

## RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03075

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

Her separation code, narrative reason for separation, and reenlistment code be changed based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

### APPLICANT'S CONTENTIONS

She has suffered continued mental stress because of the reason for her discharge and was recently informed it could be changed. She was in good standing with good evaluations on her job performance until the Air Force pressed these charges, stripped her of her security clearance, and involuntarily discharged her. This has caused her great mental anguish.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

On 5 Mar 82, the applicant's commander notified her he was recommending she be discharged from the Air Force with a general character of service, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*. Specifically, the applicant engaged in homosexual conduct.

On 10 Mar 82, the applicant submitted a conditional waiver requesting an honorable discharge.

On 15 Mar 82, the Staff Judge Advocate (SJA) found the discharge action legally sufficient. Due to the absence of aggravating circumstances, the SJA recommended the discharge authority accept the conditional waiver and direct the applicant be discharged with an honorable character of service.

On 23 Mar 82, the discharge authority approved the conditional waiver request and directed the applicant be discharged with an honorable service characterization.

On 26 Mar 82, the applicant received an honorable discharge. Her separation code and corresponding narrative reason for separation is HRA, *Homosexual Acts*, and her reenlistment code is 2C, *Involuntarily separated with an honorable discharge; or entry level separation without characterization of service*. She was credited with 3 years, 10 months, and 24 days of 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 17 Aug 21 for comment (Exhibit D) 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. 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.

### **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show the DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued in conjunction with her 26 Mar 82 separation, be amended as follows:

- a. Block 25, *Separation Authority*: AFR 39-10
- b. Block 26, *Separation Code*: JFF
- c. Block 27, *Reenlistment Code*: 1J
- d. 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-2021-03075 in Executive Session on 20 Oct 22:

*Work-Product* 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/atch, dated 15 Aug 21.

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 17 Aug 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.

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Board Operations Manager, AFBCMR