

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01813

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her separation code, narrative reason for separation, and reentry code changed, based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

APPLICANT'S CONTENTIONS

Her discharge under the Don't Ask, Don't Tell (DADT) policy was unjust, unfair, and had a significant negative impact on her military career, personal life, and overall well-being.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 21 May 07, the applicant's commander recommended she be discharged from the Air Force, under the provisions of AFI 36-3208, *Administrative Separation of Airmen*, for homosexual conduct.

On 1 Jun 07, the Staff Judge Advocate found the discharge action legally sufficient.

On 6 Jun 07, the discharge authority directed the applicant be discharged with an honorable service characterization. Probation and rehabilitation was considered, but not offered.

On 8 Jun 07, the applicant received an honorable discharge. Her separation code and corresponding narrative reason for separation is HRB, *Homosexual Conduct (Statement)* and her reentry code is 2C, *Involuntarily separated with an honorable discharge; or entry level separation without characterization of service*. She was credited with 1 year, 4 months, and 1 day 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 6 Sep 23 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was 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 against correcting the applicant's record.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show the DD Form 214, *Certificate of Release from Active Duty*, issued on 8 Jun 07, be amended to reflect she was discharged with 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-2023-01813 in Executive Session on 28 Mar 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 19 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 6 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.

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Board Operations Manager, AFBCMR