

RECORD OF PROCEEDINGS

IN THE MATTER OF: **DOCKET NUMBER:** BC-2023-01662
XXXXXXXXXXXXXXXXXX (DECEASED) **COUNSEL:** NONE
XXXXXXXXXXXXXXXXXX (APPLICANT) **HEARING REQUESTED:** NO

APPLICANT’S REQUEST

1. Her deceased father’s discharge status be changed based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).
2. Reimbursement for earned unused leave.

APPLICANT’S CONTENTIONS

Her father was treated unjustly and unfairly. His discharge is considered discrimination and was wrong. He was also wrongfully stripped of a cash settlement for 30 days of earned, unused leave.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The decedent was a former airman second class (E-2).

On 5 Nov 53, the decedent’s commander recommended he be discharged from the service under the provisions of Air Force Regulation (AFR) 35-66, *Discharge Processing where Homosexual Acts or Tendencies are Involved*. The specific reason for the action was the decedent engaging in homosexual acts while in the Air Force.

On 18 Nov 53, the decedent appeared before a board of officers, was represented by counsel, and presented evidence on his behalf. The board was conducted in accordance with applicable laws and guidance at the time, and it was recommended that the decedent be separated from the service with a General Discharge.

On 25 Feb 54, according to DD Form 214, *Report of Separation from the Armed Forces of the United States*, the decedent was discharged from the Air Force. The character of his separation is Undesirable. Block 38, *Remarks*, reflects: Lump sum payment for accrued unused leave not authorized.

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

APPLICABLE AUTHORITY

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.

AIR FORCE EVALUATION

AFPC/JA recommends partially granting the application. The applicant’s request for a change in characterization, narrative reason for separation, and separation code falls within the Under Secretary of Defense’s (USECDEF) post-DADT guidance. The decedent was discharged pursuant to AFR 35-66, paragraph 5b(5)(a) as a Class II Homosexual. He had the benefit of counsel and presented evidence before a board of officers. His separation processing appears to have been conducted in accordance with the law and appropriate guidance in effect at the time.

However, because the discharge was based solely upon a policy similar to DADT and there was no misconduct or aggravating factors in the decedent’s record, the USECDEF guidance is to change the characterization of service, the narrative reason for separation, and the separation code. The applicant’s request for a cash payment for unused leave is outside the scope of the USECDEF policy.

The complete advisory opinion is at Exhibit D.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 23 Aug 23 for comment (Exhibit E) 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 error or injustice. The Board concurs with the rationale and recommendation of AFPC/JA and finds a preponderance of the evidence substantiates the applicant’s contentions in part. Specifically, 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, for the remainder of the applicant’s request, the evidence presented did not

demonstrate an error or injustice, and the Board therefore 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 DECEDENT be corrected to show the DD Form 214, *Report of Separation from the Armed Forces of the United States*, issued on 25 Feb 54, be amended to reflect he was discharged with service characterized as Honorable, a Separation Code of JFF, and a Narrative Reason for Separation of 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-2023-01662 in Executive Session on 9 May 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/atchs, dated 5 May 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: DoD Repeal of DADT Guidance, dated 20 Sep 11.
Exhibit D: Advisory opinion, AFPC/JA, dated 18 Aug 23.
Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 23 Aug 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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Matthew E. Kaleskas
Board Operations Manager, AFBCMR