

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-00360

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### **APPLICANT'S REQUEST**

His discharge Under Honorable Conditions (General) be upgraded to an Honorable discharge, based on the repeal of Section 654 of Title 10, United States Code.

### **APPLICANT'S CONTENTIONS**

He was discharged under Don't Ask, Don't Tell after choosing to end a relationship with someone who did not share his values of integrity, honorable behavior, or belief that all people are equal, regardless of gender or skin color. This person chose to report the applicant as an act of revenge for ending the relationship, and named several of the applicant's fellow service members as lesbian, gay, bisexual, and/or transgender (LGBT) as well. His service record was good and the only reason he was given a general discharge was because he chose not to fight the charges against him to protect fellow service members. He freely admitted to being a homosexual man, and that he engaged in the relationship. He would like his discharge upgraded to honorable, as his service deserves to be characterized as such.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

The applicant is a former Air Force staff sergeant (E-5).

On 10 May 95, a Report of Inquiry (ROI) into the alleged homosexual conduct, on the part of the applicant, was submitted to the Commander, 2d Air Force (2 AF/CC). The inquiry officer recommended prosecution under the Uniform Code of Military Justice (UCMJ) be considered against the applicant, and that discharge action be initiated against him if UCMJ action is not pursued.

On 16 May 95, 2 AF/JA found the ROI was legally sufficient to support initiation of discharge action for homosexual conduct. The reviewer disagreed with the recommendation for disciplinary action under the UCMJ. Also, the reviewer did not recommend initiating discharge action against the applicant for misconduct, which would allow a recommendation that his service be characterized as under other than honorable conditions (UOTHC).

On 17 May 95, 2 AF/CC determined action under the UCMJ was not appropriate, and recommended the applicant's commander initiate administrative separation action, with a further recommendation that the discharge be characterized as general (under honorable conditions).

On 15 Jun 95, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Instruction, (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.36.2.1. for homosexual conduct. The specific reasons for the action were as follows:

On or about 1 May 95, after being advised of his rights under the Department of Defense policy against homosexual conduct and Article 31 (UCMJ), the applicant admitted both verbally and in writing, to the allegations regarding his homosexual relationship from Aug 93 to Mar 95, with **Mr. S.**, which included his participation in various sexual acts on a number of occasions with **Mr. S.** He also admitted he engaged in homosexual acts with **JM** and **JB**. In addition, he made the following statement, "And sir, I will come out and say, yeah, I am gay now." He also stated that he had the propensity to engage in homosexual conduct in the future.

On 15 Jun 95, the discharge action was found legally sufficient, and the discharge authority approved the recommendation on 19 Jun 95.

On 23 Jun 95, the applicant received an Under Honorable Conditions (General) discharge.

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**

The Board sent a copy of the DoD policy to the applicant on 28 Apr 21 for comment (Exhibit D), but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application is timely.
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 the APPLICANT be corrected to show the DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued in conjunction with his 23 June 1995 discharge, be amended to read "Honorable" in Block 24, *Character of Service*, "JFF" in Block 26, *Separation Code*, "1J" in Block 27, *Reentry Code*, and "Secretarial Authority" in Block 28, *Narrative Reason for Separation*.

## **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-2021-00360 in Executive Session on 6 Oct 21:

, Panel Chair  
, Panel Member  
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atc, dated 19 Sep 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 28 Apr 21.

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.

**X**

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Board Operations Manager, AFBCMR