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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2024-00335

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His under other than 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 scheduled to get married in May 65 and in Apr 65 he suffered a mental breakdown due to concerns over his sexuality. He turned himself in for medical help but instead received an undesirable discharge.

Counsel, on behalf of the applicant, asserts his discharge should be upgraded to honorable based on the policy change allowing everyone to serve openly in the military after the repeal of "Don't Ask Don't Tell" (DADT). He was discharged solely for being a homosexual (Class II), with no other misconduct. Given the applicant's advanced age, counsel requests the matter be expedited.

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 30 Apr 65, the applicant's commander notified him of his intent to initiate action against him for an undesirable discharge as a Class II homosexual, under the provisions of Air Force Regulation (AFR) 35-66, *Discharge of Homosexuals*.

On 4 May 65, the applicant waived his right to a board hearing and requested he receive a general discharge based on his excellent ratings and the absence of misconduct.

On 13 May 65, the Staff Judge Advocate found the discharge action legally sufficient and recommended the applicant be separated with an undesirable discharge.

On 19 May 65, the discharge authority directed the applicant be discharged with an undesirable discharge.

On 9 Jun 65, the applicant received an under other than honorable conditions discharge with a separation designator number (SDN) of 257 (unfitness due to homosexual acts). He was credited with 3 years, 8 months, and 13 days of total active service.

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

APPLICABLE AUTHORITY/GUIDANCE

AFR 35-66, *Discharge of Homosexuals*, dated 31 May 54. Homosexuals are classified within several categories and are classified as follows:

Class I: Those cases accompanied by assault or coercion as characterized by any act in or to which the other person involved did not willingly cooperate or consent, or where the consent was obtained through force, fraud, or actual intimidation; thereby, constituting the invasion of the rights of another, or the commission of a homosexual act with a minor under the age of consent, whether the minor cooperated or not. Trial by court-martial is usually appropriate. In no case will persons in Class I be administratively discharged until the entire case has been submitted to the Secretary of the Air Force who will determine whether such action is in the best interest of the service.

Class II: Those cases wherein personnel have willfully engaged in one or more homosexual acts, or where evidence supports proposal or attempt to perform an act of homosexuality which do not fall into the Class I category. Distinction is not made in the administrative handling of cases of alleged participation in homosexual acts based upon whether or not the role of the person in any particular act was active or passive. Discharge for Class II homosexuals will normally be under conditions other than honorable.

Class III: Those cases wherein personnel exhibit, profess, or admit homosexual tendencies, or habitually and knowingly associate themselves with true, confirmed homosexuals and wherein there are no specific homosexual acts or offenses.

On 20 Sep 11, with the repeal of the law commonly known as 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 21 Aug 24 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 against correcting the applicant’s record.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show the DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, issued on 9 Jun 65, be amended to reflect he was discharged with service characterized as Honorable, a Narrative Reason for Separation of Secretarial Authority, Separation Code of JFF, and 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-2024-00335 in Executive Session on 26 Sep 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 24 Jan 24.
- 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 11 Jun 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.

4/4/2025

X **Work-Product**

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Signed by: **Work-Product**