

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01925

COUNSEL:

HEARING REQUESTED:

APPLICANT'S REQUEST

1. His under other than honorable conditions discharge be upgraded to honorable, based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).
2. His grade be changed from airman second class (E-3) to staff sergeant (E-5).

APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends the applicant was separated for engaging in a homosexual act which was specifically banned by the military and discovery of such acts often resulted in serious punitive action. He received an under other than honorable conditions discharge despite the fact he did not receive an opportunity to present his case to an independent administrative separation board and had no other misconduct. He has lived with this burden of discharge for 50 years. He could not bring himself to discuss his military service with his children. Due to the existing stigma, he did not appeal his discharge for many years while he came to terms with himself and his life.

He is nearly 80 years old and is seeking relief for the first time. His only reason for separation has been expressly and statutorily overruled, making his petition a compelling case for relief. Therefore, in light of the Department of Defense repeal of Don't Ask, Don't Tell, the applicant should receive an honorable discharge that he earned through his stellar service and an administrative promotion to E-5.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman second class (E-3). He entered the Regular Air Force on 16 Jul 57.

On 7 Feb 61, the applicant's commander notified him of his intent to recommend he be discharged from the Air Force, under the provisions of Air Force Regulation (AFR) 35-66, *Discharge for Homosexual Acts or Tendencies*, (Class II) and the applicant acknowledged receipt that same day.

On 8 Feb 61, the applicant waived his right to a board hearing and on 14 Feb 61, he submitted a petition for leniency.

[REDACTED]

On 9 Mar 61, the applicant's commander recommended the applicant be separated from the Air Force and be issued a general discharge under the provisions of AFR 35-66.

On 16 Mar 61, the wing commander concurred with the squadron commander's recommendation and recommended the applicant receive a general discharge.

On 29 Mar 61, the discharge authority directed the applicant be returned to the Continental United States for discharge under provisions of AFR 39-17, *Discharge of Airmen Because of Unfitness*, and furnished an undesirable discharge.

On 11 Apr 61, according to Special Orders Number [REDACTED], dated 10 Apr 61, the discharge authority approved the recommendation with an under other than honorable conditions discharge.

On 11 Apr 61, the applicant received an under other than honorable conditions discharge under the provisions of AFR 39-17, with a Separation Designation Number of [REDACTED]. He was credited with 3 years, 8 months, and 26 days of total active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory opinions at Exhibits H and I.

POST SERVICE INFORMATION

On 15 Nov 22, the Board sent the applicant a request for post-service information (Exhibit F). The applicant provided a copy of a report from the Federal Bureau of Investigation (FBI) dated 20 Dec 22. According to the report, the applicant had no prior arrest data at the FBI.

The entire FBI report can be found at Exhibit G.

APPLICABLE AUTHORITY/GUIDANCE

Air Force Regulation 35-66, dated 23 July 1956. Homosexuals are classified within several categories and are classified as follows:

Class I: Those cases accompanied by assault or coercion as characterized by any act in or to which the other person involved did not willingly cooperated or consent, or where the consent was obtained through force, fraud, or actual intimidation; thereby, constituting the invasion of the rights of another, or the commission of a homosexual act with a minor under the age of consent, whether the minor cooperated or not. Trial by court-martial is usually appropriate. In no case will persons in Class I be administratively discharged until the entire case has been submitted to the Secretary of the Air Force who will determine whether such action is in the best interest of the service.

Class II: Those cases wherein personnel have willfully engaged in one or more homosexual acts, or where evidence supports proposal or attempt to perform an act of homosexuality which do not fall into the Class I category. Distinction is not made in the administrative handling of cases of alleged participation in homosexual acts based upon whether or not the role of the person in any particular act was active or passive. Discharge for Class II homosexuals will normally be under conditions other than honorable.

Class III: Those cases wherein personnel exhibit, profess, or admit homosexual tendencies, or habitually and knowingly associate themselves with true, confirmed homosexuals and wherein there are no specific homosexual acts or offenses.

[REDACTED]



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.” In addition, 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. Finally, the issuance of a discharge under DADT or the taking of an action pursuant to DoD regulations related to a discharge under DADT should not by itself be considered to constitute an error or injustice that would invalidate an otherwise proper action taken pursuant to DADT and applicable DoD policy. Thus, remedies such as correcting a record to reflect continued service with no discharge, restoration to a previous grade or position, credit for time lost, or an increase from no separation pay to half or full separation pay or from half separation to full separation pay, would not normally be appropriate.

The complete DoD policy is at Exhibit C.

On 25 Jul 18, the Under Secretary of Defense issued supplemental guidance (Wilke Memo) to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to the supplemental guidance. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board.

The entire guidance can be found at Exhibit E.

APPLICANT’S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE

On 2 Feb 24, the Board staff provided the applicant a copy of the Under Secretary of Defense DADT policy (Exhibit D).

On 15 Nov 22, the Board staff provided the applicant a copy of the Under Secretary of Defense (Wilkie Memo) guidance (Exhibit F).

AIR FORCE EVALUATION





AFPC/JA (Judge Advocate) does not offer a specific recommendation due to lack of information, but opines the applicant was discharged under AFR 35-66 after receiving legal counsel and waiving a discharge board. The discharge process appears to have been conducted in accordance with the law and appropriate guidance in effect at the time, but the record lacks a legal review, details on the separation authority's decision, and the investigative report. The discharge seems partly influenced by a policy similar to "Don't Ask, Don't Tell," but there is no evidence explaining why the applicant received an Under Other Than Honorable Conditions discharge instead of the General discharge recommended by the commander. Due to these missing elements, a legal review cannot assess whether misconduct or other factors influenced the discharge.

The complete advisory opinion is at Exhibit H.

AFPC/DPMSPP (Enlisted Promotions) recommends denying the applicant's request to have his pay grade changed from E-3 to E-5. Based on the documentation provided and analysis of the facts, there is no evidence of an error or injustice. Based on the applicant's official AF Form 7, *Airman Military Record*, Air Force Form 75, *USAF Airman Performance Report*, and DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, verifying the current rank as A2C/E-3, the current pay grade is correct. Furthermore, they were unable to verify the applicant being considered, selected or promoted to E-5.

The complete advisory opinion is at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 11 Mar 24 for comment (Exhibit J), and the applicant replied on 10 Apr 24. In his response, through counsel on behalf of the applicant contends the Enlisted Promotions advisory opinion focused narrowly on the applicant's pay grade adjustment to E-5, suggesting denial due to insufficient records supporting a promotion. This advisory opinion did not address the core issue that the applicant was unjustly discharged for his sexual orientation and should have received at least a promotion to E-4 based on his performance and time in grade. Had he not been wrongfully discharged; he would have likely achieved higher pay grades.

The Judge Advocate advisory opinion recommended denying the pay grade adjustment request, citing a lack of evidence. Despite the applicant's efforts to obtain his personnel file since Jun 20, he has not succeeded, and the missing records should not imply the absence of merit for a higher pay grade. Additionally, the judge advocate advisory opinion applied an inappropriate rationale to the discharge upgrade and narrative reason for separation. It suggested the discharge for homosexual conduct should have been general under honorable conditions and implied possible misconduct despite no evidence supporting such a claim. This approach reflects a biased review, as no misconduct is documented.

Given the absence of evidence for misconduct and the unfairness of the discharge, the Board is urged to disregard the Judge Advocate's recommendations. The applicant's case should be reviewed under the post-DADT guidance from the Under Secretary of Defense, which supports granting the relief requested.

The applicant's complete response is at Exhibit K.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the best interest of justice to excuse the delay.



[REDACTED]

2. The applicant exhausted all other available administrative remedies before applying to the Board.

3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an injustice in part. While the Board finds no error in the original discharge process, the Board recommends partial 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. Accordingly, the Board recommends the applicant's service characterization, separation code, narrative reason for separation and reentry code be changed. However, the Board finds insufficient evidence to warrant changing his rank from senior airman to staff sergeant. Therefore, the Board concurs with the rationale and recommendation of AFPC/DPMSPP and 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 11 Apr 61, be amended to reflect he 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.

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 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-2022-01925 in Executive Session on 24 Oct 24:

[REDACTED] Panel Chair
[REDACTED] Panel Member
[REDACTED] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 28 Jun 22.
- Exhibit B: Documentary Evidence, including relevant excerpts from official records.
- Exhibit C: DoD Policy on Correcting Military Records after Repeal of DADT, dated 20 Sep 11.
- Exhibit D: Letter, SAF/MRBC to applicant (DADT Under SecDef Memo, dated 15 Nov 22).
- Exhibit E: Wilkie Memo and Clemency Guidance, 25 Jul 18.
- Exhibit F: Letter, SAF/MRBC to Applicant, (Wilkie Memo and Clemency Guidance), 15 Nov 22.
- Exhibit G: Applicant's Response (FBI Report), dated 27 Feb 23.
- Exhibit H: Advisory, AFPC/JA, 20 Feb 24.
- Exhibit I: Advisory, AFPC/DPMSPP, 7 Mar 24.
- Exhibit J: Notification of Advisory Opinions, 11 Mar 24.
- Exhibit K: Applicant's Response, 12 Apr 24.
- Exhibit L: Minority Opinion, dated DD MMM YY.

[REDACTED]

[REDACTED]

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.

9/30/2025

X

[REDACTED]

Board Operations Manager, AFBCMR

Signed by:

[REDACTED]

[REDACTED]