

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

Work-Product

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01140

Work-Product

COUNSEL: Work-P...

Work-Product

HEARING REQUESTED: Work-Pr...

Work-Product

APPLICANT'S REQUEST

1. The deceased service member's under other than honorable conditions (UOTHC) discharge be upgraded to honorable based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).
2. All rights and privileges, including a life insurance policy in effect at the time, be reinstated.

APPLICANT'S CONTENTIONS

On 22 Sep 92, her son received a UOTHC discharge because he was homosexual. He served 13 years in the Air Force and was proud to serve his country. He was involved with another airman in a consensual relationship, and when it was discovered, the other man became afraid of personal and professional repercussions. Because her son cared for the other man, he encouraged him to "play the victim." The investigation into the complaint was awful and led to her son experiencing mental health issues before and after discharge and contributed to his suicide in 2007. She discovered documents detailing the mistreatment of her son after her husband's death, making her grief for her husband worse and reigniting her grief for her son. It seemed to be a "he said, he said" situation with no corroborating evidence. Doctors noted her son was at suicide risk after treating him in the hospital, but the investigator continued with nasty tactics followed by a cruel discharge with no mental health support. The way he was treated was inhumane. He was offered no support for his diagnosed condition, was despondent after discharge, and after several attempts he was finally successful in killing himself. She could do nothing to help him out of his depression. The outcome may have been different if the Air Force he respected and served with honor for so long was there when he needed it.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is the mother of a former Air Force staff sergeant (E-5).

On 26 Aug 92, the former service member was notified of his commander's intent to recommend he be discharged from the Air Force under the provisions of AFR 39-10, *Administrative Separation of Airmen*, for homosexuality. That same day, the former service member acknowledged receipt and waived his right to a hearing before an administrative discharge board. He did not submit a statement on his own behalf, except to request the discharge be processed expeditiously.

On 27 Aug 92, the former service member's commander recommended the former service member be discharged from the Air Force, under the provisions of AFR 39-10, paragraph 5-35 for homosexuality with a UOTHC characterization.

On 1 Sep 92, the Staff Judge Advocate found the discharge recommendation legally sufficient and deemed a UOTHC discharge appropriate based on the following factors:

a. The victim airman claimed the former service member coerced or intimidated him into engaging in homosexual acts on seven occasions. While this may seem unlikely, there is substantial reason to believe the victim's statements.

b. The allegations are not contradicted by any evidence and are partially corroborated by a phone conversation between the victim and the former service member. During the conversation, the former service member did not explicitly deny the accusations, and his responses suggested potential admission.

c. The former service member's actions violated the superior-subordinate relationship, even though the victim was not directly under his supervision, and many incidents occurred in a dormitory, which is important for maintaining good order and discipline.

On 2 Sep 92, the wing commander recommended the former service member's unconditional waiver be accepted and he be discharged with a UOTHC service characterization.

On 21 Sep 92, the numbered air force Staff Judge Advocate found the discharge recommendation legally sufficient. On 22 Sep 92, the discharge authority approved the discharge action.

On 22 Sep 92, the former service member received a UOTHC discharge with a separation code and corresponding narrative reason for separation of HRA, *Homosexuality*, and a reentry code of 2B, *Involuntarily separated with a general or under other than honorable conditions discharge*. He was credited with 13 years, 1 month and 7 days of total active service.

For more information, see the excerpt of the deceased service member's record at Exhibit B and the advisory at Exhibit E.

APPLICABLE AUTHORITY/GUIDANCE

Title 38 of the United States Code outlines the role of veterans benefits. The Department of Veterans Affairs is an agency of the federal government that is responsible for administering benefit programs for veterans, their families, and their survivors. The Servicemembers' Group Life Insurance (SGLI) offers term coverage to eligible service members who meet certain criteria. This benefit program is provided and governed by the Department of Veterans Affairs. The AFBCMR is without authority to reinstate a previous policy after a member has separated from service.

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 18 Jun 24 for comment (Exhibit D) but received no response.

AIR FORCE EVALUATION

AFPC/JA (Staff Judge Advocate) recommends granting the applicant’s request to upgrade the decedent’s discharge characterization. On 26 Aug 92, the former service member was informed that he was facing discharge under AFR 39-10, paragraph 5-35 (homosexuality), and was advised of his rights to a discharge board, to submit evidence, and to be represented by counsel. He submitted an unconditional waiver and requested a swift discharge, without providing additional statements. His waiver was accepted, and he received a UOTHC discharge. On 1 Sep 92, the servicing legal office reviewed the discharge package and deemed it legally sufficient. Their review included the statement the victim had alleged the former service member coerced or intimidated him into engaging in homosexual acts on seven occasions, and while the claim seemed unlikely, there was enough reason to consider the victim's statements credible.

On 21 Sep 92, a review by the servicing numbered air force legal office also found the discharge package legally sufficient, agreeing with the previous legal review. However, this review raised doubts about the victim's credibility due to his demeanor during interviews. Although the victim's claim the former service member threatened his career and exploited his religious beliefs was deemed plausible, the victim's behavior suggested he may not have taken the threats seriously and instead participated willingly. Additionally, the victim claimed that one of the incidents took place at an off-base hotel, but the hotel manager stated that no person had registered under the former service member's name, and their policy required photo identification for room registration.

The former service member was discharged under AFR 39-10, Section G, paragraph 5-35b, due to homosexual acts, after waiving his right to a discharge board and receiving counsel. The discharge process followed the law and guidance in effect at the time, although it was based on a policy similar to DADT. The former service member's case includes allegations of coercion and intimidation toward a subordinate airman, which, if true, could have been grounds for a more severe discharge. However, the case was not tried, and no judicial or administrative body reviewed the evidence in full. The former service member did not confess to misconduct but made partial admissions during a pretext phone call, denying any threats.

The victim’s credibility was questioned, particularly regarding an alleged assault at an off-base hotel, which was contradicted by hotel management. Both legal reviews cast doubt on the victim’s story, with the numbered air force legal office directly questioning the victim’s credibility. The

aggravating factors in the case related to alleged threats to the victim's career, but the legal advisors concluded the victim did not take these threats seriously, suggesting he participated in homosexual acts voluntarily. If the victim did not view the threats as credible, the discharge could have occurred without the aggravating factors.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 9 Jul 24 for comment (Exhibit F) but 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 former service member 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 former service member's UOTHC characterization was based on aggravating factors of alleged threats to another airman's career; however, two separate legal reviews conducted during discharge processing cast doubt on the airman's story and directly questioned his credibility. Legal advisors concluded the airman did not take the threats seriously, suggesting he participated in homosexual acts voluntarily. If the airman did not view the threats as credible, the discharge could have occurred without the aggravating factors. The absence of aggravating factors in the former service member's record meets the criteria of the DoD policy on records correction following the repeal of DADT.

However, the Board finds insufficient evidence to warrant the applicant's request for reinstatement of various rights and privileges and the former service member's life insurance policy. 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 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 or the restoration of benefits and entitlements would not normally be appropriate. Additionally, SGLI is governed by the Department of Veterans Affairs and the Board is without authority to reinstate a previous policy after a member has separated from service. Therefore, the Board recommends correcting the former service member's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to MEMBER be corrected to show that the DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued on 22 Sep 92, 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.

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-2024-01140 in Executive Session on 23 Jan 25:

- 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, 26 Mar 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: DoD Policy on Correcting Military Records after Repeal of DADT, 20 Sep 11.
- Exhibit D: Notification of DoD Policy, SAF/MRBC to Applicant, 18 Jun 24.
- Exhibit E: Advisory opinion, AFPC/JA, 1 Jul 24.
- Exhibit F: Notification of AFPC/JA Advisory, SAF/MRBC to applicant, 9 Jul 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.

9/11/2025

X *Work-Product*

Board Operations Manager, AFBCMR
Signed by: USAF