

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2023

DOCKET NUMBER: AR20230003472

APPLICANT REQUESTS: in effect, changes to his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:

- block 25 (Separation Authority) – a more favorable designation
- block 26 (Separation Code) – a more favorable designation
- block 27 (Reentry Code) – a more favorable designation
- block 28 (Narrative Reason) – a more favorable designation

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- ACTS Online Application in lieu of DD Form 149 (Application for Correction of Military Record), 22 February 2023
- ACTS Signature page, 22 February 2023

FACTS:

1. The applicant states, in effect, he was wrongfully discharged for not getting the COVID-19 vaccination. He is unable to reenlist in the Marine Corps. He needs the reenlistment code, the reason for separation, and separation code changed in order to reenlist.
2. The applicant provided his ACTS Online Application which is outlined above.
3. A review of the applicant's service records shows:
  - a. On 26 February 2020, he enlisted in the Regular Army and entered active duty (AD) having previously completed 4 years of AD service in the U.S. Marine Corps and having completed a conditional waiver for release from the U.S. Marine Corps Inactive Ready Reserve. His entry grade/pay grade on AD was sergeant/E-5, his military occupational specialty was 11B (Infantryman), and the highest grade/pay grade he achieved while on AD was sergeant/E-5.

b. On 29 November 2021, he was reprimanded by the Commanding General, Headquarters (HQ), U.S. Army Maneuver Center of Excellence, Fort Benning, for misconduct. The GOMOR reads:

(1) On 24 August 2021, the Secretary of Defense directed the Secretary of the Army to begin full vaccination of Soldiers against the Coronavirus Disease 2019 (COVID-19) disease using a vaccine that received full licensure from the U.S. Food and Drug Administration. Despite being given multiple opportunities to comply with a lawful order to receive the vaccination, you refused to comply.

(2) You are reprimanded for disobeying a lawful order.

(3) This is an administrative reprimand imposed under the provisions of Army Regulation 600-37 and not as punishment under Article 15, Uniform Code of Military Justice. You are advised that in accordance with Army Regulation 600-37, Paragraph 3-5b, I am considering whether to direct this reprimand be filed permanently in your Army Military Human Resource Record. Prior to making my filing decision, I will consider any matters you submit in extenuation, mitigation, or rebuttal. You will be provided, by separate cover, a copy of the evidence which forms the basis for this reprimand.

c. On 13 December 2021, he acknowledged receipt of the GOMOR and he elected not to submit matters in extenuation, mitigation, or rebuttal.

d. This GOMOR was ordered filed permanently in the performance section his Army Military Human Resource Record (AMHRR).

e. On 8 February 2022, he was counseled by his Commanding Officer, Ranger Selection and Training Company (RSTC), Regimental Special Troops Battalion (RSTB), 75th Ranger Regiment, for involuntary separation. He understood his separation was being initiated based on Army Directive 2022-02, which directed commanders to initiate involuntary separation for Soldiers who refused COVID vaccine. He was further understood being flagged for involuntary separation under code "B".

f. On 15 February 2022, he was flagged (DA Form 268).

g. On 29 March 2022, he underwent a mental status evaluation as directed by his command, for separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 14. A DA Form 3822 (Report of Mental Status Evaluation) shows the examining behavioral health provider noted :

(1) He had no duty limitation due to behavioral health reasons and he currently met behavior health medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness).

(2) He was screened for Post-Traumatic Stress Disorder (PTSD), for Depression, for Traumatic Brain Injury, for Substance Misuse, and for Sexual Trauma. His cognition and perception were not impaired, and his behavior and impulsivity were normal.

(3) He could understand and participate in administrative proceedings and could appreciate the difference between right and wrong. He further noted no diagnosis. There was no evidence of mental defect, emotional illness, or psychiatric disorder of sufficient severity to warrant disposition through military medical channels. He was psychologically cleared for any administrative action deemed appropriate by the separation authority.

h. On 7 April 2022, his company commander notified him of his intent to initiate separation action against him for commission of a serious offense, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, and notified him of his rights. He stated the following reasons for his proposed action were he failed to obey a lawful order issued by an officer to receive the COVID-19 vaccination. After being given multiple chances, he failed to become fully vaccinated against COVID-19 virus in violation of Army Directive 2020-02. His company commander recommended he receive an honorable characterization of service. Intermediate commanders and the separation authority were not bound by his recommendation as to characterization of service. The separation authority may direct that his service be characterized as honorable, under honorable conditions, or under other than honorable conditions. The separation authority could not direct the issuance of a type of discharge or characterization of service less favorable than that recommended by an administrative separation board. He understood he was entitled to have his case considered by an administrative separation board because he would have 6 or more years of active and reserve service at the time of notification of separation. He further understood he had the right to submit statements in his own behalf, to consult with counsel, and to submit a conditional waiver of his rights to have his case considered by an administrative separation board.

i. On 20 April 2022, he acknowledged receipt of his commander's separation notification and elected his rights. He acknowledged he was afforded to consult with counsel. He declined to submit statements in his own behalf. He voluntarily waived consideration of his case by an administrative separation board, to include personal appearance before such a board. In electing these rights, he understood that he may expect to encounter substantial prejudice in civilian life if a discharge general, under honorable conditions was issued to him. He further understood that as the result of issuance of a discharge that was less than honorable conditions, he may be ineligible for all benefits as a veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life.

j. On unspecified dates, his company and battalion commanders approved his conditional waiver of his right to an administrative separation board in consideration of an honorable discharge from the U.S. Army.

k. On 29 April 2022, the Brigade Commander, 75th Ranger Regiment, approved the conditional waiver and recommended approval of his discharge with an honorable characterization of service.

l. The separation approval authority memorandum is not contained in the available records.

m. Orders issued by U.S. Army Installation Management Command, HQ, US Army Garrison, Fort Benning reassigned him to U.S. Army transition point with a date of discharge of 30 June 2022.

n. His enlisted record brief shows he completed 7 months of service in Kuwait from 18 December 2018 to 12 July 2019.

o. On 30 June 2022, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 due to misconduct (serious offense) with an honorable characterization of service, Separation Code JKQ and Reentry Code 3). He completed 2 years, 4 months, and 5 days of active service with not time lost. It also shows in item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Army Good Conduct Medal
- USMC Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Humanitarian Service Medal
- Army Service Ribbon
- USN Service Deployment Ribbon
- Parachutist Badge

4. On 10 January 2023, the Secretary of Defense issued a memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, and Defense Agency and DoD Field Activity Directors, Subject: Recission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces. This memorandum reads, in part:

a. "On December 23, 2022 the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 was enacted. Section 525 of the NDAA for FY 2023

requires me to rescind the mandate that members of the Armed Forces be vaccinated against COVID-19, issued in my August 24, 2021 memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members." I hereby rescind that memorandum. I also hereby rescind my November 30, 2021 memorandum, "Coronavirus Disease 2019 Vaccination for Members of the National Guard and the Ready Reserve."

b. "No individuals currently serving in the Armed Forces shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds. The Military Departments will update the records of such individuals to remove any adverse actions solely associated with denials of such requests, including letters of reprimand. The Secretaries of the Military Departments will further cease any ongoing reviews of current Service member religious, administrative, or medical accommodation requests solely for exemption from the COVID-19 vaccine or appeals of denials of such requests.

c. "For Service members administratively discharged on the sole basis that the Service member failed to obey a lawful order to receive a vaccine for COVID-19, the Department is precluded by law from awarding any characterization less than a general (under honorable conditions) discharge. Former Service members may petition their Military Department's Discharge Review Boards and Boards for Correction of Military or Naval Records to individually request a correction to their personnel records, including records regarding the characterization of their discharge."

5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant was discharged from active duty under chapter 14 of AR 635-200 due to misconduct, commission of a serious offense with an honorable discharge. Absent his misconduct, there was no reason to process him for separation. The underlying reason for his separation is his misconduct. The only valid narrative reason for separation under chapter 14-12c is misconduct and such separation has a Separation Code of JKQ which has a corresponding RE Code of 3. The Board did not find evidence that any of these entries is in error or unjust. Based on a preponderance of evidence, the Board determined that the Separation Authority, Separation Code,

Reentry Code, and Narrative Reason for Separation the applicant received upon separation were not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

d. Paragraph 14-12c provides commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM.

e. Paragraph 5-3. Secretarial Plenary Authority.

(1) Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

(2) Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special HQDA directive that may, if appropriate, delegate blanket separation authority to field commanders for the class category of Soldiers concerned.

3. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), currently in effect, lists the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JKQ" corresponds to "Misconduct (Serious Offense), and the authority, Army Regulation 635-200, paragraph 14-12c.

5. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214.

a. Block 24 (Character of Service) – Correct entry is vital since it affects a Soldier's eligibility for post-service benefits. Characterization or description of service is determined by directive authorizing separation.

b. Block 25 (Separation Authority) – To be completed for copies 2, 4, 7, and 8 only. Obtain correct entry from regulatory directives authorizing the separation.

c. Block 26 (Separation Code) – To be completed for copies 2, 4, 7, and 8 only. Obtain the correct entry from Army Regulation 635-5-1, which provides the corresponding SPD code for the regulatory authority and reason for separation.

d. Block 27 (Reentry Code) – Army Regulation 601-210 determines reentry eligibility and provides regulatory guidance on reentry codes. These codes are not applicable to officers, USMA cadets who fail to graduate, or to RC Soldiers being separated for other than cause.

e. Block 28 (Narrative Reason for Separation) – This is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1.

6. Army Directive 2020-02, in effect in February 2020 (Personnel Actions for Active Duty Soldiers Who Refuse the COVID-19 Vaccination Order and Accession Requirements for Unvaccinated Individuals), if effect at the time, detailed how Army commanders were to proceed with involuntary separation proceedings for Soldiers who refused the COVID-19 vaccination order, and required them to process these separation actions as expeditiously as possible.



7. On 10 January 2023, the Secretary of Defense issued a memorandum for senior Pentagon leadership, commanders of the combatant commands, and Defense Agency and DoD Field Activity Directors, Subject: Recission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces. This memorandum reads, in part:

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//NOTHING FOLLOWS//