

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01120

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Uncharacterized/Entry Level Separation be upgraded to a general (under honorable conditions) discharge, based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

APPLICANT'S CONTENTIONS

He was required to sign documentation pertaining to Don't Ask, Don't Tell after a sleepwalking airman laid down on his bed in the middle of the night. It was reported to the Dorm Guard due to regulations. He initially refused to complete/sign the document but was informed non-compliance would result in court-martial, due to the circumstances. He is not homosexual/bisexual.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 2 Sep 93, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*, Chapter 5, Section G, paragraph 5-35b. The specific reasons for the action were: Admission of homosexuality or bisexuality.

On 8 Sep 93, the Staff Judge Advocate found the discharge action legally sufficient.

The discharge authority directed the applicant be discharged for homosexuality, with an entry-level separation. Preprocessing counseling and rehabilitation are not applicable.

On 10 Sep 93, the applicant received an Uncharacterized/Entry Level Separation. His narrative reason for separation is "Admitted homosexual or bisexual" and he was credited with 18 days of total active service.

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

AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the application. Based on review of the applicant's request, there is no error or injustice with the discharge processing.

Airmen are in entry level status during the first 180 days of continuous active military service. The Department of Defense (DoD) determined if a member served less than 180 days continuous

service, it would be unfair to the member and the service to characterize their limited service. To grant relief would be contrary to the criteria established by DoD Instruction (DoDI) 1332.14, *Enlisted Administrative Separations*.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Jun 22 for comment (Exhibit D) but has received no response.

APPLICABLE AUTHORITY/GUIDANCE

DoDI 1332.14, *Enlisted Administrative Separations*:

Glossary, Part II. Definitions:

Entry-level status. Upon enlistment, a service member qualifies for entry-level status during the first 180 days of continuous active military service.

Enclosure 4: *Guidelines on Separation and Characterization*

3. CHARACTERIZATION OF SERVICE OR DESCRIPTION OF SEPARATION

c. Uncharacterized Separation

(1) Entry-Level Separation

(a) 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, except when:

1. Characterization under other than honorable conditions is authorized under the reason for separation (Enclosure 3) and is warranted by the circumstances of the case; or

2. The Secretary concerned, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual military duty. The characterization is authorized when the Service member is separated under Enclosure 3 by reason of selected changes in service obligation, convenience of the U.S. Government, disability, secretarial plenary authority, or an approved reason established by the Military Department.

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 E.

APPLICANT'S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE

The Board sent a copy of the DoD policy to the applicant on 29 Jun 22 for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

1. Although the application was not timely filed within the three-year limitation period established by 10 U.S.C. § 1552 (b), the untimeliness is waived in the interest of justice.
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. The Board notes the recommendation of AFPC/DP2SSR against correcting the record; however, finds a preponderance of the evidence substantiates the applicant's contentions in part. 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, changing the Narrative Reason for Separation to reflect Secretarial Authority and Separation Code to JFF. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore 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 10 September 1993, be amended to reflect he was discharged with a Narrative Reason for Separation of Secretarial Authority and 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 the 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-2022-01120 in Executive Session on 30 Nov 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 Nov 21.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 23 May 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Jun 22.
- Exhibit E: DoD Policy on Correcting Military Records after Repeal of DADT, 20 Sep 11.

Exhibit F: Notification of DoD Policy, SAF/MRBC to applicant, dated 29 Jun 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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Board Operations Manager, AFBCMR