

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20240000223

APPLICANT REQUESTS:

- retirement vice honorable discharge
- a personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge)
- Memorandum, subject: General Officer Memorandum of Reprimand – Refusal of COVID-19 Vaccination, 15 November 2021 and allied documents
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 1 July 2022
- E-mail Correspondence to the Applicant from U.S. Army Human Resources Command (HRC) Officer Promotions, Special Selection Review Board Results to Chief Warrant Officer 3 (CW3), 22 September 2022

FACTS:

1. The applicant states it was a privilege to serve his country for over 18 years of honorable dedication. His desire and goals to serve in the Army were cut short due to the refusal of COVID-19 vaccination. In 2021, the mandatory COVID-19 vaccination orders were published for all servicemembers. He refused and had no intention to submit a religious exemption. He had no reason to submit such an exemption. He received administrative actions beginning in November 2021 with a suspension of favorable actions (FLAG) and 2 months later was told he would be given a general officer memorandum of reprimand. When he sought legal advice, he was told there was no guidance. In January 2022, he was notified his reprimand was being placed in his Army Human Resource Record (AMHRR). His request to continue service was denied. His last day of active service was 1 July 2022. In September 2022, he received an e-mail from HRC congratulating him on his promotion to CW3. He is requesting the privilege of being awarded his retirement.

2. Having prior enlisted Regular Army service from 18 September 2001 to 28 April 2015, the applicant was commissioned as a warrant officer one.

3. His Officer Record Brief shows service in:

- Iraq from 17 February 2003 to 15 February 2004
- Afghanistan from 17 February 2005 to 20 February 2006
- Afghanistan from 6 June 2012 to 10 February 2013
- Kuwait from 7 May 2017 to 31 January 2018
- Afghanistan from 17 November 2019 to 7 July 2020

4. On 24 August 2021, the Secretary of Defense issued memorandum, subject: Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members, which directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under Department of Defense authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19.

5. On 30 September 2021, the applicant declined to receive the COVID-19 vaccination.

6. On 22 October 2022 [sic], the applicant was counseled by his commander for refusing to comply with the Secretary of Defense directive on 24 August 2021. He was notified a general officer memorandum of reprimand would be initiated against him with the inclusion of a FLAG effective 30 September 2021.

7. On 15 November 2021, the commanding general of Headquarters, I Corps, Joint Base Lewis-McChord, Washington, issued a general officer memorandum of reprimand to the applicant.

a. He was given a lawful order to receive the COVID-19 vaccine and refused to obey the order. He was subsequently counseled and educated about the benefits and safety of the vaccine and continued to refuse to obey the order.

b. He was reprimanded. His disobedience raises questions about his fitness for continued service in the U.S. Army. Good order and discipline require that all Soldiers obey orders, regardless of rank or position. The vaccination he was ordered to receive will protect the health and readiness of the force, protecting not only him, but his fellow Soldiers and community members. His refusal degrades readiness and discipline and it disregards the tenets of duty and selfless service.

c. This is an administrative reprimand imposed under the provisions of Army Regulation 600-37 (Unfavorable Information) and not as punishment under Article 15, Uniform Code of Military Justice. He was advised that in accordance with Army Regulation 600-37, paragraph 3-5b, the commanding general intended to file the reprimand in his AMHRR. Prior to making his filing decision, he would consider any matters the applicant submitted in extenuation, mitigation, or rebuttal. He would be

provided a copy of the evidence, which forms the basis of the reprimand. He would immediately acknowledge receipt of the reprimand in writing. He would forward any matters for consideration through his chain of command within 10 calendar days using the format prescribed in Army Regulation 600-37, paragraph 3-7.

8. The applicant acknowledged receipt of the reprimand on 15 November 2021.

9. The applicant submitted a response to the reprimand on 29 December 2021.

a. He understood and completely agrees with his decision to file his reprimand in his AMHRR. Army personnel were given orders by the Commander in Chief and the Secretary of Defense to get the COVID-19 vaccine by 15 December 2021. After thorough research, he made a decision not to receive the COVID-19 vaccine.

b. It has been a privilege to serve for the past 18 years in this great U.S. Army. He fought alongside many great Soldiers of all ranks during his career. He is grateful and honored to be given the chance to be promoted through the ranks, but also be the leader and mention many Soldiers look up to. As a warrant officer, he set the standards for senior leaders, peers, and subordinates. All this said, he can no longer be that leader based on his decision. It is difficult to accept, but also as a leader, he knows when to step down.

c. He is grateful and appreciates the support of his family and chain of command and senior leaders. They all have done their best to be there for him when needed and offer any guidance and mentorship.

d. In conclusion, his time in the U.S. Army has been one of the proudest moments in his life. He has gathered life experiences that he will practice for the rest of his days on this earth. He respectfully requests that he continue his honorable service to this country until his eligible retirement date of 17 February 2023 and retain all of the post military benefits that come with such a discharge.

10. On 11 January 2022, the commanding general, after carefully considering the reprimand, circumstances of the misconduct, and all matters submitted by the applicant, directed the reprimand be placed permanently in his AMHRR.

11. On 22 February 2022, the applicant's unqualified resignation was approved under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), Chapter 3, section II. His separation designator code would be FND5. The characterization of his discharge would be honorable. He was not authorized separation pay or permissive temporary duty. He would not be transferred to the U.S. Army Reserve.

12. On 1 July 2022, he was honorably discharged accordingly. His DD Form 214 shows he completed 7 years, 2 months, and 3 days of active service this period, with 11 years, 2 months, and 12 days of total prior active service and 1 year, 1 month, and 12 days of total prior inactive service. He was issued separation program designator "FND" and his narrative reason for separation was annotated as "Miscellaneous/General Reasons."

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 available military records, the Board determined the evidence of record shows the applicant served from 29 April 2015 to 1 July 2022, a period of 7 years, 2 months, and 3 days with 11 years, 2 months, and 12 days of prior active service for a total of 18 years, 4 months, and 15 days; not a total of 20 qualifying years for retirement. Based on this, the Board determined a retirement vice an honorable discharge was unwarranted and denied relief.

2. Prior to closing the discussion, the Board determined the General Officer Memorandum of Record the applicant received as a result of refusing to vaccinate with during COVID-19 should be removed based on the rescission of the mandated vaccination as a matter of equity.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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.

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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.

BOARD NOTE:

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, dated 15 November 2021, and all associated documents from the applicant's AMHRR.

REFERENCES:

1. Army Regulation 600-8-24 (Officer Transfers and Discharges) prescribes policies governing the transfer and discharge of Army officer personnel.

a. Paragraph 3-5 (Unqualified Resignation) states any officer on active duty may tender a resignation under this paragraph except when action is pending that could result in relief for the good of the service; officer under a suspension of favorable actions, pending investigation, under charges, or any other unfavorable or derogatory action is pending.

b. Paragraph 6-1 (Officer Retirement Program) is applicable to nondisability retirement of active duty commissioned and warrant officers on active duty to include Active Guard Reserve commissioned and warrant officers who have 20 years or more active federal service. To retire in a commissioned officer grade above the warrant officer grades, an officer must generally have at least 10 years of active service as a commissioned officer.

2. Army Regulation 635-5-1 (Separation Program Designator Codes) implements specific authorities (statutory, regulatory, and Department of Defense/Army policy) and reasons for separating Soldier from active duty. It also prescribes when to enter separation program designator codes on the DD Form 214 (Certificate of Release or Discharge from Active Duty). Paragraph 2-6 (Separation Program Designators Applicable to Officer Personnel) states code "FND" will be assigned for corresponding narrative reason "Miscellaneous/General Reasons" under Army Regulation 600-8-24.

3. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. On 24 August 2021, the Secretary of Defense issued memorandum, subject: Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members, which directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under Department of Defense authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19.

//NOTHING FOLLOWS//