

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01961

COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His undesirable discharge be upgraded to an honorable discharge.

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APPLICANT CONTENDS THAT:

He was given an undesirable discharge due to his sexual preference. He would like his discharge upgraded as this restriction has been lifted.

The applicant submits no supporting documentation.

The applicant's complete submission is at Exhibit A.

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STATEMENT OF FACTS:

The applicant is a former member of the Regular Air Force who entered active duty on 16 January 1956. The applicant was discharged on 17 July 1956 under Air Force Regulation 35-66, *Discharge for Homosexual Acts or Tendencies* (Class II) with an undesirable discharge.

The circumstances and facts surrounding his discharge are not available due to limited records.

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AIR FORCE EVALUATION:

AFPC/DPSOR recommends approval. On 20 September 2011, the law commonly known as "Don't Ask, Don't Tell" (DADT), 10 USC 654 was repealed.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 are 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. Although the discharge was processed according to the applicable regulation, the applicant's record indicates the discharge was based solely on DADT or a similar policy and did not involve aggravating factors.

The applicant's service characterization should be changed to reflect honorable and the narrative reason for separation be changed to Secretarial Authority, SPD code "JFF."

The complete DPSOR evaluation is at Exhibit C.

AFPC/JA recommends approval. Although the record is scant, the available evidence indicates the regulations in effect at the time were appropriately followed and the actions taken were supported by the evidence. While the applicant's DD Form 214, *Report of Separation from the Armed Forces of the United States*, does not indicate the homosexual classification of which he was accused, the regulations and the DD Form 214 indicate this was most likely a Class II homosexual case. If it were a Class II case, in the worst case scenario, he would have received an honorable discharge or a general discharge classification. His DD Form 214 lists AFR 35-66 as the reason for discharge with an undesirable discharge. Therefore, it is logical to assume he was classified as a Class II homosexual and that there were no aggravating factors that supported the case to be referred to a court-martial.

DoD policy guidance addresses the correction of military records following the repeal of 10 U.S.C. 654, setting forth supplemental policy guidance to services Discharge review Boards and the Board for Correction of Military Records. Remedies correcting records to reflect continued service with no discharge, restoration to a previous grade or an increase from no separation pay to half or full separation pay would not normally be appropriate. However, DRBs should normally grant requests to re-characterize discharges when no aggravating factors are present.

While the evidence and record supports that the actions taken by the Air Force complied with the law, regulations and policy in effect at the time, the applicant's record warrants re-characterization of service and a change to the narrative description.

The complete JA evaluation is at Exhibit D.

AFPC/DPSOA defers recommendation to the OPR. On 10 September 2011, the Under Secretary of Defense issued guidance to repeal DADT. The guidance stated requests to change the RE code to 1J should be granted for members separated under DADT unless there was misconduct present. However, the guidance for RE codes in 1956 shows the equivalent was "1" as there were no two digit RE codes at that time.

If it is determined the RE code should have been listed on the applicant's DD Form 214, the Board should direct his RE code be listed as 1.

The complete DPSOA evaluation is at Exhibit E.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 30 August 2012, for review and comment within 30 days (Exhibit F). As of this date, this office has received no response.

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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. Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. In light of the repeal of Don't Ask, Don't Tell (DADT) and in accordance with the Under Secretary of Defense (Personnel and Readiness) guidance memorandum, *Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code*, dated 20 September 2011, Discharge Review Boards should normally grant requests to re-characterize the discharge to honorable 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 enactment of DADT and (2) there were no aggravating factors in the record, such as misconduct. Based on our review of the evidence of record, the applicant's discharge meets these requirements. Therefore, we recommend the applicant's record be corrected as indicated below.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that on 17 July 1956, he was honorably discharged with a reason and authority for separation of "Secretarial Authority" and was furnished an Honorable Discharge certificate.

The following members of the Board considered AFBCMR Docket Number BC-2012-01961 in Executive Session on 1 November 2012, under the provisions of AFI 36-2603:

, Panel Chair  
, Member  
, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 30 Apr 12.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSOR, dated 11 Jul 12.
- Exhibit D. Letter, AFPC/JA, dated 31 Jul 12.
- Exhibit E. Letter, AFPC/DPSOA, dated 29 Aug 12.
- Exhibit F. Letter, SAF/MRBR, dated 30 Aug 12.

Panel Chair