

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02413

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

She intended to continue her military service until a fellow service member reported her to the Office of Special Investigations. The investigation, bar to reenlist, and the narrative reason for her discharge have contributed to her ongoing 40-year battle with military sexual trauma (MST) and post-traumatic stress disorder (PTSD). She hopes to alleviate the weight of this injustice on her personal history and family.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force sergeant (E-4).

On 25 Oct 82, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of Air Force Regulation 39-10, *Administrative Separation of Airmen*, section G, paragraph 5-35. The specific reason for the action was at divers times during the period 14 Jul 81 to 31 Jul 82, the applicant demonstrated her homosexual tendencies through written correspondence to another female airman. On the same day, the applicant acknowledged receipt of the notification and submitted a conditional waiver of her rights associated with an Administrative Discharge Board hearing.

On 2 Nov 82, the Staff Judge Advocate found the discharge action legally sufficient.

On 10 Nov 82, the discharge authority accepted the applicant's conditional waiver and directed the applicant be discharged with an honorable service characterization.

On 2 Dec 82, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant received an honorable discharge with a separation code and corresponding narrative reason for separation of HRA, *Homosexuality – Acts*, and reentry code of 2K (involuntary separation). She was credited with 4 years, 2 months, and 13 days of 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 22 Sep 23 for comment (Exhibit D) 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 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, *Certificate of Release or Discharge from Active Duty*, issued in conjunction with the 2 Dec 82 discharge, be amended to reflect 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-2023-02413 in Executive Session on 27 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/atchs, dated 27 Jun 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 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.

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Board Operations Manager, AFBCMR