

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01290

XXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

Her DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

### APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends the applicant was discharged from the Air Force for homosexuality. At the time of the discharge, she was approximately seven days short of completing her initial six-year term of enlistment. Prior to her discharge, the applicant was considered by her commanding officers to be technically proficient, an outstanding leader, and the only female communications team chief operating in the European theater. The applicant's discharge followed a months-long Air Force Office of Special Investigation (AFOSI) investigation for alleged homosexuality. During the applicant's period of service, the Department of the Defense (DoD) considered homosexuality incompatible with military service and grounds for discharge. Throughout her service, including the period of time she was under investigation by the AFOSI, the applicant was recognized by her superiors as a high achiever and her performance reports invariably described her in glowing terms.

Following her discharge in Jul 85, the applicant went about the process of rebuilding her life. Although she was interested in finding employment with a state or federal agency, she believed the information contained in her DD Form 214 would disqualify her from government service. Eventually, the applicant started her own company. Nevertheless, the stigma surrounding the events that led to her discharge and the shame she still feels about the disclosure of her sexual orientation on her DD Form 214 continues to follow her. It was only by chance the applicant learned she could request a change in her discharge characterization following the repeal of Don't Ask, Don't Tell (DADT) and related DoD policies.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force sergeant (E-4).

On 31 May 85, the applicant's commander notified her he was recommending she be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 39-10, *Administrative Separation of Airmen*, Chapter G, *Homosexuality*, paragraph 5-35a. The specific reason for the action was on diverse occasions, between on or about 1 Mar 84 and on or about 9 Nov 84, the applicant engaged in homosexual acts with an Airman.

On 10 Jun 85, the Staff Judge Advocate found the discharge action legally sufficient.

On 12 Jun 85, the discharge authority accepted the applicant's conditional waiver and directed the applicant be discharged with a general (under honorable conditions) service characterization.

On 2 Jul 85, the applicant received a general (under honorable conditions) discharge pursuant to AFR 39-10. Her separation code and corresponding narrative reason for separation is HRA, *Homosexuality-Acts*, and her reenlistment code is 2B, *Separated with a general or under-other-than-honorable-conditions discharge*. She was credited with 5 years, 11 months, and 23 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 20 Dec 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 against correcting the applicant's record.

#### **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 2 Jul 85, be amended to reflect she 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 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-2022-01290 in Executive Session on 16 Mar 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 29 Mar 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 20 Dec 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