

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230008335

APPLICANT REQUESTS:

a. correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

(1) his primary military occupational specialty (PMOS) as 11B (Infantryman);

(2) award of the:

- Army Service Ribbon
- National Defense Service Medal
- Army Infantryman Shoulder Cord

(3) his service characterization as honorable;

(4) his reentry eligibility (RE) code as "1" or "3"; and

b. removal of the General Officer Memorandum of Reprimand (GOMOR), dated 2 November 2021, with auxiliary documents from his Army Military Human Resource Record (AMHRR).

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

- DD Form 149 (Application for Correction of Military Record)
- two DA Forms 4856 (Developmental Counseling Form), 20 September 2021 and 12 October 2021
- Headquarters, 197th Infantry Training Brigade, Memorandum (Request for Initiation of GOMOR in accordance with Fragmentary Order (FRAGO) 5 to Headquarters, Department of the Army (HQDA), Execution Order (EXORD) 225-21 (Coronavirus Disease (COVID)-19 Steady State Operations), 12 October 2021
- DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 13 October 2021

- Headquarters, U.S. Army Maneuver Center of Excellence, Fort Benning, Memorandum (GOMOR), 2 November 2021
- Applicant's Memorandum (Acknowledgement of Receipt of Reprimand), 2 November 2021
- 197th Infantry Brigade, U.S. Army Infantry School, Fort Benning, Diploma, 4 November 2021
- Headquarters, U.S. Army Maneuver Center of Excellence, Fort Benning, Memorandum (Filing Determination of Reprimand), 29 November 2021
- Alpha Company, 2d Battalion, 29th Infantry Regiment, Memorandum (Acknowledgement of Receipt of Reprimand Filing), 8 December 2021
- DD Form 214
- Alpha Company, 2d Battalion, 29th Infantry Regiment, Memorandum (Notification of Separation under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c)
- Alpha Company, 2d Battalion, 29th Infantry Regiment, Memorandum (Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense), (Applicant)

FACTS:

1. The applicant states his decorations and awards were not recorded on his DD Form 214, including the Army Service Ribbon, National Defense Service Medal, and Army Infantryman Shoulder Cord. Additionally, he completed infantry advanced individual training and his MOS was not recorded on his DD Form 214 despite receiving his diploma and proof of having completed the requirements for PMOS 11B. Lastly, since Congress and the Department of Defense have rescinded the COVID-19 mandate, he believes his discharge under honorable conditions (General) should be upgraded to honorable.
2. The applicant's request for a discharge upgrade to honorable is currently being addressed by the Military Review Board and will no longer be addressed in these proceedings.
3. He enlisted in the Regular Army on 24 May 2021.
4. The DA Form 4856, dated 29 September 2021, states he was counseled by his company commander regarding the 24 August 2021 directive for all Army service members to be vaccinated against COVID-19. On 29 September 2021, he declined to receive the vaccination. The counseling stated the rationale and ramifications of not receiving the vaccination. He agreed with the counseling on the same date.
5. Headquarters, U.S. Army Maneuver Center of Excellence, Orders 22278-847, dated 5 October 2021, awarded him PMOS 11B, effective 4 November 2021.

6. The DA Form 4856, dated 12 October 2021, states he was counseled by his company commander, notifying him that he was initiating a flag against him for refusing the Food and Drug Administration-approved Pfizer vaccine within the allotted time period the Army had provided. He agreed with the counseling on the same date.
7. The Headquarters, 197th Infantry Training Brigade, memorandum from the brigade commander (Request for Initiation of GOMOR in accordance with FRAGO 5 to HQDA EXORD 225-21), 12 October 2021, requested initiation of a GOMOR for Soldiers who had refused the Food and Drug Administration-approved vaccine.
8. The DA Form 268, dated 13 October 2021, shows his company commander initiated a flag against him for adverse action, effective 13 October 2021.
9. His records contain no evidence indicating he sought exemption from the COVID-19 vaccination based on religious, administrative, or medical grounds.
10. On 2 November 2021, the Commanding General, Headquarters, U.S. Army Maneuver Center of Excellence, Fort Benning, issued him a GOMOR for disobeying a lawful order, wherein he stated:

On 24 August 2021, the Secretary of Defense directed the Secretary of the Army to begin full vaccination of Soldiers against the 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.

You are being reprimanded for disobeying a lawful order.

This is an administrative reprimand imposed under the provisions of AR [Army Regulation] 600-37 [Unfavorable Information] and not as punishment under Article 15, UCMJ [Uniform Code of Military Justice]. You are advised that in accordance with AR [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. You will immediately acknowledge receipt of this reprimand in writing. You will forward any matters you wish me to consider through your chain of command within seven calendar days, using the format prescribed in Army Regulation 600-37, paragraph 3-7.

11. He acknowledged receipt of the GOMOR and elected not to submit any written matters on his own behalf.

12. The 197th Infantry Brigade, U.S. Army Infantry School, diploma, dated 4 November 2021, shows he successfully completed one-station unit training (combined basic combat training and advanced individual training) from 4 June 2021 to 4 November 2021.

13. On 29 November 2021, the Commanding General, Headquarters, U.S. Army Maneuver Center of Excellence, directed filing the GOMOR in the applicant's AMHRR.

14. On 8 December 2021, the applicant acknowledged the GOMOR filing determination.

15. Alpha Company, 2d Battalion, 29th Infantry Regiment, memorandum from his company commander (Notification of Separation under Army Regulation 635-200, Chapter 14-12c), notified him that he was initiating action to separate him under the provisions of Army Regulation 635-200, paragraph 14-12c, for commission of a serious offense for refusing the lawful order to be fully vaccinated against COVID-19. He recommended his discharge under honorable conditions (General) and advised him that he had the right to consult with consulting counsel and civilian counsel at no expense to the Government.

16. Alpha Company, 2d Battalion, 29th Infantry Regiment, memorandum from his company commander (Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, (Applicant)), recommended his separation from the Army under the provisions of Army Regulation 635-200, paragraph 14-12c, for refusing the lawful order to be fully vaccinated against COVID-19.

17. He was discharged in the rank/grade of specialist/E-4 on 31 March 2022 by reason of misconduct (Serious Offense) under the provisions of Army Regulation 635-200. He completed 10 months and 7 days of net active service. His DD Form 214 shows in:

- block 11 (Primary Specialty) – None/Nothing Follows
- block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) – None/Nothing Follows
- block 14 (Military Education) – None/ Nothing Follows
- block 24 (Character of Service – Under Honorable Conditions (General)
- block 26 (Separation Code) – JKQ
- block 27 (Reentry Code) – 4

18. On 14 April 2022, he was issued a DD Form 215 (Correction to DD Form 214), changing his RE code to "3."

19. A review of his records revealed the GOMOR and auxiliary documents are filed in the performance folder of his AMHRR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military record, the Board found that partial relief was warranted. The Board carefully considered the applicants request, supporting documents, evidence in the records, regulatory guidance and additional guidance received based on the current standards for the COVID-19 vaccination. The Board noted the guidance in place at the time of the reprimand and found no error or injustice in the processing of the reprimand; however, due to changing circumstances, believed the reprimand’s purpose has been served and granted relief of the removal of the reprimand from the applicant’s Army Military Human Resource Record (AMHRR).

2. The Board concurs with the corrections described in the Administrative Note below and noted that the Army Infantryman Shoulder Cord is an item of wear and no provision outlines adding this decoration to the applicant’s DD Form 214.

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 Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- a. Removing the General Officer Memorandum of Reprimand, dated 2 November 2021, and auxiliary documents from his AMHRR.

b. Amending his DD Form 214 to reflect those corrections outlined in the Administrative Note below.



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.

ADMINISTRATIVE NOTE(S): The applicant is authorized administrative correction of his DD Form 214 to show the following entries without Board action:

- block 11 – 11B1O Infantryman – 0 years 0 months
- block 13 – National Defense Service Medal and Army Service Ribbon
- block 14 – One Station Unit Training – 22 weeks

REFERENCES:

1. HQDA FRAGO 5 to HQDA EXORD 225-21 (COVID-19 Steady State Operations), 14 September 2021, addresses the 24 August 2021 Secretary of the Army implementation of mandatory COVID-19 vaccinations of Department of Defense service members. Effective immediately, commanders will vaccinate all Soldiers who are not otherwise exempt. Orders to receive the mandatory vaccine are lawful. Commanders will ensure sufficient doses of Department of Defense-approved vaccines are on hand and available for their units. Soldiers may at any time still voluntarily receive any other vaccine approved for emergency use. Soldiers requesting an exemption are not required to receive the vaccine pending the final decision on their exemption request. Only those adverse administrative actions identified for phase 1 are authorized during phase 1 for Soldiers refusing the vaccine; any other adverse action based solely on vaccine refusal is withheld during this phase.

2. The Secretary of Defense memorandum (Rescission of August 24, 2021, and November 30, 2021, COVID-19 Vaccination Requirements for Members of the Armed Forces), 10 January 2023, states:

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."

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.

3. Army Regulation 600-20 (Army Command Policy) prescribes the policies and responsibilities of command, which include the Army Ready and Resilient Campaign Plan, military discipline and conduct, the Army Military Equal Opportunity Program, the Army Harassment Prevention and Response Program, and the Army Sexual Harassment/Assault Response and Prevention Program.

a. Paragraph 5-4 (Command Aspects of Medical Readiness and Medical Care) states the proponent for prevention against disease and injury is the Office of the Surgeon General.

(1) Immunizations. Commanders will ensure that Soldiers are continually educated concerning the intent and rationale behind both routine and theater-specific or threat-specific military immunization requirements. Immunizations required by Army Regulation 40-562 (Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases) or other legal directive may be given involuntarily (except as prescribed in paragraph 5-6 or paragraph P-3b regarding religious accommodation). The intent of this authorization is to protect the health and overall effectiveness of the command, as well as the health and medical readiness of the individual Soldier. In cases where involuntary immunization is being considered, the following procedures and limitations apply:

(2) Under normal circumstances, actions will not be taken to involuntarily immunize Soldiers. If a Soldier declines to be immunized the commander will:

a. ensure that the Soldier understands the purpose of the vaccine;

b. ensure that the Soldier has been advised of the possibility that the disease may be naturally present in a possible area of operation or may be used as a biological weapon against the United States and its allies;

c. ensure that the Soldier is educated about the vaccine and has been able to discuss any objections with medical authorities; and

d. counsel the Soldier, in writing, that he or she is legally required to be immunized; that if the Soldier continues to refuse to be immunized that he or she will be legally ordered to do so, and that failure to obey the order may result in UCMJ and/or administrative action for failure to obey a lawful order (Article 92, UCMJ) as deemed appropriate by the commander.

b. Appendix P, paragraph P-2b (Immunizations). Immunization requirements for Soldiers are described in Army Regulation 40-562. Soldiers whose religious practices conflict with immunization requirements may request an exemption through command channels, from company, or immediate commander through battalion, brigade, division, and general court-martial convening authority commanders to The Surgeon General. The Surgeon General is the only approval or disapproval authority for immunization accommodation requests.

4. Army Regulation 600-37 (Unfavorable Information), sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR.

a. An administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. A memorandum of reprimand may be filed in a Soldier's Official Military Personnel File (OMPF) only upon the order of a general officer-level authority and is to be filed in the performance folder. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the OMPF, the recipient's submissions are to be attached. Once filed in the OMPF, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 (Appeals).

c. Paragraph 7-2 (Policies and Standards) states that once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.

d. Paragraph 7-3c states an officer who directed filing of an administrative memorandum of reprimand, admonition, or censure in the AMHRR may request its revision, alteration, or removal, if evidence or information indicates the basis for the adverse action was untrue or unjust, in whole or in part. An officer who directed such a filing must provide the Department of the Army Suitability Evaluation Board a copy of the new evidence or information to justify the request.

5. Army Regulation 600-8-104 (Army Military Human Resource Records Management), effective 7 May 2014, prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army. Paragraph 3-6 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the Army Board for Correction of Military Records or other authorized agency.

6. Army Regulation 600-8-22 (Military Awards), 5 March 2019, prescribes Department of the Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. Paragraph 2-11 (National Defense Service Medal) states the National Defense Service Medal is awarded for honorable active service for any period between 27 July 1950 and 27 July 1954, 1 January 1961 and 14 August 1974, 2 August 1990 and 30 November 1995, and 11 September 2001 and a date to be determined.

b. Paragraph 5-5 (Army Service Ribbon) states the Army Service Ribbon is awarded to Soldiers of the U.S. Army for successful completion of initial entry training. Effective 1 August 1981, all members of the Regular Army, Army National Guard, and U.S. Army Reserve in an active Reserve status are eligible for this award. The Army Service Ribbon is authorized for wear upon completion of initial military training. This includes advanced individual training for enlisted Soldiers.

7. Army Regulation 670-1 (Wear and Appearance of Army Uniforms and Insignia) prescribes Department of the Army policy for proper wear and appearance of Army uniforms and insignia, as worn by officers and enlisted personnel of the Regular Army, U.S. Army Reserve, and former Soldiers.

a. Paragraph 21-31a (Cord, Shoulder) states the Commanding General, U.S. Army Infantry Center, authorizes the wear of the shoulder cord for infantry personnel who have successfully completed the appropriate training.

b. Paragraph 21-31a(4) (Authorized Wearers) states authorized wearers are officers and enlisted personnel of the infantry, who hold an infantry PMOS or specialty, and who have been awarded the Combat Infantryman Badge, the Expert Infantryman Badge, or who have successfully completed the basic unit phase of an Army training program or an equivalent. Enlisted personnel who have completed one-station unit training resulting in the award of an infantry PMOS are also authorized wearers.

8. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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 personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. Paragraph 14-12c states Soldiers are subject to separation under the provisions of this paragraph for a commission of a serious military or civil offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense.

9. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedural guidance relating to transition management. Paragraph 5-6 (Rules for Completing DD Form 214) states for:

a. block 11 (Primary Specialty), enter the titles of all MOSs awarded and held for at least 1 year during the current period of service and include the number of years and months held for each MOS. For time determinations, 16 or more days count as a month. Do not count time in training (basic training, advanced individual training, or MOS-

producing school). The primary specialty MOS is awarded by service school completion or by publication of orders awarding the MOS;

b. block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized), list all federally recognized awards and decorations for all periods of service. Do not use abbreviations. Do not enter foreign or state-level awards; and

c. block 14 (Military Education), list all formal, in-service (full-time attendance) training courses successfully completed during the period of service covered by the DD Form 214 of at least 1 week or 40 hours in duration. Include course title, length in weeks, and year completed. This information is to assist the Soldier in job placement and counseling; therefore, do not list training courses for combat skills.

10. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//