

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00972

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

DD Form 214, *Certificate of Release or Discharge from Active Duty*, item 28, *Narrative Reason for Separation*, be changed based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

APPLICANT'S CONTENTIONS

There was no proof of specific "homosexual acts" and that characterization of his discharge is inaccurate and unjust. The policies and procedures under which he was discharged differ in material respects from those currently applicable on a Service-wide basis. For propriety and equity, the narrative reason should be deleted or made accurate.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force first lieutenant (O-2).

On 16 Jun 92, as part of an FBI investigation into the use of the American On-Line computer bulletin board service for transmitting child pornography that revealed the applicant received electronic mail messages from another Air Force officer who was a subject of the investigation, the OSI after receiving consent from the applicant, searched his quarters. The search did not reveal any child pornography, but instead turned up evidence the applicant was homosexual.

On 8 Aug 92, the Staff Judge Advocate found the proposed discharge action under AFR 36-2, *Officer Personnel, Administrative Discharge Procedures*, chapter 3, paragraph 3-7h, *Homosexuality*, legally sufficient, recommending an honorable discharge with no probation and rehabilitation. No aggravating factors associated with applicant's homosexual tendencies were revealed.

On 24 Aug 92, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFR 36-2, *Officer Personnel, Administrative Discharge Procedures*, chapter 3, paragraph 3-7h. The commander recommended the action because of the applicant's pre-service homosexual conduct, his admission that he is a homosexual, and his continued propensity toward homosexuality.

On 15 Mar 93, the Deputy, Air Force Review Boards, by direction of the President, the Secretary of the Air Force, directed the applicant's appointment as a reserve officer be terminated pursuant to AFR 36-12, *Officer Personnel, Administrative Separation of Commissioned Officers and Warrant Officers*, paragraph 3-15, and directed he be issued an Honorable Discharge Certificate from the United States Air Force.

On 26 Mar 93, according to documentation submitted by the applicant, he received an honorable discharge. His reentry code is "N/A" and his separation code and narrative reason for separation

is GRA, *Involuntary Discharge – Misconduct, Moral or Professional Dereliction: Homosexual Acts*. He was credited with 4 years, 2 months, and 29 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 14 Jun 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. 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 from Active Duty*, issued on 26 Mar 93, be amended to reflect he was discharged with a separation code and corresponding narrative reason for separation of JFF, *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-2022-00972 in Executive Session on 2 Feb 23:

, Chair, AFBCMR
, 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 27 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 14 Jun 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings pertaining to Docket Number BC-2022-00972, as required by AFI 36-2603, paragraph 4.11.9.

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Board Operations Manager, AFBCMR