



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-2022-02207

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His type of separation, separation authority, separation code, reenlistment code and narrative reason for separation be changed, based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

APPLICANT'S CONTENTIONS

Don't Ask Don't Tell has been repealed.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 25 Jul 00, the applicant's commander recommended he be discharged from the Air Force, under the provisions of AFDP 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.36.2.2. The specific reasons for the action were on 11 Jul 00, the applicant made a written statement that he was bisexual. This statement created a rebuttable presumption that he engages in, attempts to engage in, has the propensity to engage in, or intends to engage in homosexual acts.

On 2 Aug 00, the deputy staff judge advocate found the discharge action legally sufficient.

On 1 Aug 00, the discharge authority directed the applicant be discharged under the provisions of AFI 36-3208, paragraph 5.36.2.2, with an uncharacterized entry level separation without the offer of probation and rehabilitation.

On 7 Aug 00, the applicant received an entry level separation. His reentry code is 2C, *Involuntarily separated with an honorable discharge; or entry level separation without characterization of service*. His narrative reason for separation is "Homosexual Admission." He was credited with 3 months and 12 days of total active service.

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

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

APPLICABLE AUTHORITY/GUIDANCE

DoDI 1336.01, *Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)*. The Department of Defense (DoD) authorizes six characterizations of service for military service members to receive on discharge: (1) Honorable; (2) Under Honorable Conditions (General); (3) Under Other than Honorable Conditions; (4) Bad Conduct; (5) Dishonorable, and (6) Uncharacterized.

DoDI 1332.14, *Enlisted Administrative Separations*. A separation will be described as an entry-level separation if separation processing is initiated while an enlisted service member is in entry level status (180 days continuous active duty) except when: (1) Characterization under other than honorable is authorized under the reason for separation and is warranted by the circumstances or (2) The Secretary concerned on a case by case basis determined the characterization of service as honorable is warranted. The characterization is authorized due to reason of selected changes in service obligation, convenience of the government, disability, secretarial plenary authority or an approved reason established by the Military Department.

Entry level separations, which are accompanied by an uncharacterized discharge, are given to individuals who separate prior to completing 180 days of military service or when discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Rather, an uncharacterized discharge is the absence of a characterization of service, as the individual being discharged does not have sufficient time in service in order to fairly characterize the individual's service.

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 31 Mar 23 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 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 separation code and narrative reason for separation be changed. However, the Boards finds insufficient evidence to warrant upgrading his entry level separation to an honorable discharge given his very limited active duty service. In this respect, the Board finds his uncharacterized service based on his entry level separation is correct per DoDI 1332.14, *Enlisted Administrative Separations*. 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 7 Aug 00, be amended to reflect he was discharged with a separation code and corresponding narrative reason for separation of JFF, *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-2022-02207 in Executive Session on 4 May 23:

-  *Work-Product*, Chair, AFBCMR
-  *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 13 Jun 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 31 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.

8/9/2023



Board Operations Manager, AFBCMR

Signed by:  *Work-Product*