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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-2024-01879

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT’S REQUEST

- 1. His “Not Applicable” characterization of service be upgraded to honorable, based on the repeal of Title 10 U.S.C. Section 654.
- 2. His separation code and corresponding narrative reason for separation be changed to “JFF-Secretarial Authority.”
- 3. His reentry (RE) code be changed to 1J.

APPLICANT’S CONTENTIONS

His discharge was unjust. The sole reason he was discharged was due to his admission he had engaged in consensual homosexual activities. There was no aggravating factors alleged in his discharge paperwork and his records reflect high marks for his service.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force second lieutenant (O-1).

On 19 Sep 90, the convening authority published General Court-Martial Order (GCMO) number Work... The Order stated the applicant pled guilty and was found guilty of one charge and three specifications of committing sodomy (Article 125); one charge and one specification of wrongfully entering a local, off-limits, gay bar (Article 133); and one additional charge and one specification of allowing a sergeant to live with him to which they slept in the same bed (Article 133). The applicant was sentenced to confinement for two years, forfeiture of all pay and allowances (excess of \$950.00 of pay per month for 24 months was suspended, unless sooner vacated) and dismissal from the service (document provided by the applicant).

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Controlled by: SAF/MRB CUI Categories: Work-Product Limited Dissemination Control: N/A POC: SAF.MRBC.Workflow@us.af.mil

On 3 Jan 92, the convening authority published GCMO number Wor... The Order stated the sentence of confinement for 18 months and forfeiture of all pay and allowances for 18 months except for pay in excess of \$950.00 per month which was remitted, was affirmed with the dismissal from service being executed (document provided by the applicant).

On 24 Jan 92, the applicant received a “Not Applicable” service characterization. His RE code is noted as “Not Applicable” and his narrative reason for separation is “Conviction by Court-Martial (Other than Desertion).” He was credited with 3 years, 7 months, and 15 days of total active service (document provided by the applicant).

For more information, see the excerpt of the applicant’s record at Exhibit A and the advisory at Exhibit F.

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. Section 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.

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness issued supplemental guidance, known as the Wilkie Memo, 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 Memo.

The complete DoD policies are at Exhibits B and E.

APPLICANT'S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE

The Board sent a copy of the DoD policies to the applicant on 31 Jul 24 and 10 Feb 25 for comment (Exhibits B and E) but received no response. Additionally, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI); however, he has not replied.

AIR FORCE EVALUATION

AF/JAJI recommends denying the applicant's request for clemency from a legal perspective. The applicant's request for a discharge upgrade pertains to records resulting from a court-martial conviction and a dismissal. The AFBCMR and the Secretary of the Air Force (SAF) have limited authority to correct court-martial records. Under 10 U.S.C. Section 1552(f), the AFBCMR may extend its authority to correct a record to reflect an action taken by review authorities under the Uniform Code of Military Justice (UCMJ) or take action on the sentence of a court-martial for purposes of clemency. The applicant does not request correction of a record to reflect an action taken by review authorities. Therefore, clemency on the applicant's sentence is the only option available for consideration.

Part of the basis for the applicant's dismissal from the service was his conviction for consensual sodomy. Using the guidance provided by the Stanley memorandum, the applicant's court-martial and resultant dismissal was not based solely on DADT. The applicant had some additional misconduct for violating a general order, and the AFBCMR could determine fraternization was an aggravating factor for one of the consensual sodomy charges. The AFBCMR always has the authority to grant clemency in the form of a discharge upgrade.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 10 Feb 25 for comment (Exhibit D) but received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed but the untimeliness is waived because it is in the interest of justice to do so. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. Section 1552(b).
2. The applicant exhausted all other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. The Board notes the recommendation of AF/JAJI against correcting the record; however, the Board finds a preponderance of the evidence substantiates the applicant's contentions. While the Board finds no error in the original discharge process, the Board recommends relief based on the repeal of 10 U.S.C. Section 654. The Board finds no aggravating factors in the applicant's record and therefore finds his case meets the criteria of the DoD policy on records correction following the repeal of DADT. The two other misconducts mentioned in the legal advisory were directly related to his homosexual activities with no indication of coercion on the applicant's part. Therefore, the Board recommends correcting the applicant's records 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 24 Jan 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.

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-2024-01879 in Executive Session on 22 Aug 25:

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Panel Chair

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Panel Member

Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 21 May 24.
- Exhibit B: Letter, SAF/MRBC, w/atchs (Repeal of DADT), dated 31 Jul 24.
- Exhibit C: Advisory Opinion, AF/JAJI, dated 29 Jan 25.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Feb 25.
- Exhibit E: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clemency Guidance), dated 10 Feb 25.

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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.

9/29/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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