

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-00179

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

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

a. Remove "Unsuitable-Aberrant Tendencies-Evaluation Officer" from her Narrative Reason for Separation.

b. Her rank be changed from airman (E-2) to airman first class (E-3).

### APPLICANT'S CONTENTIONS

She recently became aware that 41 years ago when she was honorably discharged from the Air Force, her last promotion from airman to airman first class was withheld. She worked as a Tactical Aircraft Maintenance Specialist and studied very hard to earn the rank of airman first class, achieving top scores. This promotion was unjustly removed from her separation paperwork because of a biased, on-going investigation, interspersed with false accusations and condemnations. The proof in her military record is somewhat obscured and confusing in her last Airman Performance Report; however, it is clear her immediate supervisors all refer to her in her records as airman first class.

She was ravaged by the discharge from the Air Force. She did not receive a final medical or mental evaluation, debriefing, or exit counseling. She was removed from her small arms training, told to pack up her gear, and leave. Initially, she was in shock and scared because her father, a 100 percent disabled veteran, had died months prior and she thought her mother had died, too. She soon realized she was implicated in a biased investigation conducted by the Air Force Office of Special Investigations (AFOSI).

She realizes progress has been made and much has changed over the last 41 years regarding these issues. Statements made under duress during a terrifying AFOSI homosexuality investigation would not result in an unjust discharge in today's military service. Her honorable discharge was unexpected and psychologically devastating. She stored all the paperwork away in a box and over the last July 4th holiday, she opened the box for the first time since her discharge. She is stunned and angry to discover her last promotion was stripped away. She knows it was a direct result of the homosexual circumstances surrounding her unjust discharge, and that of approximately 30 other young women. It was wrong in 1980, and it is wrong today. She was sickened to read the Narrative Reason for Separation "Unsuitable-Aberrant Tendencies." This antiquated, dehumanizing and discriminatory terminology is wrong, and she respectfully requests it be removed and her earned rank of airman first class be reinstated.

The applicant's complete submission is at Exhibit A.

## STATEMENT OF FACTS

The applicant is an honorably discharged Air Force airman.

On 6 Dec 78, according to DD Form 4, *Enlistment or Reenlistment Agreement – Armed Forces of the United States*, the applicant entered the Regular Air Force in the rank of airman basic (E-1).

On 6 Jun 79, according to Special Order XXXXX, dated 30 May 79, the applicant was promoted to the rank of airman.

On 26 Oct 79, according to a letter from the Chief, Security Police, the applicant was placed on administrative hold, due to an AFOSI investigation.

On 11 Jan 80, according to AF Form 909, *Airman Performance Report*, the applicant received the highest overall rating of “9.” Her reporting officials referred to her as A1C [airman first class] in their comments; however, item 3, *Grade*, is listed as Amn [airman].

On 5 Feb 80, the applicant’s commander recommended she be honorably discharged from the Air Force, under the provisions of Air Force Manual 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, Chapter 2, Section A, paragraph 2-4f, dated 1 Sep 66. The specific reason for the action was: Homosexual and other Aberrant Sexual Tendencies.

On 13 Mar 80, the Staff Judge Advocate found the discharge action legally sufficient.

On 20 Mar 80, the discharge authority directed the applicant be discharged for Homosexual or Other Aberrant Tendencies, with an honorable service characterization. Probation and rehabilitation was considered, but not offered.

On 26 Mar 80, the applicant was honorably discharged under the provisions of AFM 39-12, in the rank of airman. Her separation code and corresponding narrative reason for separation is JMF, *Unsuitable-Aberrant Tendencies-Evaluation Officer*; and her reentry code is 2C, *Involuntarily separated with an honorable discharge; or entry level separation without characterization of service*. She was credited with 1 year, 3 months, and 20 days of total active service.

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

## 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 10 Jun 22, for comment (Exhibit D) but has received no response.

### **AIR FORCE EVALUATION**

AFPC/DP2SPP (Enlisted Promotions) recommends denying the applicant's request for promotion to airman first class. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. On 26 Oct 79, the applicant was placed on an administrative hold due to an AFOSI investigation, two months prior to acceptable time in grade requirements to promote to airman first class. Air Force Regulation 39-29, *Promotion of Airmen*, dated 28 Feb 79, page 20, Table 3. *Withholding of Promotions*, Item 1 states: "An airman's promotion is withheld when his or her name is not removed from a selected or eligibility list and the airman is under an investigation or a subject of an inquiry (formal or informal) being conducted by military authorities or by civil law enforcement authorities that may result in action under UCMJ [Uniform Code of Military Justice] or prosecution by civil authorities, or the investigation or inquiry has been completed but no determination has been made as to the action the military or civil authorities will take. PES [Promotion Eligibility Status] Code B." The applicant's commander-initiated discharge proceedings on 15 Feb 80 [sic]<sup>1</sup> and the applicant was honorably discharged on 26 Mar 80.

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 4 Nov 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. 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. While the Board notes the recommendation of AFPC/DP2SPP against correcting the applicant's grade, the Board found her promotion to airman first class was withheld due to the pending DADT investigation. But for the investigation, the promotion would have executed prior to her discharge. In view of the foregoing, the Board recommends correcting the applicant's records as indicated below.

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<sup>1</sup> The commander-initiated discharge action on 5 Feb 80.

## 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 26 Mar 80, be amended as follows:

- a. Item 4a, *Grade, Rate or Rank*: A1C
- b. Item 4b, *Pay Grade*: E3
- c. Item 12h, *Effective Date of Pay Grade*: 1980 Mar 26
- d. Item 25, *Separation Authority*: AFR 39-10
- e. Item 26, *Separation Code*: JFF
- f. Item 27, *Reenlistment Code*: 1J
- g. Item 28, *Narrative Reason for Separation*: Secretarial Authority

## CERTIFICATION

The following quorum of the Board, as defined in Department of Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00179 in Executive Session on 19 Jan 23 and 19 Oct 23:

, 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 11 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 10 Jun 22.
- Exhibit E: Advisory Opinion, AFPC/DP2SPP, w/atch, dated 31 Oct 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Nov 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

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Board Operations Manager, AFBCMR