

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01689

Work-Product

COUNSEL: Work-Product

Work-Product

HEARING REQUESTED: Work...

APPLICANT'S REQUEST

His 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).

APPLICANT'S CONTENTIONS

At the time of the so-called incident, his friend was driving his vehicle and drove to a known gay friendly bar. His vehicle was adorned proudly with Air Force emblems and a parking pass. Days later, he was called in front of his superiors for this questionable behavior. There was not much he could say except that it was not him or his doing. He never broadcasted or shared his sexuality at work with any superior or fellow airman. Also, if his car was spotted parked at such an establishment, who spotted it? Was it not questionable for other service members to be at such a place in order to report his vehicle?

Until his discharge, he had not experienced any disciplinary actions, nor was he ever public about his sexuality. He was a first lieutenant and had always conducted himself in the most professional manner. The error, per se, occurred when it was assumed that he was at the "gay friendly" bar at the time in question. An injustice occurred when he was summarily discharged without being allowed a defense. He was given no choice or appeal in the matter other than "discharged other than honorably."

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force first lieutenant (O-2).

On 28 Oct 65, the applicant's commander notified him of his intent to initiate discharge actions against him as a Class II homosexual, under the provisions of Air Force Regulation (AFR) 35-66, *Discharge of Homosexuals*. In addition, he was informed in lieu of discharge under AFR 35-66, he could tender his resignation under the provisions of AFR 36-12, *Administrative Separation of Commissioned Officers and Warrant Officers*.

On 19 Nov 65, the applicant voluntarily tendered his resignation for the good of the service in lieu of further action under AFR 35-66 (Class II).

On 17 Dec 65, the Secretary of the Air Force accepted the applicant's resignation and directed he be discharged under other than honorable conditions.

On 1 Jan 66, according to DD Form 214, the applicant received a UOTHC discharge in the rank of first lieutenant. He was credited with 3 years, 11 months, and 4 days of total active service.

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

APPLICABLE AUTHORITY/GUIDANCE

AFR 35-66, 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 cooperated 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 "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

On 6 Oct 24, the applicant's spouse notified the Board the applicant passed away on 18 Jul 24. The Board sent a copy of the DoD policy on 7 Jan 25 to the applicant's spouse for review or comment (Exhibit D) but received no response.

FINDINGS AND CONCLUSION

1. The application is timely.
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the former service member 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 decedent'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, *Armed Forces of the United States Report of Transfer or Discharge*, issued on 1 Jan 66, be amended to reflect he was discharged with service characterized as honorable, a Separation Code of JFF, and a Narrative Reason for Separation of Secretarial Authority.

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-2024-01689 in Executive Session on 27 Feb 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, dated 12 May 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 27 Nov 24.

AFBCMR Docket Number BC-2024-01689

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.

11/7/2025

X

Work-Product

Signed by: USAF