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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00972

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His general (under honorable conditions) discharge be upgraded to honorable, based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

### APPLICANT'S CONTENTIONS

His discharge was discriminatory prior to the repeal of DADT.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman third class (E-2).

On 30 Jan 63, the applicant voluntarily sought medical attention from the Flight Surgeon because of compelling tendencies toward homosexual direction. The Flight Surgeon instructed him to call the matter to the attention of his commander, in which he did. The Flight Surgeon opined the applicant made a sincere and conscientious effort while in military service to counteract his homosexual inclinations, but it was obvious his tendencies were sufficiently strong to require further medical assistance. He recommended the applicant be separated from the military in accordance with Air Force Regulation (AFR) 35-66, *Discharge of Homosexuals*, dated 31 May 54, by the most expeditious means necessary.

On 6 Mar 63, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 35-66, within the category of a Class III, based on information revealed to him during a personal interview with the applicant. The applicant was given a copy of AFR 35-66 which explained the policy on the subject in detail and defined the applicant's rights as a respondent in the proposed action.

On 1 Apr 63, the applicant waived his right to a Board hearing and submitted statements on his behalf from his Defense Counsel, supervisor, and co-worker.

On 26 Jul 63, the discharge authority directed the applicant be returned to the Continental United States for separation under provisions of AFR 39-17, *Discharge of Airmen Because of Unfitness*, dated 17 Mar 59, with a general service characterization.

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On 7 Aug 63, the applicant was discharged and received a General (Under Honorable Conditions) discharge. The listed separation designation number is SDN 257, (Unfitness, Homosexual Acts). The applicant served 1 year and 26 days of active service.

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

## APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Instruction 36-3211, *Military Separations*, dated 24 Jun 22, describes the types of service characterization:

**Honorable.** The quality of the Airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

**Under Honorable Conditions (General).** If an Airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the Airman's conduct or performance of duty outweigh positive aspects of the airman's military record.

AFR 35-66, *Discharge of Homosexuals*. 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 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.

### **APPLICANT'S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE**

The Board sent a copy of the DoD policy to the applicant on 22 Sep 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. 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. Therefore, the Board recommends against correcting the applicant's record.

### **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show the DD Form 214, *Certificate of Release from Active Duty*, issued on 7 Aug 63, 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.

### **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-2023-00972 in Executive Session on 14 May 24:

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 1 Mar 23.
- 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.

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Exhibit D: Notification of DoD Policy, SAF/MRBC to applicant, dated 22 Sep 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.

7/29/2024

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Board Operations Manager, AFBCMR

Signed by: Work-Product

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