

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00154
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His general (under honorable conditions) discharge be upgraded to honorable.

APPLICANT CONTENDS THAT:

He had a spotless record for 17 years and had a single act of indiscretion that should not be held against him for the rest of his life. He realizes that homosexual members of the military could not be considered for an honorable discharge until recent changes in the law.

The applicant does not provide any supporting documentation.

His complete submission is at Exhibit A.

STATEMENT OF FACTS:

The applicant was notified by his commander that he was recommending him for discharge from the Air Force under the provisions of AFR 36-2, Chapter 3, paragraphs 3-7d, g, and i. The specific reasons for this action were: 1) on diverse occasions he visited an enlisted member of a security police squadron at his post and wrongfully put his arm around the airman's shoulders or his hand in the airman's hair while the airman was on duty, 2) on another occasion, he invited an enlisted member to his home for dinner and inappropriately exposed himself in an indecent manner. The applicant's exhibited an immoral behavior with two subordinates. The applicant received a general (UHC) discharge on 27 Mar 92 after serving 16 years, 7 months, and 27 days on active duty.

Pursuant to the Board's request, the Federal Bureau of Investigation, Clarksburg, West Virginia, was unable to identify an arrest record on the basis of information furnished.

On 19 Jul 12, a request for information pertaining to his post-service activities was forwarded to the applicant for response

within 30 days. In response to our request, applicant provided post-service information, which is attached at Exhibit D.

On 20 Sep 11, the law commonly known as "Don't Ask, Don't Tell" (DADT), 10 USC 654, was repealed. The Department of Defense subsequently issued guidance indicating that Service Discharge Review Boards (DRB) should normally grant requests to change the narrative reason for a discharge, requests to re-characterize the discharge to honorable, and/or requests to change the reentry code when both of the following conditions were met: (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.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we find no evidence of an error or injustice that occurred in the discharge processing. Further, we note the applicant's contention that his discharge should be upgraded due to the repeal of the law known as "Don't ask, Don't tell." However, we do not find the applicant's assertion sufficient to conclude he was the victim of an error or injustice. In this respect, we note that while the repeal of DADT provides a basis for correcting the record of certain affected service members, specific criteria must generally be met: (1) the original discharge must have been based solely on DADT or a similar policy in place prior to enactment of DADT and (2) there must be no aggravating factors in the record, such as misconduct. The circumstances of the applicant's discharge do not meet these criteria. The applicant was furnished a general (under honorable conditions) discharge due to substantiated misconduct on his part. We have considered the applicant's overall quality of service and the documentation pertaining to the applicant's post-service activities. Based on the evidence of record, we cannot conclude that clemency is warranted in this case. Therefore, we find no basis upon which to favorably consider this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-00154 in Executive Session on 21 Aug 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 2 Jan 11, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFBCMR, dated 19 Jul 12.
- Exhibit D. Letter, Applicant, undated.

Panel Chair

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DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC