

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01344

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

She requests correction due to change in policy (Don't ask, Don't Tell).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 30 Jan 70, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, Chapter 2, Section B. The specific reason for the action was: The applicant was involved in Class II homosexual acts while in the Air Force.

On 12 Feb 70, the Staff Judge Advocate found the discharge action legally sufficient.

On 16 Feb 70, the discharge authority directed the applicant be discharged with an undesirable discharge service characterization. Probation and rehabilitation were considered, but not offered.

On 4 Mar 70, the applicant received a UOTHC discharge pursuant to AFM 39-12, Chapter 2, Section B. She was credited with 1 year, 7 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.

AIR FORCE EVALUATION

AFPC/JA recommends granting the application. The applicant's request falls squarely within the Under Secretary of Defense post-DADT guidance. On 30 Jan 70, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFM 39-12, Chapter 2, Section B. The specific reason for the action was: The applicant was involved in Class II homosexual acts while in the Air Force. The applicant unconditionally waived her right to a discharge board, the waiver was accepted, the case was found legally sufficient, and the discharge authority directed separation. On 4 Mar 70, the applicant was separated under AFM 39-12, Chapter 2, Section B, with an undesirable discharge.

The discharge was after the applicant had the benefit of counsel and her unconditional offer to waive a discharge board. Her separation processing appears to have been conducted in accordance with the law and appropriate guidance in effect at the time. The discharge, though, was based solely upon a policy similar to DADT. The record did not involve misconduct or other reasons for discharge and contained no evidence of aggravating factors. Since the discharge was based solely on a DADT-like policy with no aggravating factors, the Under Secretary of Defense guidance is to change the characterization of service, the narrative reason for separation, and the separation code.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 10 Mar 23 for comment (Exhibit F) 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. The Board concurs with the rationale and recommendation of AFPC/JA, and 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 in conjunction with her 4 Mar 70 separation, be amended to reflect she was discharged under the provisions of AFR 39-10, with service characterized as honorable, a Separation Code and corresponding Narrative Reason for Separation of JFF, *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-2022-01344 in Executive Session on 20 Apr 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/atch, dated 18 Apr 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.
- Exhibit E: Advisory opinion, AFPC/JA, dated 9 Mar 23.
- Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 10 Mar 23.

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