

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00662

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her uncharacterized 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

On 26 May 89, she was separated from the Air Force with an under other than honorable conditions (UOTHC) discharge due to an accusation of engaging in homosexuality, which was fraudulent, and the case was thrown out. On 31 Dec 90, her previous application to the Air Force Board for Correction of Military Records (AFBCMR) was completed and her record was adjusted to change her character of service to uncharacterized. She was young at the time and did not foresee or grasp the effects of this separation type or code in the long term. However, the Don't Ask, Don't Tell (DADT) policy enacted in 1993 and the DADT repeal in 2010 has long established that she was discharged under a discriminatory policy.

She has no doubt if the discharge had not occurred, she would have continued in the Air Force, not only for her original enlistment of four years, but would have chosen the Air Force as her life-long career. There were previous adjustments made to her records to align with the discharge policies at that time based on conduct as it relates to homosexuality, and she is asking that her records be re-evaluated to correct the character of service to honorable and veterans benefits granted.

This ordeal, while many years ago, has really impacted her life. She regrets not taking action on this matter. She was young and did not understand all the implications. She wants to correct this discrimination and be recognized for the contribution she was making to our country. This case was thrown out and she had no one to help her fight it. The lawyer who first assisted her said she would only get an Entry Level Separation and nothing else.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 22 Aug 88, according to DD Form 214, the applicant entered the Regular Air Force.

On 23 Jan 89, the applicant's commander notified her he was recommending her discharge from the Air Force under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, paragraph 5-35. The specific reason for the action was: On or about 3 Dec 88, she engaged or attempted to engage in a homosexual act with an Airman, in violation of Article 134, Uniform Code of Military Justice, for which she was given a verbal counseling, dated 13 Dec 88.

On 20-25 Mar 89, a Board of Officers was convened under AFR 39-10 and they recommended the applicant receive a UOTHC discharge.

On 15 May 89, the Staff Judge Advocate found the discharge action legally sufficient.

On 22 May 89, the discharge authority directed the applicant be discharged with a UOTHC service characterization.

On 26 May 89, the applicant received a UOTHC discharge. Her separation code and corresponding narrative reason for separation was GRA, *Homosexuality-Acts*, and her reenlistment code was 2B, *Separated with a general or under-other-than-honorable-conditions discharge*. She was credited with 9 months and 5 days active service.

On 19 Nov 90, in a Corrected Directive, the AFBCMR directed correction of the applicant's pertinent military records to reflect: On 26 May 89, she was discharged with an Entry Level Separation under the provisions of AFR 39-10, Chapter 5, Section B (Involuntary-Convenience of the Government), with an uncharacterized service characterization and separation code of JFF. Her reenlistment code was corrected to reflect 2C, *Involuntarily separated with an honorable discharge; or entry level separation without characterization of service*. A new DD Form 214, *Certificate of Release or Discharge from Active Duty*, was issued.

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

APPLICABLE AUTHORITY/GUIDANCE

DoDI 1336.01, *Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)*. The Department of Defense (DoD) authorizes six characterizations of service for military service members to receive on discharge: (1) Honorable; (2) Under Honorable Conditions (General); (3) Under Other than Honorable Conditions; (4) Bad Conduct; (5) Dishonorable, and (6) Uncharacterized.

DODI 1332.14, *Enlisted Administrative Separations*. A separation will be described as an entry-level separation if separation processing is initiated while an enlisted service member is in entry level status (180 days continuous active duty) except when: (1) Characterization under other than honorable is authorized under the reason for separation and is warranted by the circumstances or (2) The Secretary concerned on a case-by-case basis determined the characterization of service as honorable is warranted. The characterization is authorized due to reason of selected changes in service obligation, convenience of the government, disability, secretarial plenary authority, or an approved reason established by the Military Department.

Entry level separations, which are accompanied by an uncharacterized discharge, are given to individuals who separate prior to completing 180 days of military service or when discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Rather, an uncharacterized discharge is the absence of a characterization of service, as the individual being discharged does not have sufficient time in service in order to fairly characterize the individual's service.

AFR 39-10, *Administrative Separation of Airman*, dated 1 Apr 88, paragraph 1-19, *Separation without Characterization*, paragraph a. *Entry Level Separation*. Airmen are in entry level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service. Determine the member's status by the date of notification; thus, if the member is in entry level status when initiating the separation action, describe it as an entry level separation unless: (1) A service characterization of under other than honorable conditions is authorized under the reason for

discharge and is warranted by the circumstances of the case; or (2) The Secretary of the Air Force determines, on a case-by-case basis, that characterization as honorable is clearly warranted by unusual circumstances of personal conduct and performance of military duty.

Title 38 of the United States Code (10 U.S.C.) outlines the role of Veterans Benefits. The United States Department of Veterans Affairs is an agency of the federal government that is responsible for administering benefit programs for veterans, their families, and their survivors. <https://www.va.gov/>.

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 19 Sep 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 injustice in part. On 26 May 89, while the applicant was in an entry level status, she was separated from the Air Force with a UOTHC discharge due to an accusation of engaging in homosexuality. A separation will be described as an entry level separation if separation processing is initiated while an enlisted service member is in entry level status (180 days continuous active duty). The service characterization will be “uncharacterized,” except when an under other than honorable condition characterization is authorized and is warranted by the circumstances. It appears the discharge authority believed “homosexuality” warranted a UOTHC discharge. The same year, the applicant submitted a request to the Board and her character of service was changed from UOTHC to “Uncharacterized” based on her entry level status, and her separation code and corresponding narrative reason for separation was changed from GRA, *Homosexuality-Acts*, to JFF, *Involuntary-Convenience of the Government* [sic]¹. While the Board does not have access to the Record of Proceedings in the 1989 case, the evidence points to the applicant's entry level status and it appears the Board recommended changing the discharge to an entry level separation.

¹ The narrative reason for separation for JFF is “Secretarial Authority.”

Entry level separations are accompanied by uncharacterized service for individuals who separate prior to completing 180 days of military service or when discharge action was initiated prior to 180 days of service. The applicant's discharge process began at the 154-day point. Therefore, the Board finds insufficient evidence to warrant changing the applicant's entry level separation to an honorable discharge given her limited active duty service. In this respect, the Board finds the applicant's uncharacterized service based on entry level separation is correct per DoDI 1332.14 and AFR 39-10. Furthermore, the applicant requested she be authorized veterans benefits; however, according to 38 U.S.C., the Department of Veterans Affairs is responsible for administering benefit programs for veterans. As such, this request is not within the Board's authority.

Finally, the applicant's previously corrected DD Form 214 does not indicate she was discharged under DADT, or similar policy; therefore, guidance pertaining to the repeal of 10 U.S.C. § 654 does not apply in the applicant's case. Nonetheless, although the corrected DD Form 214 included the correct separation code, the corresponding narrative reason for separation should have read "Secretarial Authority" instead of "Involuntary-Convenience of the Government." Therefore, the Board recommends correcting the applicant's records as indicated below.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

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 May 89, be amended to reflect she was discharged with a Narrative Reason for Separation of *Secretarial Authority*.

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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00662 in Executive Session on 19 Jan 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, dated 25 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 19 Sep 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.

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