

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2025

DOCKET NUMBER: AR20250004286

APPLICANT REQUESTS: correction of his service record due to Executive Order 14184 (Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate) to:

- revoke Headquarters, Fifth Army, Joint Base San Antonio, and Fort Sam Houston Orders 230-1143, 18 August 2022
- revoke Headquarters, Fifth Army, Joint Base San Antonio, and Fort Sam Houston Orders 235-1104, 23 August 2022
- in effect, void his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 30 September 2022
- in effect, void his DD Form 215 (Correction to DD Form 214)
- restoration of his rank
- constructive service credit without a break in service
- restore all entitlements, pay, allowances, and benefits

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum for Secretaries of the Military Departments. Updated Guidance on Correction of Military Records for Service Members Involuntarily Separated for Refusal to Comply with Coronavirus Disease 2019 Vaccination Requirements

FACTS:

1. The applicant states, in effect, he was wrongly discharged solely for refusing to become fully vaccinated with the COVID-19 vaccine. He is requesting reinstatement on active duty, restoration of his pay, rank, leave, and benefits, and constructive service credit for the period beginning 1 October 2022.

2. The applicant provides and the service record shows:

- He enlisted in the Regular Army on 19 July 1992

- On 27 June 1993, he was honorably relieved from active duty to enter Service Academy (West Point); he completed 11 months and 9 days of active federal service
- On 31 May 1997, he was appointed as a Reserve Commissioned Officer at the rank of second lieutenant (2LT)
- He served in Kosovo from 5 March 2001 through 5 October 2001, Iraq from 28 April 2003 through 11 April 2004, and Qatar from 4 September 2010 through 5 March 2011
- On 31 January 2022, the Secretary of the Army signed Army Directive 2022-02, which established policies and procedures for unvaccinated individuals seeking accession in the Army and Soldiers who refuse the COVID-19 vaccination order
- On 1 June 2022, the applicant requested an exception to policy for retirement, in accordance with Army Directive 2022-02; he further requested release from active duty and assignment, and to be placed on the retirement list
- The Commanding General of the U. S. Army Physical Disability Agency, also recommended approval of his request for voluntary retirement, on 1 June 2022
- On 9 June 2022, he completed, signed and acknowledged a preseparation and transition counseling/career readiness standards form for service members separating, retiring, released from active duty
- On 16 August 2022, the chief of transition services branch, recommended approval of the applicant's request for retirement
- Orders 230-1143, published on 18 August 2022, and Orders 235-1104, published on 23 August 2022, thank him for his faithful service, and outline details of his retirement
- On 30 September 2022, he was honorably retired at the grade/rank of colonel (COL)/O-6, due to sufficient service for retirement; he completed a total of 26 years, 3 months, and 9 days of active federal service
- On 12 March 2024, the applicant was issued a DD Form 215 amending his DD Form 214 for the period ending 30 September 2022, by adding the Legion of Merit

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military record, the Board found relief was warranted. Based upon the entry on the applicant's ORB showing he was pending COVID-19 vaccination action and the information found in Soldier Management System (SMS) showing the applicant previously submitted an exemption and was denied, the Board concluded there was sufficient evidence to show the applicant submitted a retirement request to prevent potential action taken against him for failing to take the COVID-19 vaccine. Based upon that finding and new guidance related to this issue, the Board concluded there was sufficient evidence to grant the applicant's requested relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Contingent upon the applicant agreeing to the reinstatement terms and conditions for revoking his retirement and the applicant re-entering active duty, 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:

- revoking Headquarters, Fifth Army, Joint Base San Antonio, and Fort Sam Houston Orders 230-1143, 18 August 2022
- revoking Headquarters, Fifth Army, Joint Base San Antonio, and Fort Sam Houston Orders 235-1104, 23 August 2022
- voiding the applicant's DD Form 214 for the period ending 30 September 2022
- voiding the applicant's DD Form 215
- granting constructive service credit from 1 October 2022 to the date of his re-entry onto active duty, without a break in service
- restoring all entitlements, pay, allowances, and benefits

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. Army Regulation 15-185 (ABCMR) states the Army, by law, may pay claims for amounts due to applicants as a result of correction of military records. The ABCMR will furnish the Defense Finance and Accounting Service (DFAS) copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant and settle claims on the basis of the corrected military record. The applicant's acceptance of a settlement fully satisfies the claim concerned.

2. Army Regulation 637-1 (Army Compensation and Entitlements Policy) provides Department of the Army (DA) policies for entitlements and collections of pay and allowances for active duty Soldiers. It is used in conjunction with the Department of Defense (DoD) Financial Management Regulation (FMR), Volume 7A. For the purpose of this regulation, active duty is defined in accordance with Title 37, United States Code

(37 USC). The term “active duty” means full-time duty in the active service of a uniformed service and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary of the Army (SECARMY).

3. Title 10 (Armed Forces), United States Code (USC), section 1552 (c)(1) states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

4. Army Regulation 635-8 (Separation Processing and Documents) prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents. When a DD Form 214 has been prepared and distributed, and subsequently determined that it was prepared in error, the responsible transition center will void the DD Form 214 by memorandum. Distribute this memorandum to all addressees that received the erroneously prepared DD Form 214, advising them of the error and requesting the voided DD Form 214 be destroyed and removed from the Soldier's Army Military Human Resource Record (AMHRR).

5. On 24 August 2021, the Secretary of Defense mandated that all service members receive the COVID-19 vaccine. The Secretary of Defense later rescinded the mandate on January 10, 2023. It states, “the vaccine mandate was an unfair, overbroad, and completely unnecessary burden on our service members. Further, the military unjustly discharged those who refused the vaccine, regardless of the years of service given to our Nation, after failing to grant many of them an exemption that they should have received. Federal Government redress of any wrongful dismissals is overdue”.

6. On 27 January 2025, President Donald J. Trump signed Executive Order (EO) 14184, “Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate.”

7. On 6 February 2025 the Secretary of Defense issued Memorandum, "Providing Remedies for Service Members and Veterans Negatively Impacted by the Department's Defunct Coronavirus Disease 2019 Vaccination Mandate Based Executive Order."

8. On 1 April 2025 the Office of the Under Secretary of Defense issued a Memorandum for Secretaries of the Military Departments, “Updated Guidance on Correction of Military

Records for Service Members Involuntarily Separated for Refusal to Comply with Coronavirus Disease 2019 Vaccination Requirements.” It provides:

a. As directed by the Secretary of Defense, the Department of Defense shall take all actions necessary to make reinstatement available to all members of the military (Active and Reserve Components) who were discharged solely for refusal to receive the coronavirus disease 2019 (COVID-19) vaccine and who request to be reinstated. The Secretaries of the Military Departments will process reinstatements for individuals either involuntarily discharged or those who voluntary left the service or allowed their service to lapse, rather than be vaccinated under the vaccine mandate, consistent with this guidance.

b. In cases where the Service member was involuntarily separated (EO, sec. 2(a) and (b)), the Secretaries of the Military Departments will contact such Service members and make available to them reinstatement via the Boards for Correction of Military/Naval Records (BCM/NRs) process. The BCM/NRs should exercise their broad discretion to order all appropriate retroactive corrections of the Service member's record as described in Attachment 2 to the Memorandum.

c. The BCM/NRs will give COVID-19 reinstatement cases priority consideration, subject to existing statutorily specified priority consideration for post-traumatic stress disorder, traumatic brain injury, and military sexual trauma.

d. The BCM/NRs, using the attached guidance in the memorandum, will assess each case to determine if an error or injustice exists within the former Service member's record and order all appropriate records corrections, which may include but is not limited to reinstatement with no break in service, restoration of the member's previous grade or rank, and credit for lost service time due to separation.

9. On 7 May 2025, the Department of Defense issued supplemental guidance to military departments regarding the review of discharge cases and correction of military records for service members adversely impacted by COVID-19 vaccination requirements. This guidance aligns with the 27 January 2025, Executive Order by the President, which mandates the reinstatement of service members discharged solely for refusing the COVID-19 vaccine.

10. Army Regulation 600-8-104 (Army Military Human Resource Records Management), in effect at the time, 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 (Authority for Filing or Removing Documents in the AMHRR Folders) provides that once a document is

properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or another authorized agency.

11. Army Regulation 600-8-10 (Leaves and Passes) prescribes the policies and mandated operating tasks for the leave and pass function of the Military Personnel System. It provides a single-source operating document to the field, and as such, is binding on all communities involved in granting leaves and passes. It applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Re-serve, unless otherwise stated.

a. Transition leave (formerly called terminal leave) is a chargeable leave granted together with transition from the Service, including retirement. The unit commander or designee is the approval authority for transition leave requests.

b. The leave and pass program is designed to allow Soldiers to use their authorized leave to the maximum extent possible.

c. Soldiers who do not take leave, may lose leave at the end of the fiscal year (FY). Also, Soldiers who maintain a 60-day leave balance, and wait late in the FY to take leave, will be informed that they risk loss of leave over 60 days if the operational situation requires their presence. Accrued leave that exceeds 60 days at the end of the fiscal year is lost except as authorized.

//NOTHING FOLLOWS//