



CUI//SP-MIL/SP-PRVCY

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01706

Work-Product

COUNSEL: *Work-Product*

Work-Product

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). Specifically to change:

- a. Item 25, Separation Authority to Secretarial Authority
- b. Item 26, Separation Code to JFF
- c. Item 27, Reentry Code to 1J
- d. Item 28, Narrative Reason for Separation to Secretarial Authority.

APPLICANT'S CONTENTIONS

She was honorably discharged for a homosexual act under the Don't Ask, Don't Tell (DADT) policy. Since then, DADT has been repealed, and homosexual individuals are now free to openly serve in the military. Despite many achievements and tremendous contributions she has made to society, she has endured some hardships related to discrimination because of her sexuality and subjected to having to explain her discharge for homosexual acts, which she believes has resulted in some lost job opportunities.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force airman (E-2).

On 20 Dec 94, the applicant's commander notified her he was recommending she be discharged from the Air Force, under the provisions of Air Force Policy Directive (AFPD) 36-32, *Military Retirements and Separations*, and Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*, paragraph 5.36.2. for Homosexual Conduct.

On 27 Dec 94, the Staff Judge Advocate found the discharge action legally sufficient and recommended the applicant receive an honorable discharge because there are no aggravating factors in this case.

On 28 Dec 94, the discharge authority directed the applicant be discharged for Homosexual Conduct, with an honorable service characterization. Probation and rehabilitation was considered but not offered.

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
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On 6 Jan 95, according to DD Form 214, the applicant received an honorable discharge pursuant to AFI 36-3208. Her separation code and corresponding narrative reason for separation is HRA, *Homosexual Act*, and her reentry code is 2C, *Involuntarily separated with an honorable discharge; or entry level separation without characterization of service*. She was credited with 9 months and 16 days of total active service.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-3202, *Separation Documents*, dated 20 May 1994. This instruction explains how to control, prepare, and distribute separation documents. Separation occurs when members of the Air Force leave active duty, move from one active duty status to another, or are discharged, retired, transferred, dismissed, or released. Item 25, *Separation Authority*, should cite the applicable authority pertaining to the service member's separation. For example AFI 36-3207, AFI 36-3208, etc.

AFI 36-3208, *Administrative Separation of Airmen*, dated 14 Oct 94. This instruction details how to administratively separate enlisted members for all reasons except physical disability or court-martial. It contains standards and procedures for implementing AFPD 36-32 concerning voluntary and involuntary separations. It governs service characterization for administrative separation and prescribes procedures for the probation and rehabilitation program for airmen subject to administrative discharge for cause. This publication applies to members of the Regular Air Force.

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 D.

APPLICANT'S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE

The Board sent a copy of the DoD policy to the applicant on 5 Jul 22 for comment (Exhibit C) but has received no response.

FINDINGS AND CONCLUSION

1. The application is timely.
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. The Board notes the applicant requests the separation authority on her DD Form 214 be changed to Secretarial Authority; however, this is not an authorized entry for item 25 of the DD Form 214. The separation authority is correctly reflected as AFI 36-3208, which is applicable to separations for all enlisted personnel, except for those pertaining to physical disability or court-martial. Additionally, it does not indicate the applicant was discharged for Homosexual Conduct. Amending the narrative reason for discharge will resolve this issue. 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, issued on 6 Jan 95, be amended to reflect 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-01706 in Executive Session on 16 Mar 23:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 7 Nov 21.
- 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 Jul 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

5/3/2023
Work-Product

Board Operations Manager, AFBCMR
Signed by: *Work-Product*