBCMR