

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01626

XXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

Her separation code, narrative reason for separation, and reentry code be changed based on repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

### APPLICANT'S CONTENTIONS

The information on her DD Form 214, *Certificate of Release or Discharge from Active Duty*, is inequitable and defunct due to discriminatory policies that expelled individuals from the military based solely on sexual orientation.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an honorably discharged Air Force airman first class (E-3).

On 12 Aug 93, the applicant's commander recommended she be discharged from the Air Force, under the provisions of AFR 39-10, *Administrative Separation of Airmen*. The specific reason for the action was the applicant's admission that she was homosexual and engaged in homosexual acts.

On 31 Aug 93, the discharge action was found legally sufficient.

On 20 Sep 93, the applicant received an honorable discharge with a separation code and corresponding narrative reason for separation of HRA, *Homosexuality*, and a reentry code of 2C, *Involuntarily separated with an honorable discharge; or entry level separation without characterization of service*. She was credited with 1 year, 1 month, and 1 day 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 5 Aug 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 20 Sep 93, be amended to reflect she was discharged with 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-2022-01626 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, w/atchs, dated 11 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 5 Aug 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.

**X**

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Board Operations Manager, AFBCMR