

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20240000190

APPLICANT REQUESTS:

- removal of the general officer memorandum of reprimand (GOMOR), 29 October 2021, with auxiliary documents from the performance folder of his Army Military Human Resource Record (AMHRR)
- correction of his records to show he was promoted to the rank/grade of specialist (SPC)/E-4
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 16 April 2022 to show:
 - his rank/grade as SPC/E-4
 - a different separation code
 - a different narrative reason for separation

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- GOMOR Packet
- DD Form 214
- Department of the Army Office of the Deputy Chief of Staff, G-1, Letter to Former Service Member, 1 November 2023

FACTS:

1. The applicant states he received a GOMOR based on his declination to receive the Coronavirus Disease 2019 (COVID-19) vaccine. He believes he was denied promotion to the rank/grade of SPC/E-4 due to being flagged as the result of refusing to take the vaccine and thereby remained in the rank/grade of private first class (PFC)/E-3 at his discharge. However, he should have been promoted to the rank/grade of SPC/E-4. Subsequently, the Director, Military Personnel Management, on behalf of the Secretary of the Army, sent letters to those Soldiers who were separated from the service due to not receiving the COVID-19 vaccine. This letter further instructed those

Soldiers that they could have their records corrected and how to return to military service, if so inclined.

2. He enlisted in the Regular Army (RA) on 2 March 2020. He was advanced to the rank/grade of PFC/E-3 effective 1 February 2021.

3. The DA Form 4856 (Developmental Counseling Form), 22 September 2021, shows he was counseled by his company commander, Captain (CPT) S____ A. L____, regarding the 24 August 2021 Secretary of Defense directive for all service members to be vaccinated against COVID-19.

a. The counseling addressed the rationale for being vaccinated and the ramifications of not receiving the vaccination. It further noted he declined to receive the COVID-19 vaccine on 22 September 2021 or make an appointment to receive the vaccine. It also noted he could request a temporary or permanent medical exemption through medical channels. He was informed a flag was initiated and a GOMOR was requested through the chain of command.

b. He disagreed with the counseling and he and the company commander each signed the form on 29 September 2021.

4. The U.S. Army Medical Department Activity, West Point, memorandum from the Assistant Physician Assistant, Certified (COVID-19 Mandatory Vaccination Medical Consultation Results), 28 September 2021, states he met with the applicant to discuss the benefits of the vaccination and address the applicant's concerns, and determined that there was no valid reason for a medical exemption for him.

5. The DA Form 4856, 28 September 2021, shows the applicant was counseled by his company commander, CPT S____ A. L____, regarding the 24 August 2021 Secretary of Defense directive for all service members to be vaccinated against COVID-19. He was again informed of the rationale for being vaccinated and the ramifications of not receiving the vaccination and his refusal to take the vaccine. He was informed he would be flagged, given a GOMOR, and separated from the service.

a. He disagreed with the counseling on 22 September 2021 and remarked the order is a direct violation of the Nuremberg Code and he would not obey an unlawful order as it was his duty and his right on 22 September 2021.

b. Part IV contains the following comments: "Did not achieve the desired results. SM [service member] sill refusing the mandatory vaccination."

c. He and the company commander each signed the form on 29 September 2021.

6. The DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 30 September 2021, shows his unit initiated an involuntary separation flag against his records effective 29 September 2021.

7. He was reprimanded in writing by Lieutenant General D____ A. W____, Superintendent, U.S. Military Academy, West Point, on 29 October 2021, wherein he states:

You are reprimanded for disobeying a lawful order by refusing to become fully vaccinated against Coronavirus Disease 2019 (COVID-19). In response to direction by the Secretary of Defense, on 14 September 2021, the Secretary of the Army directed that Soldiers receive a COVID-19 vaccination. On 22 September 2021, you were counseled on your requirement about the vaccine and viewed an educational video. On 28 September 2021, you consulted with a medical professional to discuss the vaccine and any concerns you had about being vaccinated. On 29 September 2021, your company commander, CPT S____ L____, lawfully ordered you to receive a COVID-19 vaccination and you unjustifiably disobeyed that order. Your actions are unacceptable, and adversely impact the health and readiness of the force.

As a Soldier, you are required to follow orders and be ready to fight and win our nation's conflicts. You violated a lawful order that impacts your individual and the Military Police Company's readiness, health, and safety. Your actions fell below the standards expected of a Soldier in the United States Army, and your continued refusal to become fully vaccinated may result in more serious actions being taken against you. I trust that your future duty performance will reflect the degree of professionalism expected of every Soldier assigned to this command.

This is an administrative reprimand imposed under the provisions of Army Regulation (AR) 600-37 [Unfavorable Information] and not as punishment under Article 15, Uniform Code of Military Justice. You are advised that in accordance with AR 600-37, paragraph 3-5b, I am considering whether to direct this reprimand be filed permanently in your Army Military Human Resource Record (AMHRR). Prior to making my filing decision, I will consider any matters you submit in extenuation, mitigation, or rebuttal. You will be provided 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 7 calendar days, using the format prescribed in AR 600-37, paragraph 3-7.

8. He acknowledged receipt of the GOMOR on 5 November 2021 and elected to submit rebuttal matters in his defense.

9. On 10 November 2021, he submitted rebuttal matters, with auxiliary documents, requesting withdrawal of the GOMOR or local filing. He believes the vaccine is not fully licensed and ready for use (see memorandum for details).

10. After carefully considering the circumstances of the misconduct and the recommendations of his command, Lieutenant General W_____ directed filing the GOMOR in his AMHRR on 3 December 2021.

11. A review of his AMHRR revealed the GOMOR with associated documents is filed in the performance folder.

12. He was honorably discharged on 16 April 2022. He completed 2 years, 1 month, and 15 days of active service. His DD Form 214 shows in:

- block 4a (Grade, Rate, or Rank) – PFC
- block 4b (Pay Grade) – E-3
- block 25 (Separation Authority) – Army Regulation 635-200 (Active Duty Enlisted Administrative Separations)
- block 26 (Separation Code) – JKQ
- block 27 (Reentry Code) – 3
- block 28 (Narrative Reason for Separation) – Misconduct (Serious Offense)

14. His records do not contain a DA Form 4187 (Personnel Action) or orders showing he was promoted to the rank/grade of SPC/E-4.

15. He provided the Department of the Army Office of the Deputy Chief of Staff, G-1, letter to former service member, 1 November 2023, that states:

We write to notify you of new Army guidance regarding the correction of military records for former members of the Army following rescission of the COVID-19 vaccination requirement. As a result of the rescission of all current COVID-19 vaccination requirements, former Soldiers who were involuntarily separated for refusal to receive the COVID-19 vaccination may request a correction of their military records from either of both the Army Discharge Review Board (ADRB) or the Army Board for Correction of Military Records (ABCMR).

Individuals may request a correction to military personnel records, including records regarding the characterization of discharge, by submitting a request to the ADRB or ABCMR online at <https://actsonline.army.mil/> or by mailing a DD Form 293, Application for the Review of Discharge or Dismissal from the Armed Forces of the United States (available in fillable PDR format at https://www.esd.whs.mil/Directives/forms/dd0001_0499/DD293/) or a DD Form 149, Application for Correction of Military Record under the Provisions

of Title 10, U.S. Code, Section 1552 (available at https://www.esd.whs.mil/Directives/forms/dd0001_0499/DD149/).

Individuals who desire to apply to return to service should contact their local Army, US Army Reserve (USAR) or Army National Guard (ARNG) recruiter for more information. Individuals may locate an Army recruiter by visiting <https://www.goarmy.com>, a USAR recruiter by visiting <https://www.goarmyreserve.com>, or an ARNG recruiter by visiting <https://nationalguard.com/get-started>.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and military records, the Board majority determined that the basis for the General Officer Memorandum of Reprimand (GOMOR) imposed on 29 October 2021 and directed filing in the performance folder of the applicant's Army Military Human Resource Record (AMHRR) was later rescinded and the order is no longer in place; the reprimand has served its purpose. The Board minority determined the applicant violated a direct order by not receiving the vaccination and the GOMOR was given as a result of that violation and therefore, the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and voted to deny relief. The Board majority concluded that the evidence supports removal of the GOMOR, with auxiliary documents from the applicant's AMHRR.
2. The evidence of record shows the applicant was flagged as a result of the violation on 29 September 2021 and he would have been automatically promoted, except for the flagging action, as a result of his 2 years of service on 2 March 2022; prior to his discharge on 16 April 2022. Therefore, the Board majority determined his record should be corrected to reflect the rank/grade of specialist (SPC)/E-4 with an effective date of rank of 2 March 2022. The Board minority determined the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and voted to deny relief.
3. The evidence of record shows the applicant was honorably discharge for misconduct (serious offense) on 16 April 2022. The Board majority determined the underlying misconduct was the GOMOR, which was removed in paragraph 1 above and therefore his narrative reason for separation should be amended to show Secretarial Authority with corresponding codes. The Board minority determined the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and voted to deny relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing the General Officer Memorandum of Reprimand, with auxiliary documents, dated 29 October 2022, from the applicant's AMHRR.

2. The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending his DD Form 214, for the period ending 16 April 2022 to show in:

- item 4a (Grade, Rate or Rank): SPC
- item 4b (Pay Grade): E-4
- item 12i (Effective Date of Pay Grade): 2 March 2022
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

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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. Headquarters, Department of the Army, Fragmentary Order 5 to Headquarters, Department of the Army, Execute Order 225-21 COVID-19 Steady State Operations, 14 September 2021, states this order addresses the 24 August 2021 Secretary of the Army implementation of mandatory COVID-19 vaccinations of Department of Defense (DOD) 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 DOD-approved vaccines are on hand and available for their unit. 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. 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, in part:

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.

Other standing Departmental policies, procedures, and processes regarding immunizations remain in effect. These include the ability of commanders to consider, as appropriate, the individual immunization status of personnel in

making deployment, assignment, and other operational decisions, including when vaccination is required for travel to, or entry into, a foreign nation.

3. Secretary of the Army memorandum ((Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission), 24 February 2023, states, in part (see memorandum for details):

On 10 Jan[uary] [20]23, the Secretary of Defense rescinded the COVID-19 vaccination mandate across the Department of Defense (DoD). Accordingly, I hereby rescind all Department of the Army policies specifically associated with the implementation of the COVID-19 vaccination mandate.

Former Soldiers may petition the Army Discharge Review Board and the Army Board for Correction of Military Records to request corrections to their personnel records, including records regarding the characterization of their discharge.

Additional Army policy and guidance to effect this rescission and implement DoD policy will be issued by the Assistant Secretary of the Army (Manpower and Reserve Affairs) as necessary and appropriate.

4. Department of the Army Office of the Deputy Chief of Staff, G-1, letter to former service member, 1 November 2023, states:

We write to notify you of new Army guidance regarding the correction of military records for former members of the Army following rescission of the COVID-19 vaccination requirement. As a result of the rescission of all current COVID-19 vaccination requirements, former Soldiers who were involuntarily separated for refusal to receive the COVID-19 vaccination may request a correction of their military records from either of both the Army Discharge Review Board (ADRB) or the Army Board for Correction of Military Records (ABCMR).

Individuals may request a correction to military personnel records, including records regarding the characterization of discharge, by submitting a request to the ADRB or ABCMR online at <https://actsonline.army.mil/> or by mailing a DD Form 293, Application for the Review of Discharge or Dismissal from the Armed Forces of the United States (available in fillable PDR format at https://www.esd.whs.mil/Directives/forms/dd0001_0499/DD293/) or a DD Form 149, Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552 (available at https://www.esd.whs.mil/Directives/forms/dd0001_0499/DD149/).

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more information. Individuals may locate an Army recruiter by visiting <https://www.goarmy.com>, a USAR recruiter by visiting <https://www.goarmyreserve.com>, or an ARNG recruiter by visiting <https://nationalguard.com/get-started>.

5. 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. 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.

a. 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:

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

(1) ensure the Soldier understands the purpose of the vaccine;

(2) ensure 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;

(3) ensure the Soldier is educated about the vaccine and has been able to discuss any objections with medical authorities; and

(4) counsel the Soldier, in writing, that he or she is legally required to be immunized, 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 Uniform Code of Military Justice and/or administrative action for failure to obey a lawful order (Article 92, Uniform Code of Military Justice) as deemed appropriate by the commander.

6. 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.

7. Army Regulation 600-8-104 (Army Military Human Resource Records Management), 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.

8. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system. It is linked to the Army Regulation 600-8 series and provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support promotions and reductions. It provides the objectives of the Army's Enlisted Promotions System, which includes filling authorized enlisted spaces with the best qualified Soldiers. Chapter 2 (Decentralized Promotions) governs the decentralized promotion system for promotions to SPC and below for all RA, USAR, and ARNG/ARNG of the United States.

a. The basic active service date will be used to determine time in service (TIS) for RA Soldiers. The pay entry basic date will be used to determine TIS for Reserve Component (RC) Soldiers. For USAR (troop program unit), compute TIS from date of original enlistment into military service, but do not include service in the Delayed Entry Program for Soldiers who have transferred from the RA with no break in military service. Soldiers promoted after enlistment, but prior to initial military training, will use the basic active service date (RA) or pay entry basic date (RC) to compute the TIS requirements for the next promotion.

b. The AAA-117 (Enlisted Advancement Report) for the RA, the Enlisted Promotion Application for the USAR, and DA Form 4187 or promotion orders for the ARNG are the official instruments used by commanders to recommend Soldiers for promotion to SPC and below. When the commander denies promotion, he or she may promote the Soldier on the next automated enlisted advancement report, provided the Soldier is otherwise qualified in accordance with paragraph 1-11.

c. Promotions to private enlisted two, PFC, and SPC will be made automatically by the Electronic Military Personnel Office System (RA) and the Regional Level Application Software (USAR) or immediately with promotion orders (ARNG) for posting to the automated personnel file and/or the master military pay file. ARNG and USAR Soldiers on initial active duty for training will not be promoted to SPC unless concurrence is obtained from the Soldier's RC unit. The DA Form 4187 or promotion orders will be used for all USAR Soldiers and all ARNG of the United States Soldiers awaiting initial military training (special promotions and split training option-phase II) and all promotions for Soldiers in a Title 10 status (including mobilization). The DA Form 4187 will not be used for other automatic promotions. ARNG Soldiers are not required to be military occupational specialty qualified for promotion through SPC.

d. Eligibility criteria for automatic (RA and USAR) or immediate (ARNG) promotion to SPC is 24 months' TIS and 6 months' time in grade.

9. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) prescribes eligibility criteria governing the enlistment of persons, with or

without prior service, into the RA, USAR, and ARNG. It provides policies and procedures to process applicants for enlistment in the Delayed Entry Program and on delayed status, and the USAR Delayed Training Program.

a. Prior to discharge or release from active duty, individuals will be assigned reentry eligibility (RE) codes based on their service records or reason for discharge. RE codes may be changed only if they are determined to be administratively incorrect. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment. This chapter includes a list of Armed Forces RE codes, including RA RE codes.

b. RE-1 applies to persons completing his or her term of active service who is considered qualified to reenter the U.S. Army are considered qualified for enlistment if all other criteria are met.

c. RE-3 applies to a person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Personnel are considered ineligible unless a waiver is granted.

10. Army Regulation 635-5-1 (Separation Program Designator Codes), implements the specific authorities (statutory, regulatory, and DOD)/Army policy) and reasons for separating Soldiers from active duty. Also, it prescribes when to enter separation program designator codes on the DD Form 214.

a. The separation program designator code "JKQ" is appropriate when the narrative reason for discharge is misconduct (serious offense) and the authority is Army Regulation 635-200.

b. The reentry code is determined by the separation authority and reason for separation, not the character of separation. RE codes are placed on military discharge documents and determine whether an individual may reenlist or enlist in a Military Service at a later time.

11. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Chapter 14 (Separation for Misconduct) 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 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 manual for courts-martial.

12. The Nuremberg Code is a set of 10 ethical guidelines for human experimentation that was established by the Nuremberg Military Tribunal in 1947. The code was created as part of the judgment in the case United States v. Karl Brandt et al., one of the Nuremberg trials that took place after World War II. The code was developed in response to Nazi doctors who were accused of conducting medical experiments on concentration camp inmates.

//NOTHING FOLLOWS//