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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-00922

XXXXXXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX.

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

Her under other than honorable conditions (UOTHC) discharge be upgraded to honorable, with a Narrative Reason for Separation of Secretarial Authority, Separation Code of JFF, and Reenlistment Code of RE-1.

**APPLICANT'S CONTENTIONS**

In an 18-page legal brief, the applicant through her counsel contends her discharge is an injustice, because she was discharged solely based on homosexuality, with no misconduct or aggravating factors, and she did not receive adequate legal representation during the discharge process. In light of the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654), Don't Ask Don't Tell, and subsequent Department of Defense (DoD) guidance, issued 20 Sep 11, her discharge should be upgraded to Honorable.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a former Air Force airman basic (E-1).

On 23 Jan 80, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability*, paragraph 2-15b, Section B, and Chapter 2, with a UOTHC discharge. The specific reasons for the action were as follows:

- a. She did, during Oct 79, admit to an Airman Basic that she was homosexual.
- b. She was, on or about 27 Oct 79, found nude and in bed with an Airman. They were engaged in kissing, embracing and fondling each other.
- c. She did, on or about 8 Nov 79, kiss on the mouth an Airman at a homosexual bar.

On 4 Mar 80, the Staff Judge Advocate opined that although the applicant's commanders recommended a UOTHC discharge, he recommended the commanders' recommendations be disapproved and the applicant be discharged with a general character of service without probation and rehabilitation.

On 5 Mar 80, the discharge authority approved the recommendation and directed the applicant be furnished a General Discharge Certificate.

On 7 Mar 80, the applicant received a UOTHC discharge.

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

### **APPLICABLE AUTHORITY**

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.

### **AIR FORCE EVALUATION**

AFPC/JA recommends granting the application. The applicant served in the Air Force from 14 Aug 79 until 7 Mar 80 and was discharged under the provisions of AFM 39-12, Chapter 2, Section B paragraph 2-15b (homosexuality), receiving a service characterization of UOTHC. The applicant's discharge was based solely on her sexual orientation and a policy similar to DADT prior to enactment of DADT. The available records reveals no misconduct or derogatory data during her time in service. The legal review of this discharge, dated 4 Mar 80, noted "the respondent should receive a general discharge" and that "the other airmen who engaged in homosexual acts with the respondent submitted conditional waivers for general discharges and were approved." As such, it appears that the applicant's UOTHC, even at the time of discharge may have been unwarranted. Therefore, they recommend upgrading the applicant's discharge in accordance with the Under Secretary of Defense memorandum of 20 Sep 11.

The complete advisory opinion is at Exhibit D.

### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the DoD policy to the applicant on 9 Jul 21 for comment (Exhibit E), but has received no response.

### **FINDINGS AND CONCLUSION**

1. The application is not timely, 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. The Board concurs with the rationale and recommendation of AFPC/JA, and 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.

## 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 from Active Duty*, issued on 7 Mar 80, be amended to reflect she 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-2021-00922 in Executive Session on 2 Dec 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/atchs, dated 8 Apr 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: Advisory opinion, AFPC/JA, dated 30 Jun 21
- Exhibit E: Notification of DoD Policy, SAF/MRBC to applicant, dated 9 Jul 21.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings pertaining to Docket Number BC-2021-00922, as required by AFI 36-2603, paragraph 4.11.9.

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Board Operations Manager, AFBCMR