

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20240001901

APPLICANT REQUESTS:

- a. removal of the general officer memorandum of reprimand (GOMOR), dated 10 February 2022, with auxiliary documents from the performance folder of her Army Military Human Resource Record (AMHRR); and
- b. correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:
 - a different separation program designator (SPD) 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
- Secretary of the Army Memorandum (Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission), 24 February 2023

FACTS:

1. The applicant states she received a GOMOR based on her declination to receive the COVID-19 vaccine. The Secretary of the Army, through guidance by the Secretary of Defense memorandum on 10 January 2023, rescinded the mandate for vaccinating members of the U.S. Army against COVID-19 on 24 February 2023. Subsequently, 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. She enlisted in the Regular Army on 21 July 2015.

3. The DA Form 4856 (Developmental Counseling Form), dated 19 October 2021, shows she was counseled by her company commander regarding the 24 August 2021 Secretary of Defense directive for all service members to be vaccinated against COVID-19. The counseling addressed the rationale for being vaccinated and the ramifications of not receiving the vaccination. It further noted a plan of action wherein Soldiers could request a temporary or permanent medical exemption through medical channels.

a. She agreed with the counseling on 19 October 2021 and entered comments indicating she planned to discuss the situation with medical personnel for an exemption.

b. Part IV (Assessment of the Plan of Action) contains the comments: "[Applicant], your temporary medical exemption request was denied by the medical provider. Two health care providers determined there was no medical contraindication or condition that warrants exemption for COVID vaccination. You will be counseled on your vaccination requirement."

c. She and the company commander each signed the form on 10 January 2022.

4. The DA Form 4856, dated 16 December 2021, shows she was counseled by her company commander regarding the 24 August 2021 Secretary of Defense directive for all service members to be vaccinated against COVID-19. She was again informed of the rationale for being vaccinated and the ramifications of not receiving the vaccination.

a. She agreed with the counseling on 16 December 2021.

b. Part IV contains the following comments: "On 27 December 2021, I was informed that your temporary medical exemption request was denied. After talking with the medical providers, you are still deciding not to receive the COVID vaccination."

c. She and the company commander each signed the form on 21 January 2022.

5. The DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), dated 12 January 2022, shows her unit initiated an adverse action flag against her records effective 12 January 2022.

6. The U.S. Army Health Clinic-Schofield Barracks, Schofield Barracks, HI, memorandum from the 8th Theater Sustainment Command Soldier Centered Medical Home physician (COVID Vaccine Counseling), 4 February 2022, noted the applicant had no medical contraindication or condition that warranted an exemption for the COVID-19 vaccination. She was counseled by two health care providers to ensure she made an informed decision. As such, her request for temporary medical exemption from the COVID vaccine was denied.

7. She was reprimanded in writing by Major General D____ W____, Commanding General, 8th Theater Sustainment Command, Fort Shafter, HI, on 10 February 2022, wherein he stated:

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 Army Soldiers receive a COVID-19 vaccination. In response to this direction, you were counseled on your requirement to receive the vaccine, given an opportunity to view an educational video about the vaccine, and provided an opportunity to consult with a medical professional to discuss the vaccine and any concerns you had about being vaccinated. You requested a temporary medical exemption from the COVID-19 vaccination that was denied by your medical provider. Subsequently, your unit commander 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 noncommissioned officer, you are charged with the responsibility of setting the example for subordinates to emulate. You failed in that responsibility and undermined your ability to lead Soldiers by refusing to follow a lawful order that impacts your individual and unit readiness, health, and safety. Your actions fell below the standards expected of a noncommissioned officer 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 noncommissioned officer assigned to this command.

This is an administrative reprimand imposed under 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, 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 7 calendar days, using the format prescribed in AR 600-7, paragraph 3-7.

8. She acknowledged receipt of the GOMOR on 15 February 2022 and elected to submit rebuttal matters in her defense.

9. On 28 February 2022, she submitted rebuttal matters requesting withdrawal of the GOMOR or local filing. She stated, in part (see memorandum for details):

Declining the Coronavirus Disease 2019 (COVID-19) vaccine was not a deliberate attempt to disobey orders, but purely a personal medical decision with justified concerns. Until the vaccine mandate for service members was announced in September 2021, I was fully prepared to reenlist and continue my military service: I recently completed ALC [Advanced Leader Course] and was promoted to SSG [staff sergeant]. Prior to this action I have had zero derogatory actions on my record. However, after the vaccine mandate was implemented, I took the proper steps to obtain a temporary medical exemption and refocused my efforts on my ETS [expiration term of service] in November 2022. In the end, the choice was solely a personal one attributed to individual medical concerns and the medical community's lack of transparency and long-term data. Because of these reasons, I humbly request that this GOMOR be completely withdrawn or filed locally.

My medical concerns and factors leading to hesitancy regarding the COVID-19 vaccine are listed and expanded on below:

- the lack of long-term data, in both efficacy and safety,
- the unknown or potential effects on women's reproductive health,
- a wide-range of reported adverse effects, specifically heart inflammation, and
- lack of vaccine data/medical transparency.

I have put off starting a family with my husband in order to focus on my career, which was a personal choice. Due to the lack of data and studies on pregnant women or women's reproductive systems, this choice could be taken away from me due to the vaccine. The studies to this point focused on efficacy and safety, not effects on women's reproductive health, such as menstruation, fertility, and pregnancy. The initial Pfizer studies also excluded pregnant women from taking part in those studies. It has not been until recently, after women started speaking up about changes to their menstrual patterns and miscarriages following vaccination that health organizations started taking notice to women's concerns. In August 2021, the National Institute of Health (NIH) announced it would provide funding to five institutions to explore potential links between COVID-19 vaccination and menstrual changes. As of February 2022, only one of those institutions has released their results, confirming a change in menstruation, but could not definitively say why.

In closing, I declined the order to receive the COVID-19 vaccine based on personal concerns and hesitancy, not as a deliberate act of defiance. The

decision to decline was not easy. I have been forced to choose between my own personal health concerns regarding the COVID-19 vaccine and my military career. I chose my military career over my own personal health before, but I cannot do so again in good faith due to the lack of data and transparency regarding the COVID-19 vaccine. My character as a soldier and as a leader has been and always will be defined by my military record, my leadership, my peers, and my subordinates with whom I have had the honor to serve with. Declining the COVID-19 vaccine due to personal medical concerns will never change that. Finally, I again respectfully ask that this GOMOR is completely withdrawn or filed locally.

10. After carefully considering the circumstances of the misconduct and the recommendations of her command, Major General W_____ directed filing the GOMOR in her AMHRR on 23 March 2022. She acknowledged the filing determination on 1 April 2022.

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

12. She was honorably discharged on 23 August 2022. She completed 7 years, 1 month, and 3 days of active service. Her DD Form 214 shows in:

- 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)

13. She provided the Secretary of the Army memorandum (Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission), 24 February 2023, which states, in part:

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.

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 determined that the General Officer Memorandum of Reprimand (GOMOR) imposed on 10 February 2022 and directed filing in the performance section of the applicant's Army Military Human Resource Record (AMHRR) was due to refusing to become fully vaccinated against Coronavirus Disease 2019, which order was later rescinded. The Board concluded that due to the later rescission of the order, the GOMOR should be removed.
2. Additionally, based on the GOMOR being the underlying serious misconduct for the basis for separation, the Board granted relief to amend the separation code and narrative reason for separation associated with the applicant's separation proceedings to Secretarial Authority with corresponding codes.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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:

- a. removing the general officer memorandum of reprimand (GOMOR), dated 10 February 2022, with auxiliary documents from the performance folder of her Army Military Human Resource Record (AMHRR); and
- b. amending her DD Form 214, for the period ending 23 August 2022 to show in:
 - 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 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/).

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://natnalgard.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 601-210 (Regular Army and Reserve Components Enlistment Program) prescribes eligibility criteria governing the enlistment of persons, with or without prior service, into the Regular Army, 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. This regulation provides that prior to discharge or release from active duty; individuals will be assigned RE codes based on their service records or the reason for discharge. It also states that 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 Regular Army 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.

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

a. The SPD code "JKQ" is appropriate when the narrative reason for discharge is misconduct (serious offense) and the authority is Army Regulation 600-8-24.

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

10. 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.

//NOTHING FOLLOWS//