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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03816

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, be corrected as follows:

a. His general (under honorable conditions) discharge be upgraded to honorable, and his narrative reason, separation and reentry codes be corrected, based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

b. Award of the Vietnam Service Medal and Small Arms Expert Marksmanship Ribbon.
(Non-viable, Failure to Exhaust)

APPLICANT'S CONTENTIONS

In a 14-page legal brief, the applicant through counsel, contends his discharge was an injustice based solely on accusations of being homosexual and no aggravating factors. He was treated unfairly based on the circumstances of his discharge and his exemplary service record. In addition, he served in Work-Product from 1970 to 1971 to aid the war effort. His duties included operating the communications switchboard for the base.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 5 Jul 72, the applicant's commander recommended the applicant be discharged from the Air Force with an honorable service characterization, under the provisions of AFM 39-12, *Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program*, para 2-15b. The specific reason for the action was: He engaged in one or more homosexual acts during his current enlistment.

On 18 Jul 72, the Staff Judge Advocate found the discharge action legally sufficient. He noted there was no legal objection to an honorable discharge, although a general discharge would be more in keeping with the provisions of AFR 39-12.

On 21 Jul 72, the base commander recommended the applicant be issued a general discharge. On 27 Jul 72, the discharge authority approved the recommendation and directed the applicant be

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discharged with a general (under honorable conditions) service characterization. Probation and rehabilitation were not offered.

On 28 Jul 72, the applicant received a general (under honorable conditions) discharge. His separation designator number (SDN) is [REDACTED], *Unfitness, Homosexual Acts* and his reentry code is 2, *Separated with a general, or under-honorable-conditions discharge*. He was credited with 3 years, 1 month, and 10 days of total active service and 1 year of Foreign 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.

Department of the Air Force Manual (DAFMAN) 36-2806, *Military Awards: Criteria and Procedures*, paragraph 5.3, Verification of Entitlements, states veterans and next of kin of deceased DAF members may request verification of entitlement to awards, such as a unit awards and campaign, expeditionary, and service medals. For service on or prior to 31 Jul 04, veterans are referred to the National Personnel Records Center, Air Force Reference Branch, 9700 Page Avenue, St. Louis, Missouri 63132-5100.

APPLICANT'S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE

The Board sent a copy of the DoD policy to the applicant on 7 Mar 24 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.

4. The applicant's request for award of the Vietnam Service Medal and the Small Arms Expert Marksmanship Ribbon is not viable. As noted above, veterans with service prior to 31 Jul 04 who seek entitlement to awards are referred to the National Personnel Records Center. The applicant's failure to exhaust all available remedies renders any potential action by the Board premature. Nevertheless, the Board recommends correcting the applicant's discharge 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 28 Jul 72, 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-2023-03816 in Executive Session on 30 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 16 Nov 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 7 Mar 24.

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.

2/12/2025

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