



Work-Product

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02796

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

### 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

He was arrested by local police in a homosexual sting operation in 1983. The military assumed he was a homosexual and discharged him with an UOTHC characterization. Since the military allows homosexual entry and service, he requests correction. He was exposed to agent orange on tour from Jan through Nov 75. He has had several cancer surgeries and will likely have more in the years ahead and will possibly need medical care from the Department of Veterans' Affairs.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force captain (O-3).

On 25 Nov 83, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFR 36-2, *Administrative Separation of Commissioned Officers and Warrant Officers of the Air Force*. The specific reasons for the action were: (1) On or about 16 Mar 83, he committed a lewd and lascivious act by publicly masturbating in the presence of MCH; (2) Engaging in a homosexual act (mutual masturbation) with JFK; and (3) Engaging in a homosexual act (mutual masturbation) with BRK.

On 22 Dec 83, the applicant provided comments after consulting with counsel and refuted the allegations.

On or about 28 Dec 83, the applicant was involved in additional misconduct which prompted an amendment to the recommendation for discharge. The amendment, dated 2 Feb 84, indicated the applicant committed a lewd and lascivious act at a park by reaching out with his hand and grabbing the penis of a male undercover police officer. He was arrested for improper and insulting advances as well as additional charges of resisting arrest and reckless driving which arose out of his attempts to avoid apprehension for the homosexual misconduct.

On 27 Jan 84, the Staff Judge Advocate found the discharge action legally sufficient.

On 9 Aug 84, the applicant submitted an application for separation under AFR 36-12, *Administrative Separation of Commissioned Officers and Warrant Officers of the Air Force*, Chapter 2, Table 2-7, Rule 2.

On 20 Nov 84, the Secretary of the Air Force approved the application for discharge and directed the applicant be discharged with a UOTHC service characterization.

On 7 Dec 84, the applicant received a UOTHC discharge. His narrative reason for separation is "Voluntary Resignation In Lieu of AFR 36-2 (Homosexual Acts)." He was credited with 12 years, 1 month, and 25 days of total active service.

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

## **POST-SERVICE INFORMATION**

On 25 Sep 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation (FBI) for consideration under clemency/fundamental fairness; however, he has not replied.

## **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. § 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.

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 equality, an injustice, or clemency grounds the Board should refer to the supplemental guidance, paragraphs 6 and 7.

On 25 Sep 24, Board staff provided the applicant a copy of the supplemental guidance (Exhibit E).

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 the 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.

## AIR FORCE EVALUATION

AFPC/JA recommends denying the applicant's request. On 10 Sep 11, the Under Secretary of Defense issued guidance in concert with the repeal of "DADT." This guidance stated requests

should normally be granted when both of the following conditions are met: (1) The original discharge was based solely on DADT or a similar policy in place prior to the enactment of DADT. (2) There were no aggravating factors in the records, such as misconduct. The applicant does not meet either of these conditions, as he was permitted to resign in lieu of further action under AFR 36-2. In addition to a policy similar to DADT, his discharge was based on the commission of lewd and lascivious acts. These acts constitute aggravating factors. For these reasons, AFPC/JA recommends denying the applicant's request for a discharge characterization upgrade.

The complete advisory opinion is at Exhibit D.

#### **APPLICANT'S REVIEW OF APPLICABLE AUTHORITY/GUIDANCE**

The Board sent a copy of the DoD policy to the applicant on 1 Oct 24 for comment (Exhibit F), but has received no response.

#### **FINDINGS AND CONCLUSION**

1. The application was timely filed.
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 not 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 does not substantiate the applicant's contentions. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Specifically, the lewd and lascivious acts are aggravating factors and do not meet the criteria of the DoD policy on records correction following the repeal of DADT. In the interest of justice, the Board considered upgrading the discharge based on clemency; however, given the evidence presented, and in the absence of post-service information and a criminal history report, the Board finds no basis to do so. The applicant retains the right to request reconsideration of this decision. The applicant may provide post-service evidence depicting his good citizenship since his discharge, in the consideration for an upgrade of his discharge characterization due to clemency/fundamental fairness. In view of the foregoing and in the absence of persuasive evidence to the contrary, the Board recommends against correcting the applicant's records.

#### **RECOMMENDATION**

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

## 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-2024-02796 in Executive Session on 25 Mar 25:

Work-Product Panel Chair  
Work-Product Panel Member  
Work-Product Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 13 Aug 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: Advisory opinion, AFPC/DP3SP, dated 24 Sep 24.
- Exhibit E: Letter, SAF/MRBC, dated 1 Oct 24.
- Exhibit F: Letter, SAF/MRBC, w/atchs (Post-Service Request and Clarifying Guidance), dated 25 Sep 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.

10/29/2025

X

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Associate Director, AFBCMR  
Signed by: USAF