

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01565

XXXXXXXXXX

COUNSEL:

HEARING DESIRED: NO

---

APPLICANT REQUESTS THAT:

1. His under other than honorable conditions characterization of service be changed to honorable.
2. His undesirable discharge certificate be changed to honorable.

---

APPLICANT CONTENDS THAT:

In a combined 17 page brief, the applicant and counsel present the following contentions:

- a. Although the applicant attests that he never engaged in homosexual activities, he was labeled a "Class II" homosexual and discharged from the Air Force with an under other than honorable conditions characterization of service and an undesirable discharge certificate.
- b. The military has changed its policy on sexual orientation as well as its policy regarding the issuance of discharge characterizations. In light of these changes, it is grossly unjust for the applicant to be forced to retain a discharge characterization of under other than honorable conditions and an undesirable discharge certificate.
- c. The Board should change the applicant's discharge characterization to honorable as an equitable relief in the interest of justice.
- d. Although the applicant has been aware of his discharge characterization since his separation, he only became aware of a possible injustice associated with his discharge upon the repeal of the policy commonly known as Don't Ask, Don't Tell (DADT), which took place on 20 September 2011. Therefore, while more than three years have passed since the applicant discovered the basis for the undesirable discharge and under other than honorable conditions characterization of service, the application is filed in a timely manner.

e. In the alternative, if the Board considers the applicant's date of discovery to be that on which he first saw his undesirable and under other than honorable conditions discharge characterization, it is the interest of justice for the Board to waive the three-year time limit pursuant to its powers under 32 C.F.R., 865.3(f)(1).

In support of his request, the applicant provides copies of his counsels' brief, his DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, documents extracted from his military personnel records, and documents pertaining to the Repeal of Don't Ask Don't Tell.

The applicant's complete submission, with attachments, is at Exhibit A.

---

STATEMENT OF FACTS:

According to his DD Form 214, and documents extracted from his military personnel record, the applicant is a former member of the Regular Air Force who enlisted on 26 April 1957 and was progressively promoted to the grade of Airman Third Class with an effective date of pay grade of 13 July 1957.

On 3 October 1958, the commander notified the applicant of his intent to discharge him from the Air Force with an undesirable discharge under the provisions of Air Force Regulation (AFR) 35-66, *Discharge of Homosexuals*. Specifically, the evidence contained in an investigation file appeared to warrant classifying the applicant as a Class II Homosexual.

On 3 October 1958, the applicant acknowledged receipt of his commander's intent to discharge him and his entitlement to an impartial hearing by a board of officers, entitlement to counsel, and to present evidence and call witnesses on his behalf. The applicant waived his right to appear before the board and requested discharge without the benefit of board proceedings and additionally, did not avail himself of legal counsel. However, on 27 October 1958 he requested permission to speak to a legal officer and availed himself of legal counsel on that same day.

On 12 November 1958, the applicant received an Article 15 nonjudicial punishment for violation of Article 86, *Absence without Leave*, of the Uniform Code of Military Justice (UCMJ) for failure to go to his appointed place of duty at the time prescribed on 8 November 1958. His punishment consisted of a reduction in grade to Airman Basic (AB), E-1.

On 5 December 1958, the applicant was tried by summary court-martial for a second violation of Article 86, in that he failed to go to his appointed place of duty at the prescribed time on

or about 4 December 1958. The applicant pled guilty and was found guilty. He was sentenced to restriction to the limits of the base for 60 days and forfeit of \$60.00. The sentence was approved and ordered executed on 5 December 1958.

The applicant was discharged effective 9 February 1959 and was credited with 1 year, 9 months and 14 days of active duty service. His grade at the time of discharge was airman basic with an effective date of 12 November 1958.

Pursuant to the Board's request, the Federal Bureau of Investigation (FBI) provided a copy of an Investigative Report which is at Exhibit C.

On 19 September 2012, a copy of the FBI Investigative report was forwarded to the applicant along with a request for post service documentation for review and comment within 30 days. Four letters of recommendation were received, through counsel, on 2 January 2013 (Exhibit E).

---

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 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 and in view of the Article 15 and Special Court Martial actions, we do not recommend upgrading his discharge to fully honorable but rather to general (under honorable conditions). Therefore, we recommend the applicant's record be corrected as indicated below.

---

THE BOARD RECOMMENDS THAT:

1. The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that on

9 February 1959, he was discharged with a narrative reason for separation of "Secretarial Authority," rather than "Homosexual Conduct," and a separation code of "JFF," rather than "HRA, with service characterized as "general, (under honorable conditions)," rather than "under other than honorable conditions.

---

The following members of the Board considered this application in Executive Session on 14 November 2012 and 7 January 2013, under the provisions of AFI 36-2603:

, Panel Chair  
, Member  
, Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01565 was considered:

- Exhibit A. DD Form 149, dated 15 March 2012.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. FBI Report
- Exhibit D. Letter, AFBCMR dated 19 September 2012.
- Exhibit E. Letter APPLICANT, dated 15 October 2012, w/atchs.

Panel Chair