



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

Office of the Assistant Secretary

AFBCMR
1500 West Perimeter Road
Joint Base Andrews NAF Washington, MD 20762-7002

Mr. Hubert Edward Spires
c/o Mr. Michael J. Wishnie
The Jerome N. Frank Legal Services Organization Yale Law School
PO Box 209090
New Haven, CT 06520-9090

Dear Mr. Spires:

Your application to the Air Force Board for Correction of Military Records, AFBCMR Docket Number BC-2016-01301, has been finalized.

The Board determined that the military records should be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

After correction, the records will be reviewed to determine if you are entitled to any monetary benefits as a result of the correction of records. This determination is made by the Defense Finance and Accounting Service (DFAS-IN), Indianapolis, Indiana, and involves the assembly and careful checking of finance records. It may also be necessary for the DFAS-IN to communicate directly with you to obtain additional information to ensure the proper settlement of your claim. Because of the number and complexity of claims workload, you should expect some delay. We assure you, however, that every effort will be made to conclude this matter at the earliest practical date.

Sincerely,

1/5/2017

X *Daryl R. Lawrence*

DARYL R. LAWRENCE
Associate Director, AFBCMR
Signed by: LAWRENCE.DARYL.R.1054877621

Attachments:

1. Record of Proceedings
2. Copy of Directive

cc:
DFAS-IN

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related to his service and/or discharge. He was also asked to provide his service number to aid in future requests for records.

On 28 March 2016, the AFBCMR received a second application from the applicant, which contained an NA Form 13038, *Certification of Military Service*, produced by NPRC on 4 December 2015. According to the applicant's NA Form 13038, he was a member of the United States Air Force from 17 January 1946 to 17 March 1948 (2 years and 2 months). His service was terminated by an undesirable discharge.

On 31 March 2016, the applicant's records were again requested from NPRC.

On 19 April 2016, the applicant was advised that his case was being returned without action because it seemed his request for correction of his records related to service in the Marine Corps (his DD Form 149, *Application for Correction of Military Records*, erroneously indicated that he served in the Marine Corps).

On 23 June 2016, in response to the AFBCMR's 31 March 2016 request for records, NPRC provided copies of a partially reconstructed record, which contained only four documents and the processing of his case resumed.

The applicant's War Department Form 372-A, *Final Payment - Worksheet*, states "Honorable Discharge by Reason of - Undesirable Habits & Traits of Character AR 615-368 [*Unfitness (Undesirable Habits or Traits of Character)*] dtd 14 May 47," and indicates he was discharged in the grade of sergeant.

According to the Air Force Legal Operations Agency, the applicant does not have a court-martial record.

Army Regulation 615-368 set forth the policy and procedures for separation of enlisted personnel for unfitness. Unfitness included psychopathic personality types, manifested by antisocial or amoral trends, criminal behavior, chronic alcoholism, drug addiction, pathological lying, or sexual misconduct in the service which served to render a member's retention in the service undesirable, and his rehabilitation was considered impossible after repeated attempts have failed (except where attempts at rehabilitation are impracticable as in confirmed drug addiction or confirmed homosexuals).

Army Regulation 615-368 further states, "the true or confirmed homosexual who commits a homosexual offense or attempts an offense and whose misconduct **does not** involve aggravated factors will be discharged under this regulation, unless he demands trial by court martial or resists separation from the service under these regulations in which case he will be tried by court martial. Enlisted personnel who are to be discharged because of homosexual tendencies, but who **have not** committed a homosexual offense while in service will normally be discharged as undesirable unless the

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individual has been on active duty over a considerable period of time and during such entire period has performed his duty in an honest and faithful manner without having committed any offense of a nature related to his homosexuality.”

On 10 September 2011, the Under Secretary of Defense issued guidance pertaining to correction of military records requests resulting from the repeal of Title 10, Section 654, commonly known as DADT. An excerpt from the aforementioned guidance is provided below:

“Effective September 20, 2011, Service [Discharge Review Boards] DRBs should normally grant requests to change the narrative reason for a discharge (the change should be “Secretarial Authority” (Separation program Designator Code [SPD] code JFF), requests to re-characterize the discharge to honorable, and/or requests to change the reentry code to an immediately-eligible-to-reenter category (the new RE code should be 1J) when both of the following conditions are met: (1) the original discharge was based solely upon 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 each request must be evaluated on a case-by-case basis, the award of an honorable or general discharge should normally be considered to indicate the absence of aggravating factors.”

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of an injustice. It appears the applicant’s records were located in the area most heavily damaged by fire in 1973; therefore, the facts surrounding his separation could not be verified. However, the applicant states he was discharged for being a homosexual and is requesting relief under the DADT policy. As noted above, the DoD issued policy guidance that Service 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. Although we cannot conclusively determine the applicant was discharged for his sexual orientation, based on our review of the facts and circumstances in this case, it is our opinion his discharge more likely than not meets both conditions noted above. In this respect, we note the applicant was discharged under Army Regulation 615-368, which includes provisions for the discharge of personnel for homosexual conduct or traits where there

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were no aggravating factors (other misconduct) during a member's service. While this regulation does include other bases for discharge not related to homosexuality, we believe it is more likely than not the applicant was discharged for his sexual orientation and there were no aggravating factors in the record that could, in and of themselves, form the basis of an adverse discharge. Therefore, in the interest of justice, we believe it is appropriate to recommend his records be corrected as set forth below.

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 March 1948, he was furnished an "Honorable" discharge with a narrative reason for separation of "Secretarial Authority," and a reentry code of "1" and was furnished an Honorable Discharge certificate.

The following members of the Board considered AFBCMR Docket Number BC-2016-01301 in Executive Session on 6 December 2016, under the provisions of AFI 36-2603:

Mr. Michael A. Cleveland, Panel Chair
Ms. Amy L. Gravely, Member
Ms. Jean R. Love, Member

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

Exhibit A. DD Form 149, dated 24 March 2016, w/atchs.
Exhibit B. Applicant's Available Master Personnel Records.

12/14/2016

X Michael A.Cleveland

MICHAEL A. CLEVELAND
Panel Chair
Signed by: CLEVELAND.MICHAEL.A.1043618527



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Office of the Assistant Secretary

AFBCMR BC-2016-01301

MEMORANDUM FOR THE CHIEF OF STAFF

Having considered the recommendation of the Air Force Board for Correction of Military Records, and under authority delegated by the Secretary, I direct the following corrections be made to all pertinent records of the Department of the Air Force concerning HUBERT EDWARD SPIRES, [REDACTED]

On 17 March 1948, he was furnished an “Honorable” discharge with a narrative reason for separation of “Secretarial Authority,” and a reentry code of “1” and was furnished an Honorable Discharge certificate.

This directive is effective immediately. In accordance with Section 1552(a)(4) of Title 10, United States Code, it is final and conclusive on all officers of the United States, who are required to take all necessary and appropriate action consistent with the corrections noted above and the attached Record of Proceedings (ROP).

1/5/2017

X

Handwritten signature of Mark S. Teskey in blue ink.

Signed by: TESKEY.MARK.S.1085344184
MARK S. TESKEY
Director
Air Force Review Boards Agency

Attachment:
ROP