

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 November 2025

DOCKET NUMBER: AR20240006905

APPLICANT REQUESTS: to place him on the retired list in his highest rank/grade held satisfactorily of lieutenant colonel (LTC)/O-5.

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

- DD Form 149 (Application for Correction of Military Record)
- Coronavirus disease (COVID-19 vaccine statement)
- Headquarters (HQs), First Army Division West Memorandum, Subject: Officer Evaluation Report (OER) Referral for C- B- (the applicant), LTC, from 4 May through 28 October 2021
- DD Form 214 (Certificate of Release or Discharge from Active Duty) service ending 30 September 2022

FACTS:

1. The applicant states when he was a battalion commander, he was relieved for his refusal to issue a mission essential order that undermined the good order, discipline and weakness of unit readiness when he informed his brigade (BDE) commander (CDR), he was not able to forcibly coerce a subordinate to receive the COVID-19 vaccine. He presented evidence to the BDE CDR which had shown the base clinic did not have the Comirnaty COVID-19 vaccine which was the only Food and Drug Administration approved vaccine, on hand but only had Emergency Use Authorization (EUA) vaccines available to personnel. Since his subordinate would not take EUA vaccines, he could not legally hold them accountable to the order to receive the COVID-19 vaccine. This is when he was relieved of command. The Army Grade Determination Review Board (AGDRB) determined he would be placed on the retired list in the rank of major (MAJ) versus LTC his highest grade held. He was punished for not enforcing an order which he could not legally enforce. Though he was given an order to ensure everyone in his command received the vaccine, he did not have a legal standing to force a subordinate to take an EUA vaccine if they chose not to.

2. A review of the applicant's service record shows:

a. With prior U.S. Army Reserve (USAR) enlisted service, on 1 May 2002, Orders Number 121-090-A-1224, issued by HQs, U.S. Army Cadet Command, the applicant was ordered to active duty, effective 10 May 2002, for his acceptance of a commission in the USAR.

b. On 10 May 2002, the applicant executed his oath of office and was appointed as a Reserve commissioned officer in the rank of second lieutenant.

c. On 15 August 2011, Orders Number 227-020, issued by HQs, U.S. Army Human Resources Command (AHRC), the applicant was promoted to the rank/grade of MAJ/O-4, effective 1 September 2011 with the same date of rank.

d. On 21 November 2018, Orders Number 325-010, issued by AHRC, the applicant was promoted to the rank/grade of LTC/O-5, effective 1 December 2018 with the same date of rank.

e. DA Form 67-10-2 (Field Grade Plate (O4 through O5, CW3 through CW5) OER for rating period 4 May through 28 October 2021 shows the applicant was rated as a Battalion Commander and the reason for the evaluation was Relief for Cause. Part II (Authentication) d shows the evaluation was a referred report and the applicant chose not to make any comments. The rater rated the applicant's overall performance as unsatisfactory and commented he recommended the applicant be relieved from command for failing to support the lawful order of officers appointed over him. He otherwise demonstrated the attributes and competencies of a field grade officer. The rater further commented the applicant's failure to support an Army Command Policy resulted in the recommendation for him to be relieved from command. The applicant's senior rater rated his overall potential as not qualified and commented "he directed the applicant be relieved of command as he lost faith and confidence in his ability to command. His refusal to follow orders interfaces with his duties as a commander."

f. On 22 April 2022, the AGDRB reviewed the voluntary retirement request for the applicant for a grade determination which was submitted by AHRC. The Deputy Assistant Secretary of the Army (Review Boards) directed the applicant be placed on the retired list in the rank/grade of MAJ/O-4 if his retirement request was approved. It was determined the applicant's service in the rank/grade of LTC/O-5 was not satisfactory.

g. On 25 April 2022, Orders Number 115-0101, issued by HQs, III Corps and Fort Hood, the applicant was retired, effective 30 September 2022, and placed on the retired list in the rank/grade of MAJ/O-4, effective 1 October 2022.

h. On 30 September 2022, the applicant was honorably retired from active duty and assigned to the USAR Control Group (Retired Reserve). DD Form 214 shows the applicant completed 20-years, 4-months, and 21-days of active service. It also shows in:

- Item 4a (Grade, Rate or Rank): LTC
- Item 4b (Pay Grade): O5
- Item 12h (Effective Date of Pay Grade): 1 December 2018
- Item 18 (Remarks): Retired List Grade MAJ

3. The applicant provides:

a. Statement from the officer in charge of the Abrams Vaccine Site stated that Fort Hood, TX was providing the Pfizer-BioIntech COVID-19 and Moderna vaccines which fall under the EUA to customers wishing to be vaccinated against the COVID-19 virus. At that time, Fort Hood, TX was not supplied with the Cominarty COVID-19 vaccine.

b. HQs, First Army Division West Memorandum, Subject: OER Referral for C-B- (the applicant), LTC, from 4 May through 28 October 2021 stated the applicant was provided the OER which was referred for relief for cause from command based on his refusal to issue a mission essential order that had undermined good order, discipline and weakness of unit readiness. He was required to acknowledge receipt of the evaluation. He was afforded the opportunity to make comments in his own behalf.

#### 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.

a. The Board majority determined the applicant refused to enforce a vaccine mandate that lacked legal enforceability. His decision was based on the absence of FDA-approved Comirnaty vaccines, substantiated by official documentation. The Board noted the applicant's contention that he could not lawfully compel subordinates to receive an Emergency Use Authorization (EUA) vaccine.

b. While the Board noted the applicant was relieved for cause, the Board majority determined the underlying issue was a conflict between lawful enforcement and command policy. His refusal was not due to misconduct, incompetence, or failure to lead, but rather a principled stance on legal limitations. Additionally, the Board noted the rater acknowledged that the applicant otherwise demonstrated the attributes and competencies of a field grade officer.

c. The Board noted the applicant served honorably for over 20 years, including time as a battalion commander. His promotion to LTC was earned and held for nearly 4 years prior to retirement. His DD Form 214 reflects LTC/O-5 as his grade at separation, reinforcing his substantiated performance at that level.

2. The Board minority concluded the applicant was relieved for cause due to his refusal to support a lawful order issued by his brigade commander. The senior rater explicitly stated that he lost confidence in the applicant's ability to command, citing interference with duties and undermining unit readiness.

a. The Board minority noted the applicant's refusal to issue a mission-essential order contributed to a breakdown in good order and discipline. Regardless of his legal interpretation, his actions disrupted the chain of command and compromised operational effectiveness during a critical public health crisis.

b. The Board minority noted the Army Grade Determination Review Board reviewed the applicant's record and determined his service at the LTC grade was not satisfactory. This determination was made in accordance with Army regulations and reflects the seriousness of a relief-for-cause action.

c. Additionally, the Board minority noted officers are expected to execute orders unless they are clearly unlawful. The applicant's unilateral decision not to enforce the vaccine mandate reflects poor judgment.


BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

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

- amending Headquarters, III Corps and Fort Hood Orders 115-0101, dated 25 April 2022 to show retired grade/date of rank as LTC/1 December 2018
- entitlement to back pay and allowances as a result of this correction



X //SIGNED//

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CHAIRPERSON

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.

REFERENCE:

Army Regulation 15-80 (Army Grade Determination Review Board and Grade Determinations), establishes policies, procedures and responsibilities of the Army Grade Determination Review Board (AGDRB) and other organizations delegated authority to make grade determinations on behalf of the Secretary of the Army (SA).

a. Paragraph 1-10 (Deputy Assistant Secretary of the Army (Review Boards), the DASA (RB) will make discretionary grade determination on behalf of the SA for officer below the grade of brigadier general involving service retirement and computation of retired pay. The DASA(RB) retains the authority to take final action in any case in which a subordinate authority, including the AGDRB would otherwise be authorized to take final action.

b. Paragraph 2-3 (Automatic grade determinations), an officer will normally retire at the highest grade served, unless service at that grade is deemed unsatisfactory or the officer failed to meet statutory time in grade requirements.

c. Paragraph 2-5 (Unsatisfactory Service), service in the highest grade or an intermediate grade normally will be considered to have been satisfactory when: a. reversion to a lower grade was:

- Expressly for prejudice or cause
- Owing to misconduct
- Caused by non-judicial punishment
- The result of the sentence of a court-martial

There is sufficient unfavorable information to establish that the Soldier's service in the grade in question was unsatisfactory. One specific act of misconduct may or may not form the basis for a determination that the overall service in that grade was unsatisfactory regardless of the period of time served in grade.

d. Paragraph 4-1, the AGDRB will recommend to the DASA (RB) for final determination, the highest grade in which an officer has served satisfactorily for purposes for service retirement and computation of retired pay. The AGDRB recommendation is advisory and the SA or the SA's designee including the DASA (RB) is not bound by that recommendation.

//NOTHING FOLLOWS//