

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02268

XXXXXXXXXXXX

COUNSEL: NONE

(AKA) XXXXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended as follows:

- a. Reflect her current legal name.
- b. Change item 28, *Narrative Reason for Separation*, "Unsuitability. Aberrant Tendencies. Board Waiver."

APPLICANT'S CONTENTIONS

Her name was legally changed after surgery for infertility showed internal intersexual organs. There was a necessary procedure to correct an error at birth. The gender change surgery, performed on 23 Jun 82, was due to medical necessity and not aberrant tendencies.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force staff sergeant (E-5).

The applicant served in the Air Force from 7 Jun 71 to 9 Mar 81, under the name SEH.

On 12 Mar 81, the applicant obtained a court order to change her name to SEH [initials did not change].

On 21 Mar 83, pursuant to a change of gender, the applicant obtained a court order to change her birth certificate from SEH [Male] to SEH [Female]. The corrected birth certificate was issued by the Department of Health, Bureau of Vital Statistics on 1 Apr 83.

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

APPLICABLE AUTHORITY/GUIDANCE

In accordance with Executive Order (E.O.) 14004, dated 25 Jan 21, *Enabling All Qualified Americans to Serve Their Country in Uniform*, the 46th President of the United States determined that gender identity should not be a bar to military service. The Secretary of Defense concluded that permitting transgender individuals to serve openly in the military was consistent with military readiness and with strength through diversity, such that transgender service members who could meet the required standards and procedures should be permitted to serve openly.

The Secretary of Defense implemented policy that shall: (1) immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service on the basis of

gender identity or under circumstances relating to their gender identity; (2) identify and examine the records of service members who have been involuntarily separated, discharged, or denied reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity; (3) issue guidance to the Secretaries of each military department regarding the correction of the military records of individuals described in subsection (b)(ii) of this section as necessary to remove an injustice, pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law; and (4) direct the Secretaries of each military department to provide supplemental guidance, subject to the approval of the Secretary, to the boards for the correction of military records, instructing such boards on how to review applications for the correction of records of individuals described in subsection (b)(ii) of this section. Where appropriate, the department concerned shall offer such individuals an opportunity to rejoin the military should they wish to do so and meet the current entry standards.

Consistent with recommendations of the Air Staff and the Office of the Secretary of Defense Separations Standardization Working Group, the Board has established a precedent of granting requests for post-service name changes under the following conditions: (1) the applicant's name was changed as part of a transgender transition or the applicant is seeking to revert to a maiden name or the name under which he or she entered service; and (2) the change is supported by a court order, a divorce decree, or birth certificate (True Copy Raised Seal, Notarized, or official digital document with electronic signature); (3) the change is made only to the DD Form 214; and (4) the Board has not already granted a name change for the applicant.

SAF/MR memorandum, *Guidance to the Air Force Board for Correction of Military Records*, dated 9 Mar 15, states that while the Board generally has the authority to correct an applicant's records to reflect a legal change to the applicant's name, it should exercise discretion in doing so. The DD Form 214 is primarily created for the benefit of the veteran to establish entitlements to various government programs, or in seeking employment with organizations that grant veteran's preferences. A DD Form 214 may constitute an injustice when the veteran asserts that presenting a DD Form 214 that lists the old name effectively requires a needlessly intrusive explanation of personal history. This type of injustice may arise in situations such as when the name change is transgender-related or associated with a divorce.

A complete copy of the SAF/MR memorandum is at Exhibit C.

APPLICANT'S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE

The Board sent a copy of the SAF/MR memorandum to the applicant on 4 Jan 22, for comment (Exhibit D), but has received no response.

AIR FORCE EVALUATION

The AFRBA Psychological Advisory recommends granting the applicant's request to change the Narrative Reason for Separation on her DD Form 214. The applicant received an honorable character of service discharge. An undated Statement of Reason in the applicant's available military records, presumably written by her commander, clarified she was discharged from service for unsuitability in the form of aberrant sexual tendencies identified as transsexualism. She was reported to have been seen at Mental Health Services and evaluated on numerous occasions between Oct 80 and Jan 81, and was determined to be "experiencing, inter alia, significant identity disturbance to include gender identity." She also admitted to periodically dressing in feminine attire and intended to continue behaving in such a manner. The applicant had also submitted a Request for Discharge, dated on 2 Feb 81, citing her transsexual nature as the reason for her discharge request and stated she felt this would be in the best interest of the Air Force and herself to separate from the service.

The applicant may have experienced gender dysphoria, which is an unsuiting condition; however, the applicant has consistently identified as a female, even doing so openly during service, and presently. She has legally changed her name and gender, had surgery to be consistent with her identified gender, and has lived as a female for more than 40 years. Her behaviors and actions suggests she does not have a mental health condition due to her gender identity.

After reviewing the available records, no error with the applicant's discharge was found as she did disclose and requested to be discharged due to her transsexual nature. The applicant denied homosexual or transvestite tendencies. At the time of her service, identifying as a transsexual was considered unsuiting for continued military service and her discharge was consistent with the policy in effect at the time. Although there was no error with her discharge, there is an injustice identified with her narrative reason for separation, specifically for "Aberrant Tendencies." Identifying as a transsexual is no longer disqualifying for service and is not considered to be an aberrant behavior or tendency in present time.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 22 Jun 22, for comment (Exhibit F), 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. The Board finds the applicant has established that presenting her DD Form 214 with the previous legal name effectively requires a needlessly intrusive explanation of personal history. Furthermore, the AFRBA Psychological Advisor identified the applicant's discharge from the Air Force was for unsuitability in the form of aberrant sexual tendencies identified as transsexualism; consequently, pursuant to E.O. 14004, the applicant continues to suffer an injustice. 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 APPLICANT be corrected to show that the DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued in conjunction with the 9 Mar 81 discharge, be declared void; a new DD Form 214 be issued to reflect the following changes, and no entries be made on the reissued DD Form 214 indicating changes were made or the DD Form 214 was administratively reissued:

- a. Block 1, *Name*: Current Legal Name
- b. Block 25, *Separation Authority*: AFR 39-10
- c. Block 26, *Separation Code*: JFF
- d. Block 27, *Reentry Code*: 1J
- e. Block 28, *Narrative Reason for Separation*: Secretarial Authority

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-2021-02268 in Executive Session on 29 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, w/atchs, dated 1 Jun 21.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Memorandum, SAF/MR, dated 9 Mar 15.
Exhibit D: Notification of Memorandum, SAF/MRBC to Applicant, dated 4 Jan 22.
Exhibit E: Advisory Opinion, AFRBA Psychological Advisor, dated 16 Jun 22.
Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Jun 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.

X

Board Operations Manager, AFBCMR