



Work-.../SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01974

Work-Product

COUNSEL: Work-Product

Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The deceased former member's DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, dated 11 May 66 be amended based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654) to reflect:

- a. Character of Service; Honorable.
- b. Separation Code; JFF.
- c. Narrative Reason for Separation; Secretarial Authority.
- d. Reentry Code; 1J, *Eligible to reenlist, but elects separation.*

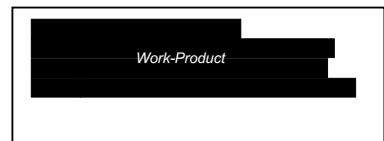
APPLICANT'S CONTENTIONS

Counsel on behalf of the applicant (former member's son) contends the former member was a model Airman with no misconduct in his record. In 1966, he was discharged with an under other than honorable conditions (UOTHC) characterization solely due to homosexual conduct. Since his discharge, the military has changed its policy regarding homosexual conduct with the repeal of "Don't Ask, Don't Tell (DADT)." The published guidance related to this appeal states that Boards for Correction of Military Records (BCMR) should normally grant requests to recharacterize the discharge to honorable if the original discharge was based solely on DADT or a similar policy in place prior to the enactment of DADT. There were no aggravating factors in the record such as misconduct. Both of those factors are met here so the former member's discharge should be upgraded to honorable as a result.

Counsel cites the following cases where the military record was corrected to reflect service characterized as honorable, a Separation Code of JFF, a Narrative Reason for Separation of Secretarial Authority and Reentry Code of 1J.

- ABCMR Docket: AR20130008128
- Navy BCMR Docket: 5406-13
- Navy BCMR Docket: 00838-13
- AFBCMR Docket: BC-2014-01955
- AFBCMR Docket: BC-2015-01956
- AFBCMR Docket: BC-2020-01246

The applicant's complete submission is at Exhibit A.



AFBCMR Docket Number BC-2022-01974

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STATEMENT OF FACTS

The applicant is the son of a former Air Force second lieutenant (O-1).

On 6 Nov 62, according to DD Form 214, the former member entered the Regular Air Force in the rank of second lieutenant.

On 4 Mar 66, the former member's commander notified him of his intent to initiate discharge actions against him as a Class II homosexual, under the provisions of Air Force Regulation (AFR) 35-66, *Discharge of Homosexuals*. The former member was informed in lieu of discharge under AFR 35-66, he could tender his resignation under the provisions of AFR 36-12, *Administrative Separation of Commissioned Officers and Warrant Officers*.

On 24 Mar 66, the applicant voluntarily tendered his resignation for the good of the service in lieu of further action under AFR 35-66 (Class II).

On 11 May 66, according to Special Order Work-P... dated 10 May 66, the Secretary of the Air Force accepted the former member's resignation and he received an under other than honorable conditions discharge. The authority for the discharge was AFR 36-12, paragraph 20e and SDN 513, Letter USAFMPC (AFPMAKO2).

On 11 May 66, according to DD Form 214, the former member received a UOTHC discharge in the rank of second lieutenant. He was credited with 3 years, 9 months, and 7 days of total active service.

On 10 Apr 73, the former member appealed to the Air Force Discharge Review Board (DRB) requesting a change of service characterization. The DRB concluded the UOTHC discharge was equitable and proper and that it should not be changed.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*. Reentry codes determine whether or not an enlisted Airmen may reenlist, or enlist in a military service at a later time.

According to DD Form 214, *Certificate of Release or Discharge from Active Duty*, Total Force Personnel Service Delivery Guide, an Airman's reentry code is annotated in block 27 of the DD Form 214. Officers do not receive a reentry code; therefore, NA [Not Applicable] will be entered in block 27.

Air Force Regulation 35-66, *Discharge of Homosexuals*, dated 31 May 54. 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.

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 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.

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. Notwithstanding, as noted above in the Applicable Authority, reentry codes determine whether or not an enlisted Airmen may reenlist, or enlist in a military service at a later time. Therefore, since the former service member was discharged as an officer a reentry code is not authorized on his DD Form 214. Accordingly, 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 MEMBER be corrected to show the DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, issued on 11 May 66, be amended to reflect he was discharged pursuant to AFR 36-12, with service characterized as honorable, a Separation Code of JFF, and a Narrative Reason for Separation of Secretarial Authority.

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-2022-01974 in Executive Session on 21 Sep 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 21 Jul 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: Notification of DoD Policy, SAF/MRBC to applicant, dated 18 Apr 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.

10/4/2023

X **Work-Product**

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