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16 *Attorneys for Plaintiff*

17  
18 **THE UNITED STATES DISTRICT COURT**  
19 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
20

21 HELEN GRACE JAMES,  
22  
23 Plaintiff,

24 v.

25 HEATHER WILSON,  
26 Secretary of the Air Force,  
27  
28 Defendant.

Case No.

**COMPLAINT**

Case No.

**COMPLAINT**

1 **COMPLAINT**

2 Plaintiff Helen Grace James, a veteran of the United States Air Force and a resident of  
3 Clovis, California, hereby alleges:

4 **INTRODUCTION**

5 In 1955, Ms. James was forced to leave the United States Air Force and Air Force  
6 Reserves and denied an honorable discharge for only one reason: she is lesbian. Ms. James is  
7 now 90 years old, and she has petitioned the Air Force to upgrade her “general under honorable  
8 conditions” discharge to “honorable,” to reflect her dedicated military service to our country and  
9 to right a wrong committed against her. The Air Force has failed to act on Ms. James’ petition  
10 within the statutorily required 18 months and thus Ms. James seeks an order from the Court  
11 requiring the Air Force to promptly upgrade her discharge status to “honorable.”

12 **JURISDICTION AND VENUE**

13 1. This action arises under the Fifth Amendment to the U.S. Constitution and the  
14 Administrative Procedure Act, 5 U.S.C. §§ 702, 706. This Court has jurisdiction under 28  
15 U.S.C. §§ 1331, 1361, and 1651.

16 2. Venue is proper in the Eastern District of California pursuant to 28 U.S.C.  
17 § 1391(e)(1) because Plaintiff resides in Clovis, California, no real property is involved in this  
18 action, and Defendant Heather Wilson is sued in her official capacity as an officer of the United  
19 States.

20 **PARTIES**

21 3. Plaintiff Helen Grace James is a veteran of the United States Air Force. She is a  
22 citizen of the United States and resides in Clovis, California.

23 4. Defendant Heather Wilson, Secretary of the Air Force, is sued in her official  
24 capacity. Defendant has the power to act through the Air Force Board for Correction of Military  
25 Records (“AFBCMR”) to change any record of a former member of the Air Force when  
26 necessary to correct an error or to remove an injustice.

**FACTUAL ALLEGATIONS**

5. Helen Grace James was born on January 30, 1927 in Scranton, Pennsylvania.

6. Ms. James’ father was a World War I veteran and he inspired her to enlist in the Air Force. After earning a Bachelor of Science degree in Health Education at East Stroudsburg State College in Pennsylvania and teaching for several years, Ms. James enlisted in the Air Force in 1952, when she was 25 years old. She was concurrently enlisted in the Air Force Reserves.

7. Ms. James completed her basic training at Lackland Air Force Base in San Antonio, Texas. She was then assigned to Kessler Air Force Base in Biloxi, Mississippi where she trained as a radio operator. Following training, she was stationed at Roslyn Air Force Base in New York. At Roslyn, Ms. James continued to work as a radio operator, helping to ensure that our borders along the Atlantic were secure. She also played on and coached softball and basketball teams with other airmen. Ms. James loved the new experiences and challenges she experienced in the military.

8. Ms. James consistently received positive performance evaluations and had no disciplinary problems. She was promoted from radio operator to crew chief and had achieved the rank of Airman Second Class at the time of her discharge. During her time at Roslyn, she was also commissioned as a Second Lieutenant in the Reserves.

9. About a year after she was stationed at Roslyn, Ms. James learned that gay and lesbian service members were considered by the military to be a threat to national security. The Office of Special Investigations (“OSI”) investigated airmen who were rumored to be homosexual, and Ms. James soon learned that OSI investigators had already arrived at her base.

10. Ms. James’ life in the military abruptly changed. She became fearful, anxious and depressed. She also had a lot of trouble sleeping, and she used alcohol to cope with her escalating fears.



1 service. She was also stripped of her commission in the Air Force Reserves with an  
2 “undesirable” discharge on August 17, 1955.

3 16. Ms. James went back home, but she never told anyone about what had happened  
4 to her in the military. She felt ashamed. The school where she had worked as a teacher before  
5 entering the Air Force offered her the opportunity to return to a full-time teaching position, but  
6 the school required that she provide a copy of her discharge papers before she could be rehired.  
7 She knew that the school would never take her back if they saw what was in her military records.  
8 Instead, she went to work on a tobacco farm.

9 17. Later, Ms. James decided to go back to school to get a degree in physical therapy.  
10 She attended the University of Pennsylvania. Other students in her program were also veterans,  
11 but they were able to pay for their studies with benefits received under the GI Bill. With an  
12 “undesirable” discharge, Ms. James was not eligible for such benefits. She had to borrow money  
13 and work nights as an usher in a theatre to pay for her education. During this time, she felt  
14 depressed, angry, and alone. She had trouble sleeping and suffered nightmares and flashbacks  
15 from her days in the military.

16 18. After graduating from the program in 1956, Ms. James moved far away from  
17 everybody and everything in her past. She moved to Los Angeles, California and worked as a  
18 physical therapist. After about ten years, Ms. James again went back to school, this time on a  
19 scholarship, to earn an advanced degree in physical therapy at Stanford University.

20 19. While at Stanford, a friend of Ms. James, who was also an attorney, helped her  
21 appeal her “undesirable” discharge to the AFBCMR. In 1968, the AFBCMR upgraded Ms.  
22 James’ discharge status to “general under honorable conditions” for her military service in both  
23 the Air Force and Reserves. (Copies of Ms. James’ certificates of military service reflecting her  
24 “general” discharge are attached hereto as Exh. A.)

25 20. In 1969, Ms. James graduated from Stanford University with a master’s degree in  
26 physical therapy. In 1972, she was offered a faculty position at the California State University at  
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1 Fresno, which was initiating a new bachelor's degree program in physical therapy. Ms. James  
2 taught in the program for 15 years and was awarded the honor of Professor Emeritus in Physical  
3 Therapy in 1989. She then went into private practice.

4 21. Despite these successes, Ms. James continues to be haunted by what happened to  
5 her in the military. She still struggles to cope with the fears and anxieties that have been with her  
6 since her first interaction with OSI. Ms. James still suffers from depression, shame, and thoughts  
7 of suicide. She continues to have trouble sleeping, and grapples with nightmares, flashbacks, and  
8 hypervigilance. Although she is currently in therapy (and has been on and off since she left the  
9 military), she is still traumatized by the military investigation and interrogation that occurred  
10 over 62 years ago.

11 22. As her 90th birthday approached, Ms. James decided that this ordeal had been  
12 going on for long enough. On April 8, 2016, she applied to the AFBCMR to upgrade her  
13 discharge status to "honorable."

14 23. On March 31, 2017, the National Personnel Records Center sent a letter to Ms.  
15 James notifying her that it was unable to locate her military personnel records. The National  
16 Personnel Center concluded that Ms. James' records were most likely destroyed in a 1973 fire at  
17 the Center's facility in St. Louis, Missouri. (A copy of that letter is attached hereto as Exh. B.)

18 24. By statute, the AFBCMR must take final action on all discharge applications  
19 within 18 months of receipt. 10 U.S. C. § 1557(b).

20 25. On October 11, 2017—three days *after* the expiration of the 18-month deadline  
21 for final action—the AFBCMR sent Ms. James a letter notifying her that her case would be  
22 prepared for consideration. (A copy of that letter is attached hereto as Exh. C.)

23 26. Included with the AFBCMR's October 11, 2017 letter was a separate advisory  
24 opinion from the Air Force Military Retirements and Separations Section of the Headquarters  
25 Air Force Personnel Center ("AFMRS"), which stated that it could offer no recommendation on  
26 Ms. James' application to upgrade her discharge status because Ms. James' records had been  
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1 destroyed in the 1973 fire. The AFMRS stated that because of the lack of records, it lacked  
2 documentary evidence demonstrating that Ms. James had been discharged based solely on her  
3 sexual orientation as she claimed in her application.

4 27. In its October 11, 2017 letter, the AFBCMR required Ms. James to respond to the  
5 letter within 30 days, and Ms. James did so in a reply mailed on November 9, 2017.

6 28. The Air Force has not attempted to and cannot rebut the fact that Ms. James was  
7 discharged solely because she is lesbian. There is no evidence of any aggravating factors on the  
8 record that would otherwise explain Ms. James' discharge, and the destruction of her records  
9 cannot be held against her.

10 29. On November 27, 2017, the Case Management Office of the AFBCMR confirmed  
11 in an email to one of Ms. James' attorneys, Chris Megaw, that the Board had reached a decision  
12 in Ms. James' case. The Case Management Office explained that it could not release that  
13 decision, however, until it was reviewed and signed by the AFBCMR's Executive Director. The  
14 Case Management Office refused to estimate when the decision would be finalized and sent to  
15 Ms. James.

16 30. That same day, Ms. James (through counsel) notified the AFBCMR that she  
17 intended to file suit no later than January 2, 2018 to seek judicial intervention to compel the  
18 AFBCMR to act.

19 31. The Case Management Office of the AFBCMR continues to refuse to provide any  
20 estimate of when it will finalize its decision, despite repeated requests from Ms. James' counsel.

21 32. Ms. James is a 90-year-old disabled veteran, anxious to receive a decision on her  
22 application for a discharge upgrade. For over 60 years, her less than honorable discharge has  
23 made her feel like a second-class citizen and not a true veteran. It has also prevented her from  
24 receiving benefits she rightfully earned, including education, insurance, and retirement benefits.  
25 Her less than honorable discharge will also prevent her from being buried in a National  
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1 Cemetery with full military funeral honors like other service members. Before she passes, Ms.  
2 James would like these injustices to be corrected.

3 **STATUTORY AND REGULATORY BACKGROUND**

4 33. The Air Force discharged Ms. James on March 11, 1955 and the Air Force  
5 Reserves on August 17, 1955. At the time, Chapter 2, Section B of Air Force Manual 39-12  
6 governed discharges based on homosexuality.

7 34. Pursuant to AFM 39-12, homosexuality was grounds for an “undesirable”  
8 discharge, otherwise known as discharge “by reason of undesirable habits and traits of  
9 character.”

10 35. A veteran’s discharge status affects eligibility for various benefits and support  
11 services administered by the VA as well as by private organizations that provide services to  
12 veterans. Veterans without an “honorable” discharge status are generally ineligible to receive  
13 disability, employment, housing, education, burial and other benefits.

14 36. Congress has authorized the Secretary of the Air Force, acting through the  
15 AFBCMR, to correct the discharge of any former member of the Air Force. 10 U.S.C. § 1552.

16 37. An Air Force veteran may request a discharge upgrade from the AFBCMR to  
17 correct an error or injustice in her discharge characterization. 32 C.F.R. § 865.2. The application  
18 ordinarily must be made within three years of discovery of the injustice, but the AFBCMR may  
19 waive the limitations period “in the interest of justice.” *Id.* at § 865.3.

20 38. In the 1994 National Defense Authorization Act, Congress prohibited, for the first  
21 time, discrimination against closeted homosexual members of the Armed Services and prohibited  
22 the questioning of service members regarding their sexuality. Pub. L. No. 103-160, § 571, 107  
23 Stat. 1547 (1994). This policy was often called “Don’t Ask, Don’t Tell” (DADT).

24 39. Between 1994 and 2010, federal law stated: “The prohibition against homosexual  
25 conduct is a longstanding element of military law that continues to be necessary in the unique  
26 circumstances of military service.” 10 U.S.C. § 654(a)(13)(2000).

1           40.     In 2010, Congress passed the Don't Ask, Don't Tell Repeal Act, which allowed  
2 gays, lesbians, and bisexuals to serve openly in the United States Armed Forces. Pub. L. No.  
3 111-321, 124 Stat. 3515 (2010).

4           41.     In accordance with the repeal of DADT, the Under Secretary of Defense directed  
5 the boards for correction of military records to “normally grant requests” for discharge upgrades  
6 or changes to narrative reasons for discharge “when the following conditions are met: (1) the  
7 original discharge was based solely on DADT or a similar policy in place prior to enactment of  
8 DADT and (2) there were no aggravating factors in the record, such as misconduct.”

9 Memorandum from Under Secretary of Defense Clifford L. Stanley, to the Secretaries of the  
10 Military Departments, re: Correction of Military Records Following Repeal of Section 654 of  
11 Title 10, United States Code (Sept. 20, 2011) (DADT Memo) (copy attached hereto as Exh. D).

12           42.     The Under Secretary of Defense further explained that “the award of an honorable  
13 or general discharge”—such as the one Ms. James received in 1968—“should normally be  
14 considered to indicate the absence of aggravating factors.” *Id.*

15           43.     To apply for a discharge upgrade before the AFBCMR, the applicant must  
16 complete a form DD 149, which should include, at least, “(1) The name under which the member  
17 served. (2) The member’s social security number or Air Force service number. (3) The  
18 applicant’s current mailing address. (4) The specific records correction being requested. (5)  
19 Proof of proper interest if requesting correction of another person’s records. (6) The applicant’s  
20 original signature.” 32 U.S. C. § 865.3.

21           44.     Since at least 1968—five years prior to the National Personnel Records Center  
22 fire—the Air Force has had an obligation to “make and preserve records containing adequate and  
23 proper documentation of the organization, functions, policies, decisions, procedures, and  
24 essential transactions of the agency and designed to furnish the information *necessary to protect*  
25 *the legal and financial rights of . . . persons directly affected by the agency’s activities.*” 44  
26 U.S.C. § 3101 (emphasis added).

1 45. An individual aggrieved by agency action may seek judicial review in a United  
2 States District Court pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 702, 706.

3 46. This Court has jurisdiction to issue a writ of mandamus under 28 U.S.C. § 1651 to  
4 compel an agency to take a discrete action that is legally required under 5 U.S.C. § 706(1) and  
5 unlawfully withheld. *See Norton v. Southern Utah Wildlife Alliance*, 542 U.S. 55, 63 (2004).

6 **CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**

8 **Administrative Procedure Act, 5 U.S.C. § 706**

9 **Agency Action Unlawfully Withheld or Unreasonably Delayed**

10 47. The allegations of the preceding paragraphs are incorporated by reference as if  
11 fully set forth herein.

12 48. Under the APA, a federal agency is required to act “within a reasonable time . . .  
13 to conclude a matter presented to it.” 5 U.S.C. § 555(b). Congress authorized U.S. District  
14 Courts to compel agency action that is “unlawfully withheld or unreasonably delayed.” 5 U.S.C.  
15 § 706(1).

16 49. By statute, the AFBCMR was required to reach a decision on Ms. James’  
17 application within 18 months of receipt. 10 U.S. C. § 1557(b).

18 50. It has been more than 18 months since Ms. James filed her application to upgrade  
19 her discharge to “honorable” (mailed on April 8, 2016).

20 51. To the extent Defendant, through the AFBCMR, is still reviewing Ms. James’  
21 April 2016 application, she has unlawfully withheld or unreasonably delayed adjudication of a  
22 matter that was first brought before it over 18 months ago, does not involve an overly lengthy or  
23 voluminous record, and concerns a 90-year-old disabled veteran.

24 52. Defendant, through the AFBCMR, has unlawfully withheld or unreasonably  
25 delayed a decision in adjudicating Ms. James’ application in violation of 10 U.S. C. § 1557(b)  
26 and the Administrative Procedure Act, 5 U.S.C. § 706.

**SECOND CLAIM FOR RELIEF**

**Fifth Amendment to the U.S. Constitution**

**Violation of Procedural Due Process**

53. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

54. The Due Process Clause of the Fifth Amendment to the U.S. Constitution requires federal agencies to conduct adjudications in a fair manner. It also requires agencies to follow their own rules, procedures and deadlines.

55. The failure of the Defendant, through the AFBCMR, to issue a decision on Ms. James' application to upgrade her discharge status to "honorable" after 18 months violates U.S.C. § 1557 and deprives Ms. James of the fundamental fairness in administrative adjudications guaranteed by the Due Process Clause of the Fifth Amendment.

**THIRD CLAIM FOR RELIEF**

**Writ of Mandamus, 28 U.S.C. § 1651**

56. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

57. This Court may issue a writ of mandamus pursuant to 28 U.S.C. § 1651 to compel Defendant, through the AFBCMR, to take an action it is legally required to take.

58. Defendant, through the AFBCMR, failed to make a final decision on Ms. James' application within 18 months of submission, an action it was legally required to take under U.S.C. § 1557(b) and continues to unlawfully withhold with no indication of when it will be completed.

59. Ms. James is entitled to a writ of mandamus pursuant to 28 U.S.C. § 1651 compelling Defendant to make a final decision on her application.

**PRAYER FOR RELIEF**

Plaintiff respectfully requests that this Court grant the following relief:

1 (1) Order the Defendant, through the AFBCMR, to upgrade Ms. James' discharge  
2 status to "honorable" and to correct the narrative reasons for separation;

3 (2) In the alternative, order Defendant, through the AFBCMR, to complete its  
4 consideration of Ms. James' 2016 application within fourteen days under 5 U.S.C. § 706 of the  
5 Administrative Procedure Act;

6 (3) In the alternative, issue a writ of mandamus ordering Defendant, through the  
7 AFBCMR, to complete its consideration of Ms. James' 2016 application within fourteen days  
8 under 28 U.S.C. § 1651.

9 (4) Award reasonable attorneys' fees and costs; and

10 (5) Grant such other and further relief this Court deems just and proper.

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Dated: January 2, 2018

Respectfully Submitted,

By: /s/ J. Cacilia Kim  
J. Cacilia Kim

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J. CACILIA KIM  
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*Attorneys for Plaintiff*

# EXHIBIT A

# General Discharge



Under Honorable Conditions  
from the Armed Forces of the United States of America

*This is to certify that*

HELEN G. JAMES, A/2C, AA8210582, Regular Air Force

*was Discharged from the*

## United States Air Force

*on the* 11 *day of* March 55 *under honorable conditions*

*B. G. Dillon*

DD FORM 257AF PREVIOUS EDITIONS OF THIS FORM MAY BE USED.

B. G. DILLON, MAJOR, USAF

THIS IS AN IMPORTANT RECORD—SAFEGUARD IT!

# General Discharge



Under Honorable Conditions  
from the Armed Forces of the United States of America

*This is to certify that*

HELEN G. JAMES, 2d Lt, AM3001933, Air Force Reserves

*was Discharged from the*

## United States Air Force

*on the* 17 *day of* August 55 *under honorable conditions*

*F. T. Warren*

DD FORM 257AF PREVIOUS EDITIONS OF THIS FORM MAY BE USED.

F. T. WARREN, LT COL., USAF

THIS IS AN IMPORTANT RECORD—SAFEGUARD IT!

# EXHIBIT B



March 31, 2017

HELEN JAMES  
PO BOX 542  
CLOVIS, CA 93613-0542

**RE:           Veteran's Name: JAMES, Helen Grace**  
**SSN/SN: [REDACTED]**  
**Request Number: 2-20114206021**

Dear Recipient:

Thank you for contacting the National Personnel Records Center. The record needed to answer your inquiry is not in our files. If the record were here on July 12, 1973, it would have been in the area that suffered the most damage in the fire on that date and may have been destroyed. The fire destroyed the major portion of records of Army military personnel for the period 1912 through 1959, and records of Air Force personnel with surnames Hubbard through Z for the period 1947 through 1963. Fortunately, there are alternate records sources that often contain information which can be used to reconstruct service record data lost in the fire; however, complete records cannot be reconstructed.

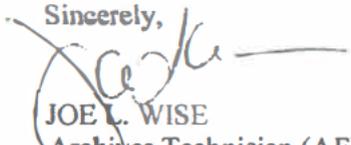
The NPRC is the physical custodian of the military records of former members of the U.S. Armed Forces. The U.S. Air Force retains legal custody of military records. Therefore, we are referring your inquiry, your documents along with information found from alternate record sources, to the Air Reserve Personnel Center (ARPC), which has jurisdiction over this matter. We regret that we cannot be of direct assistance; however, you may expect a response from the office shown below.

**Board for Correction of Air Force Records**  
**SAF/MRBR**  
**550-C Street West,**  
**Suite 40**  
**Randolph AFB, TX 78150-4742**

For future inquires concerns involving correction of military records please complete DD Form 149, *Application for Correction of Military Record*, should be sent to the appropriate address listed on the form.

If you have questions or comments regarding this response, you may contact us at 314-801-0662 or by mail at the address shown in the letterhead above. If you contact us, please reference the Request Number listed above. If you are a veteran, or a deceased veteran's next of kin, please consider submitting your future requests online by visiting us at <http://vetrecs.archives.gov>.

Sincerely,

  
JOE L. WISE

Archives Technician (AFN-MC2E)



**We Value Our  
Veterans' Privacy**

*Let us know if we have  
failed to protect it.*

# EXHIBIT C



OFFICE OF THE ASSISTANT SECRETARY

11 October 2017

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

Ms. Helen James  
PO Box 542  
Clovis, CA. 93613

Dear Ms. James:

Your case (Docket #: BC-2016-01714) will be prepared for Board consideration. The attached advisory opinion prepared by the office of primary responsibility are forwarded for your review and comment, if desired. This is not the decision on your application.

**You have 30 days** from the date of this letter to comment on the advisory opinion or provide additional evidence in support of your request to the AFBCMR. Ensure your Docket number is included on all correspondence. If you need more time to comment, you must ask that your case be administratively closed until such time as you are able to proceed. Otherwise, your case will be processed for the Board's consideration based on the available evidence of record.

**ALL FURTHER CORRESPONDENCE SHOULD BE SENT TO:**

**SAF/MRBC  
1500 West Perimeter Road  
Joint Base Andrews NAF Washington, MD 20762**

We cannot predict when your case will be decided, but assure you that it will be processed in its turn as rapidly as possible and will receive fair and objective consideration. The AFBCMR staff will not provide further status, so the next correspondence you receive will normally be the decision on your case.

For further information of a general nature, visit our web site at:  
<http://www.afpc.af.mil/afveteraninformation/>.

AFBCMR, Administrative Operations

Attachment:  
AFPC/DP2STM Advisory Opinion dated 5 Oct 2017

FL-1  
Revised 2 Dec 15

Applicant Notification of Board Referral  
Current as of 2 Jun 2016

**BREAKING BARRIERS...SINCE 1947**



10/5/2017

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DP2STM  
550 C Street West  
Joint Base San Antonio-Randolph, TX 78150-4713

SUBJECT: Application for Correction of Military Record (DD Form 149)  
HELEN JAMES, BC-2016-01714

TIMELINESS OF APPLICATION: The application was filed within three years of the discovery of the alleged error or injustice, or with due diligence, should have been discovered.

YES  NO

EXHAUSTION OF ADMINISTRATIVE REMEDIES: The applicant has exhausted all reasonable administrative remedies prior to submitting this application for relief to the BCRM.

Yes  NO

REQUESTED ACTION: The applicant is requesting that her discharge be upgraded to honorable. The applicant contends that she was discharged for being homosexual and given an under honorable conditions (general) discharge and is still traumatized by the event.

FACTS/ANALYSIS:

1. The applicant's master of personnel record contains no information concerning the discharge. The applicant provided a DD Form 214, *Certificate of Release or Discharge from Active Duty*, which indicates that the applicant was discharged on 11 March 1955. In addition, the document indicates that she was separated under the provision of chapter 2, section B of AFM 39-12, *Separation for Unsuitability; Misconduct, Personal Abuse of Drugs; Resignation or Request for Discharge for the Good of the Service; and Procedures for the Rehabilitation Program*. Our office attempted to locate the 1955 version from our archives with no success. We then contacted Air University to see if that manual is located in their archive library. The Air University POC informed our office that no 1955 version of AFM 39-12 could to be found.
2. Our review of the 1 Sep 66 version of AFM 39-12, chapter 2, section B, *Discharge for Unfitness*, indicated a myriad of circumstances that allowed for involuntary discharge:
  - a. Frequent involvement of a discreditable nature with civil or military authorities.
  - b. Sexual perversion, including but not limited to (1) lewd and lascivious acts, (2) homosexual acts, (3) sodomy, (4) indecent exposure, (5) indecent acts with or assault upon a child, and (6) other indecent acts or offenses.
  - c. Drug addition, habituation, or the unauthorized use or possession of narcotics, marijuana, hypnotics, sedatives, tranquilizers, stimulants, hallucinogens, or other

- similarly known harmful or habit forming drugs and/or chemicals.
- d. An established pattern for shirking
  - e. An established pattern of showing dishonorable failure to pay just debts
  - f. An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgements of a civil court concerning support of dependents.
  - g. Unsanitary habits that includes but is not limited to repeated infection of venereal disease, a continued and obstinate refusal to bathe, and similar refusals to observe personal hygiene which resisted counseling and guidance.
3. Since the applicant's master of personnel records is limited/absent and the DD Form 214 does not indicate which sub-paragraph of chapter 2, section B, is the reason for discharge, our office is unable to verify the discharge reason. Furthermore, even if the applicant could provide evidence that she was discharged under sub-paragraph "b", without the discharge documentation, our office cannot determine whether or not it was the sole reason for discharge and that there were no other aggravating factors. As a result, we cannot give an informed opinion on this case.

RECOMMENDATION: None.

10/5/2017

**X** Ina A. Strickner

---

INA A. STRICKNER, DAF  
Military Retirements and Separations Section  
Signed by: STRICKNER.INA.A.1086002783

# EXHIBIT D



PERSONNEL AND  
READINESS

**UNDER SECRETARY OF DEFENSE**  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

SEP 20 2011

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS**

**SUBJECT: Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code**

Pursuant to the Don't Ask, Don't Tell Repeal Act of 2010, the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff have certified that the Department of Defense is prepared for the repeal of section 654 of title 10, United States Code, commonly referred to as Don't Ask, Don't Tell (DADT). Repeal will take effect on September 20, 2011. Upon repeal, some former Service members discharged under DADT or prior policies may request a correction of their military records from either their Service Discharge Review Board (DRB) or their Service Board for Correction of Military/Naval Records (BCM/NR). To help ensure consistency across the Services and to address what may be a large number of similar applications arising from the repeal of DADT, this memorandum provides supplemental policy guidance for DRB and BCM/NR action on such applications. As an initial matter, the repeal of DADT will be considered a sufficient basis to support reconsideration of such requests for applicants who have previously filed with either their Service DRB or BCM/NR.

The Service DRBs, provided for in section 1553 of title 10, United States Code, and governed by Department of Defense Directive (DoDD) 1332.41 and Department of Defense Instruction (DoDI) 1332.28, have a relatively limited scope of review and are authorized to provide only specified remedies. In general, if a DRB finds either an inequity or impropriety in a discharge action, it may change the narrative reason for the discharge, upgrade the character of discharge, or take both actions.

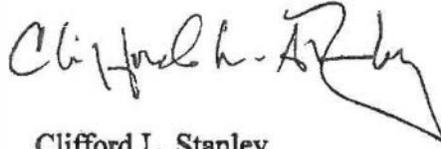
Effective September 20, 2011, Service DRBs should normally grant requests to change the narrative reason for a discharge (the change should be to "Secretarial Authority" (Separation program Designator Code (SPD) code JFF)), requests to re-characterize the discharge to honorable, and/or requests to change the reentry code to an immediately-eligible-to-reenter category (the new RE code should be RE code 1J) 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 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.

Also effective September 20, 2011, with respect to requests in cases where there were multiple reasons for separation including DADT, Service DRBs normally should apply the policy in the previous paragraph to the DADT reason for separation and apply existing DRB policy to the remaining reason(s).

In contrast to the DRBs, the Service BCM/NRs, provided for in section 1552 of title 10, United States Code, and also governed by DoDD 1332.41, have a significantly broader scope of review and are authorized to provide much more comprehensive remedies than are available from the DRBs. Upon finding an error or injustice, BCM/NRs may fashion the remedy they find necessary and appropriate within applicable legal limits. Although the correction boards have wide latitude in determining what constitutes an error or injustice, it is DoD policy that broad, retroactive corrections of records from applicants discharged under DADT are not warranted. Although DADT is repealed effective September 20, 2011, it was the law and reflected the view of Congress during the period it was the law.

Similarly, DoD regulations implementing various aspects of DADT were valid regulations during that same period. Thus, consistent with what we understand is past board practice on changing standards, DADT's repeal may be a relevant factor in evaluating an application (such as 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 to an immediately-eligible-to reenter category) but 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.

This policy does not address situations where a correction board determines that DADT (or other prior policy) as applied under the circumstances of a particular case constituted an error or injustice. Under those circumstances, the BCMR would craft an appropriate remedy. Additionally, the Boards should also consider the guidance provided in my Repeal of DADT and Future Impact on Policy memorandum, dated January 28, 2011, (attached) in determining whether a specific requested record correction is necessary or appropriate.



Clifford L. Stanley

Attachment:  
As stated

cc:  
Chairman of the Joint Chiefs of Staff  
Coast Guard, Commandant (CG1)  
General Counsel of the Department of Defense

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Helen Grace James
(b) County of Residence of First Listed Plaintiff Fresno, California
(c) Attorneys (Firm Name, Address, and Telephone Number)
Elizabeth Kirsten and J. Cacilia Kim
Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, CA 94104
Chris Megaw and Jonathan Cedarbaum
WilmerHale, 1875 Pennsylvania Ave N.W., Washington DC 20006

DEFENDANTS
Heather Wilson, Secretary of the Air Force
County of Residence of First Listed Defendant Washington, D.C.
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. § 706, U.S. Const. Amend. 5
Brief description of cause:
Suit to compel Defendant to upgrade Plaintiff's discharge, or in the alternative, to compel Defendant to reach a final decision regarding Plaintiffs' discharge upgrade application.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
JS 44 Reverse (Rev. 08/16)				

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions.](#)
- V. **Origin.** Place an "X" in one of the seven boxes. Original Proceedings. (1) Cases which originate in the United States district courts. Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date. Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers. Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.