

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00175

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### **APPLICANT'S REQUEST**

His discharge status be changed based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

### **APPLICANT'S CONTENTIONS**

He was unjustly discharged solely based on his sexual orientation.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

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

On 8 Oct 98, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant entered the Regular Air Force.

On 5 Nov 98, the applicant submitted a statement requesting to be discharged on the basis of homosexual conduct.

On 9 Nov 98, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*. Specifically, the applicant admitted to being homosexual and requested to be discharged.

On 16 Nov 98, the discharge authority directed the applicant be discharged for Homosexual Conduct with uncharacterized service.

On 17 Nov 98, according to DD Form 214, the applicant received an uncharacterized discharge. His reentry code is 2C, *Involuntary separation with honorable discharge or entry-level characterization of service*, and his separation code and corresponding narrative reason for separation is HRB, *Homosexual Admission*. He was credited with 1 month and 10 days of total active service.

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

### **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 advisory opinion to the applicant on 8 Feb 23 for comment (Exhibit D) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application is 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. Accordingly, the Board recommends the applicant's narrative reason for separation and separation code be changed. However, the Board finds insufficient evidence to warrant upgrading his entry level separation to an honorable discharge given his very limited active duty service (40 days). In this respect, the Board finds the applicant's uncharacterized service based on 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 DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued on 17 Nov 98, 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-2023-00175 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, dated 31 Dec 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 8 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