

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-03423

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### **APPLICANT'S REQUEST**

1. Her Uncharacterized/Entry Level Separation discharge (Homosexual Admission) be upgraded to honorable, based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).
2. Any administrative paperwork associated with her original discharge be corrected accordingly.

### **APPLICANT'S CONTENTIONS**

On 20 Sep 21, Secretary of Veterans Affairs, XXXX XXXXX issued a directive to correct the discharge status of LGBTQ service members intended to restore benefits and honorable status to veterans discharged due to their sexual orientation and HIV/AIDS status. Hence the reason for this request.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

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

On 3 Mar 04, the applicant entered the Regular Air Force.

On 16 Jul 04, the applicant received an Uncharacterized/Entry Level Separation discharge. Her narrative reason for separation was "Homosexual Admission" and she was credited with 4 months, and 14 days of total active service.

For more information, see the excerpts 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 12 Apr 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 error or 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. Specifically, in accordance with DoD Supplemental Policy Guidance, dated 20 Sep 11, the Board recommends changing the narrative reason for separation to "Secretarial Authority," and the SPD code to "JFF." However, for the remainder of the applicant's request to upgrade her discharge to honorable, there was insufficient evidence presented enabling the Board to recommend correcting her character of service as Airmen are given entry-level separation/uncharacterized service characterization when separation is initiated in the first 180 days continuous active service. Department of Defense (DoD) policy determined if a member served less than 180 days continuous active service, it would be unfair to the member and the service to characterize their limited service. Therefore, the uncharacterized character of service on her DD Form 214 is correct and in accordance with DoD and Air Force instructions. As such, the Board finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant's records 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 from Active Duty*, issued on 16 July 2004, be amended to reflect she was discharged with a Narrative Reason for Separation of Secretarial Authority, and a Separation Code of JFF.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

## **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-2021-03423 in Executive Session on 22 Jun 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 22 Sep 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 12 Apr 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