

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00146

XXXXXXXXXXXXXXXXXXXX

COUNSEL: NONE

(AKA) XXXXXXXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT’S REQUEST

1. The name on his DD Form 214, *Certificate of Release or Discharge from Active Duty*, be changed to reflect his current legal name.
2. His reentry code, separation 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

He is of Native American heritage and legally changed his English name to his traditional tribal name to reflect his indigenous culture.

He was unjustly discharged based on his sexual orientation. His record reflects high marks for his service, and he had no aggravating factors.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 22 Mar 00, according to DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, the applicant entered the Air Force under the name Work-Pr...

The applicant served in the Air Force from 22 Mar 00 to 26 Sep 01, under the name Work-Pr...

On 26 Sep 01, the applicant was honorably discharged. His reentry code is 3C, *First-term airman not yet considered under selective reenlistment program*, and his separation code and corresponding narrative reason for separation is HRB, *Homosexual Admission*. He was credited with 1 year, 6 months, and 4 days of total active service.

On 18 Dec 20, the applicant obtained a court order to change his name to Work....

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

APPLICABLE AUTHORITY/GUIDANCE

Air Force policy does not authorize the correction of records of former Airmen to show name changes occurring after discharge (AFI 36-2608, *Military Personnel Records System*, Table A7.3 [Name Changes]). In particular, if the name appearing on the DD Form 214 was correct at the time it was created, the AFI would not allow a correction, even to reflect a subsequent, legal name change. The past practice of the Board has been to follow the AFI in all cases except those where the applicant seeks to revert to either a maiden name or the name under which he or she entered service, or the Board finds a particular injustice that warrants an exception to policy, such as noted below in the SAF/MR memorandum.

SAF/MR memorandum, *Guidance to the Air Force Board for Correction of Military Records*, dated 9 Mar 15, states that while the Board generally has the authority to correct an applicant's records to reflect a legal change to the applicant's name, it should exercise discretion in doing so. The DD Form 214 is primarily created for the benefit of the veteran to establish entitlements to various government programs, or in seeking employment with organizations that grant veteran's preferences. A DD Form 214 may constitute an injustice when the veteran asserts that presenting a DD Form 214 that lists the old name effectively requires a needlessly intrusive explanation of personal history. This type of injustice may arise in situations such as when the name change is transgender-related or associated with a divorce.

A complete copy of the SAF/MR memorandum is at Exhibit C.

APPLICANT'S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE

The Board sent a copy of the SAF/MR memorandum to the applicant on 13 Feb 23, for comment (Exhibit D), but has received no response.

ADDITIONAL 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.

A complete copy of the DoD policy is at Exhibit E.

APPLICANT'S REVIEW OF ADDITIONAL APPLICABLE AUTHORITY/GUIDANCE

The Board sent a copy of the DoD policy to the applicant on 27 Feb 23, for comment (Exhibit F) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.

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 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. However, the Board finds the applicant has not established that presenting his DD Form 214 with the previous legal name effectively requires a needlessly intrusive explanation of personal history and finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that his DD Form 214, *Certificate of Release from Active Duty*, issued on 26 Sep 01, be amended to reflect a reentry code of 1J and 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-2023-00146 in Executive Session on 16 Nov 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, 19 Dec 22.
Exhibit B: Documentary Evidence, including relevant excerpts from official records.
Exhibit C: Memoranda, SAF/MR, dated 9 Mar 15 and 25 Jul 22.
Exhibit D: Notification of Memoranda, SAF/MRBC to applicant, dated 13 Feb 23.
Exhibit E: DoD Policy on Correcting Military Records after Repeal of DADT, 20 Sep 11.
Exhibit F: Notification of DoD Policy to Applicant, dated 27 Feb 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.

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Board Operations Manager, AFBCMR