

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-01452

XXXXXXXXXXXXXX

**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**

He was falsely accused of being homosexual and unjustly discharged. There were no aggravating factors in his record.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

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

On 28 Oct 68, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Manual 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service*. The specific reasons for the action were: through the applicant's own voluntary admission, confirmed by an Air Force medical doctor, and facts substantiated and verified by the several talk sessions with two qualified personnel counselors, the applicant's homosexual tendencies and desires are the motivating factors for this proposed action.

On 5 Nov 68, the Staff Judge Advocate found the discharge action legally sufficient.

On 26 Nov 68, according to Special Order AA-581, the discharge authority directed the applicant be discharged with an under honorable conditions service characterization.

On 27 Nov 68, according to the applicant's DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, he received a general (under honorable conditions) discharge. He was credited with 9 months and 22 days of total active service.

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

### **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.” 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 8 Dec 23 for comment (Exhibit D) but has received no response.

### **FINDINGS AND CONCLUSION**

1. The application is timely.
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 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, *Armed Forces of the United States Report of Transfer or Discharge*, issued on 27 Nov 68, be amended to reflect he was discharged with service characterized as honorable.

### **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-2023-01452 in Executive Session on 11 Jun 24:

, 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/atch, dated 20 Apr 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.  
Exhibit D: Notification of DoD Policy, SAF/MRBC to applicant, dated 8 Dec 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.

---

X

---

*Work-Product*

Board Operations Manager, AFBCMR

---