RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXX

DOCKET NUMBER: BC-2022-00567

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His under other than honorable conditions discharge be upgraded to honorable, based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

APPLICANT'S CONTENTIONS

He would like to get an honorable discharge instead of a general (sic) because he was not guilty of what happened. When he was walking back to his barracks from night shift on the flightline, he was met by a lieutenant who said he [the applicant] was gay and was going to be discharged. He was (not), and has never been, gay. He was told he could have a lawyer. When he refused a lawyer, he was told to pack all of his military issue into his duffel bag, including dog tags, and be off the base by 4:00. He was then handed a general discharge. Finally, he had reenlisted in Dec 58 and was told he could be promoted to airman first class in Feb 59, and instead he was discharged. This should be cleared from his record which will mean he can receive some benefits that he thinks he is due.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class.

On 20 Jan 59, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 35-66, *Discharge of Homosexuals*, type class II.

On 10 Feb 59, the discharge authority directed the applicant be discharged with an Undesirable Discharge Certificate.

On 18 Feb 59, the applicant received an under other than honorable conditions discharge and he was credited with 3 years, 7 months, and 19 days of total active service.

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

APPLICABLE AUTHORITY/GUIDANCE

In accordance with AFR 36-66, *Discharge of Homosexuals*:

2. *Policy*. The policy of the Air Force with respect to homosexuals is outlined as follows:

   b. *Classification*. Homosexuals coming within the purview of this policy fall into several categories. However, the cases, generally are classified as follows:

(2) Class II – Those cases wherein personnel have willfully engaged in one or more homosexual acts, or where evidence supports proposal or attempt to perform an act of homosexuality, which does not fall into the class I category.

c. *Type of Separation.* As discharge under this Regulation is predicated solely on the facts concerning a person's homosexual acts or tendencies, the manner of his performance of duty does not affect the type of discharge which will be effected. Disposition will normally be as follows:
(2) Class II. Discharge will normally be under conditions other than honorable.

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 23 Aug 22 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application is timely.

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, *Armed Forces of the United States Report of Transfer or Discharge,* issued on 18 February 1959, be amended to reflect he 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-2022-00567 in Executive Session on 11 Oct 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 7 Feb 22.
    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 23 Aug 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