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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01320

GROUP SUBMISSION

COUNSEL: NONE

HEARING REQUESTED: NO

GROUP REQUEST

The discharge details on the DD Form 214, *Certificate of Release of Discharge from Active Duty*, be amended based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

GROUP CONTENTIONS

On 20 Sep 23, the Deputy Secretary of Defense announced that the Department of Defense will proactively review military records of former service members whose military records indicate their administrative separation was the result of their sexual orientation and who received a less than fully honorable conditions discharge (DoD DADT Record Review Initiative (DRRI). In addition to existing initiatives that encourage service members to seek relief through the Military Department Review Board processes, the Department is taking affirmative steps to ensure all potentially eligible service members discharged during DADT are given due consideration by the appropriate Review Board pursuant to the statutory authority in 10 U.S.C. § 1552(b).

The complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicants are former Air Force service members discharged under the provisions of AFR 36-2, *Officer Personnel, Administrative Discharge Procedures*, AFR 36-12, *Administrative Separation of commissioned Officers*; AFI 36-3207, *Separating Commissioned Officers*; AFR 39-10, *Administrative Separation of Airmen*; or AFI 36-3208, *Administrative Separation of Airmen*. The discharge bases included: homosexual admission or conduct, and in some cases, misconduct.

The applicants received a general (under honorable conditions) or under other than honorable conditions (UOTHC) discharge with corresponding reentry code, if applicable, and a separation code and narrative reason for separation associated with DADT discharge policy.

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 3.10. Group Applications. In accordance with 10 U.S.C. § 1552(b), the Secretary of the Air Force may file a request for correction of a military record if the request is made on behalf of a group of members or former members of the Regular Air Force, United States Space Force, Air National Guard (error or injustice occurred while in Title 10

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Status), Air Force Reserve (or predecessor organizations) who were similarly harmed by the same error or injustice.

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 (i.e., “The Stanley Memorandum”). 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.

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness issued supplemental guidance, known as the Wilkie Memorandum, to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie Memorandum. Even if relief is not warranted under the Stanley Memorandum, the Board may still grant relief pursuant to fundamental fairness as articulated in the Wilkie Memorandum and its mandatory and discretionary factors.

The complete DoD policy guidance is at Exhibit C.

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman’s service generally has met Department of the Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

General (Under Honorable Conditions). If an airman’s service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the member's military record.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

The use of force or violence to produce serious bodily injury or death.
Abuse of a special position of trust.
Disregard by a superior of customary superior - subordinate relationships.
Acts or omissions that endanger the security of the United States.
Acts or omissions that endanger the health and welfare of other members of the DAF.
Deliberate acts or omissions that seriously endanger the health and safety of other persons.
Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

FINDINGS AND CONCLUSION

1. The application is timely.
2. The requirement to exhaust all available non-judicial relief before applying to the Board was waived.
3. After reviewing all Exhibits, the Board concludes the applicants are the victims 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 applicants' records 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 from Active Duty*, issued on the date of discharge, be amended to reflect 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2024-01320 in Executive Session on 24 April 2024:

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: SAF/MR Group Application, w/atchs dated 22 Mar 24.
Exhibit B: Documentary Evidence, DADT (Stanley) and Fundamental Fairness (Wilkie) Guidance Memorandums.

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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

Signed by: *Work-Product*

AFBCMR Docket Number BC-2024-01320

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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01320

DOD DADT RECORDS REVIEW
INITIATIVE (DRRI GROUP SUBMISSION)

COUNSEL: NONE

HEARING REQUESTED: NO

GROUP REQUEST

The discharge details on the DD Form 214, *Certificate of Release of Discharge from Active Duty*, be amended based on the repeal of Title 10, United States Code, Section 654 (10 U.S.C. § 654).

GROUP CONTENTIONS

On 20 Sep 23, the Deputy Secretary of Defense announced that the Department of Defense will proactively review military records of former service members whose military records indicate their administrative separation was the result of their sexual orientation and who received a less than fully honorable conditions discharge (DoD DADT Record Review Initiative (DRRI). In addition to existing initiatives that encourage service members to seek relief through the Military Department Review Board processes, the Department is taking affirmative steps to ensure all potentially eligible service members discharged during DADT are given due consideration by the appropriate Review Board pursuant to the statutory authority in 10 U.S.C. § 1552(b).

The complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicants are former Air Force service members discharged under the provisions of AFR 36-2, *Officer Personnel, Administrative Discharge Procedures*, AFR 36-12, *Administrative Separation of commissioned Officers*; AFI 36-3207, *Separating Commissioned Officers*; AFR 39-10, *Administrative Separation of Airmen*; or AFI 36-3208, *Administrative Separation of Airmen*. The discharge bases included: homosexual admission or conduct, and in some cases, misconduct.

The applicants received a general (under honorable conditions) or under other than honorable conditions (UOTHC) discharge with corresponding reentry code, if applicable, and a separation code and narrative reason for separation associated with DADT discharge policy.

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 3.10. Group Applications. In accordance with 10 U.S.C. § 1552(b), the Secretary of the Air Force may file a request for correction of a military record if the request is made on behalf of a group of members or former members of the Regular Air Force, United States Space Force, Air National Guard (error or injustice occurred while in Title 10

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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 (i.e., “The Stanley Memorandum”). 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.

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness issued supplemental guidance, known as the Wilkie Memorandum, to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie Memorandum. Even if relief is not warranted under the Stanley Memorandum, the Board may still grant relief pursuant to fundamental fairness as articulated in the Wilkie Memorandum and its mandatory and discretionary factors.

The complete DoD policy guidance is at Exhibit C.

Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, describes the authorized service characterizations.

Honorable. The quality of the airman’s service generally has met Department of the Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

General (Under Honorable Conditions). If an airman’s service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the member's military record.

Under Other than Honorable Conditions. This characterization is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members. The member must have an opportunity for a hearing by an administrative discharge board or request discharge in lieu of trial by court-martial. Examples of such behavior, acts, or omissions include but are not limited to:

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Rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual abuse of a child, sexual harassment, and attempts to commit these offenses.

FINDINGS AND CONCLUSION

1. The application is timely.
2. The requirement to exhaust all available non-judicial relief before applying to the Board was waived.
3. After reviewing all Exhibits, the Board concludes the applicants are the victims of an injustice. While the Board finds no error in the original discharge process, the Board recommends partial relief based on the repeal of 10 U.S.C. § 654 and recommends only the narrative reason and SPD code be changed. However, regarding the service characterization, the Board acknowledges the presence of aggravating factors, preventing an upgrade under the Stanley Memorandum. Additionally, the Board notes that even in light of the Wilkie Memorandum and its fundamental fairness considerations, the severity of the misconduct in the service records justifies the current service characterizations. Therefore, the Board recommends correcting the applicants' records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANTS be corrected to show the DD Form 214, *Certificate of Release from Active Duty*, issued on the date of discharge, be amended to a Separation Code of JFF, and a Narrative Reason for Separation of Secretarial Authority, identified in Exhibit A of the group submission.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2024-01320 in Executive Session on 24 April 2024:

Work-Product, Panel Chair

Work-Product, Panel Member

Work-Product, Panel Member

Work-Product

All members voted to correct the record. The panel considered the following:

Exhibit A: SAF/MR Group Application, w/atchs dated 22 Mar 24.

Exhibit B: Documentary Evidence, DADT (Stanley) and Fundamental Fairness (Wilkie) Guidance Memorandums.

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

Signed by: *Work-Product*

AFBCMR Docket Number BC-2024-01320

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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

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DOCKET NUMBER: BC-2024-01320

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INITIATIVE (DRRI GROUP SUBMISSION)

COUNSEL: NONE

HEARING REQUESTED: NO

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Acts or omissions that endanger the security of the United States.
Acts or omissions that endanger the health and welfare of other members of the DAF.
Deliberate acts or omissions that seriously endanger the health and safety of other persons.
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FINDINGS AND CONCLUSION

1. The application is timely.
2. The requirement to exhaust all available non-judicial relief before applying to the Board was waived.
3. After reviewing all Exhibits, the Board concludes the applicants are the victims of an injustice. While the Board finds no error in the original discharge process, the Board recommends partial relief based on the repeal of 10 U.S.C. § 654. The Board notes that in light of the Wilkie Memorandum and its fundamental fairness considerations, the Board recommends the service characterization be upgraded from Under other than Honorable Conditions to General, and the narrative reason and SPD code be changed. Therefore, the Board recommends correcting the applicants' records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANTS be corrected to show the DD Form 214, *Certificate of Release from Active Duty*, issued on the date of discharge, be amended to reflect service characterized as General, a Separation Code of JFF, and a Narrative Reason for Separation of Secretarial Authority, identified in Exhibit A of the group submission.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2024-01320 in Executive Session on 24 April 2024:

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: SAF/MR Group Application, w/atchs dated 22 Mar 24.

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AFBCMR Docket Number BC-2024-01320

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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

Signed by: *Work-Product*

AFBCMR Docket Number BC-2024-01320

Work-Product