

**1. Applicant's Name:**

- a. **Application Date:** 21 September 2022
- b. **Date Received:** 26 September 2022
- c. **Counsel:** None

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is General (Under Honorable Conditions). The applicant requests an upgrade to show the characterization of service as Honorable.

b. **Board Type and Decision:** In a records review conducted on 9 February 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

**3. DISCHARGE DETAILS:**

a. **Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200 / JKQ / RE-3 / Under Honorable Conditions (General)

b. **Date of Discharge:** 3 September 2022

**c. Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 August 2022

(2) **Basis for Separation:** Failure to become fully vaccinated with COVID-19 Vaccine

(3) **CDR Recommended Characterization:** General (Under Honorable Conditions)

(4) **Legal Consultation Date:** 10 August 2022

(5) **Administrative Separation Board:** On 10 August 2022, the applicant waived consideration of the case by an administrative separation board contingent upon a characterization of service no less than a General (Under Honorable Conditions). On 29 August 2022, the applicant's conditional waiver was approved.

(6) **Separation Decision Date / Characterization:** 29 August 2022 / General (Under Honorable Conditions)

**4. SERVICE DETAILS:**

a. **Date / Period of Enlistment:** 4 May 2016 / 5 years (Applicant's AMHRR is void of an extension or reenlistment contract)

b. **Age at Enlistment / Education / GT Score:** 27 / associate degree / 113

c. **Highest Grade Achieved / MOS / Total Service:** E-6 / 42A30, Human /resources Specialist / 10 years, 11 months, 1 day

- d. **Prior Service / Characterizations:** RA, 3 October 2011 – 3 May 2016) / HD
- e. **Overseas Service / Combat Service:** None
- f. **Awards and Decorations:** ARCOM, AGCM-3, NDSM, GWOTSM, NCOPDR-2, ASR, COA
- g. **Performance Ratings:** 1 November 2015 – 31 October 2016 / Most Qualified  
   1 November 2016 – 4 May 2018 / Highly Qualified  
   5 May 2018 – 4 May 2019 / Highly Qualified  
   5 May 2019 – 3 May 2020 / Highly Qualified  
   4 May 2020 – 12 July 2021 / Highly Qualified

**h. Disciplinary Action(s) / Evidentiary Record:**

(1) General Officer Memorandum of Reprimand (GOMOR), undated, reflects the applicant was reprimanded for disobeying a lawful order by refusing to become vaccinated against COVID-19. The applicant's Army Military Human Resource Record (AMHRR) is void of any additional disciplinary actions.

(2) The applicant was counseled on 17 September 2021 for declining to receive the COVID-19 vaccine. On 15 March 2022, the applicant was counseled pertaining the initiation of separation proceedings for failing to obey a direct order and for the solicitation of prostitution. The applicant's AMHRR is void of any other negative counseling.

(3) DA Form 268 (Report To Suspend Favorable Personnel Actions (Flag), 5 October 2021, reflects the a flag was initiated against the applicant for adverse action effective 5 October 2021. DA Form 268, 4 February 2022, reflect the applicant was flagged due to involuntary separation effective 31 January 2022.

i. **Lost Time / Mode of Return:** None

**j. Behavioral Health Condition(s):**

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293, DD Form 214, NCOER, GOMOR with filing determination, COVID-19 Vaccination Record Card, Letter of Support, Documents from Separation Packet

**6. POST SERVICE ACCOMPLISHMENTS:** None submitted in support of submitted petition.

**7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):**

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal

abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

**b.** Army Regulation 15-180 (Army Discharge Review Board), dated 25 September 2019, sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

**c.** Office, Secretary of Defense memorandum (Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder), 3 September 2014, directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

**d.** Office, Under Secretary of Defense memorandum (Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment), 25 August 2017 issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

**e.** Office, Under Secretary of Defense memorandum (Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations), 25 July 2018 issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

**(1)** This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, DRBs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

**(2)** Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

**f.** Office, Secretary of Defense memorandum (Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Member of the Armed Forces) 10 January 2023, implemented 23 December 2022, James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023 which rescinded the mandate for members of the Armed Forces to be vaccinated against Corona Virus 2019 (COVID-19), as issued on 24 August 2021 in the now-rescinded Secretary of Defense Guidance for Mandatory COVID-19 Vaccination for Department of Defense Service Members issued on 30 November 2021. For Service members administratively discharged on the sole bases of failure to obey a lawful order to receive vaccine for COVID-19, the Department precluded by law from awarding any characterization less than a general (under honorable conditions) discharge. Former service members may petition the Military Departments DRBs and BCM/NRs to individually request correction to their personnel records, including records regarding the characterization of their discharge.

**g.** Office, Secretary of the Army memorandum (Army Policy Implementing the Secretary of Defense Coronavirus 2019 (COVID-19) Vaccination Mandate Recission), 24 February 2023 implemented policy to rescind the COVID-19 vaccination mandate, applicable to Soldiers servicing in the Regular Army (RA), Army National Guard (ARNG)/Army National Guard of the United States (ARNGUS), and the U.S. Army Reserve (USAR), cadets of the U.S. Military Academy (USMA), cadet candidates at the U.S. Military Academy Preparatory School (USAMPS), and cadets in the Senior Reserve Officer Training Corps (SROTC). It provides that Soldiers currently serving shall not be separated solely on their refusal to receive the COVID-19 vaccine if they sought an exemption on religious, administrative, or medical grounds. Furthermore, the guidance provides details for updating records of current Soldiers, however, former Soldiers may petition the Army Discharge Review Board or the Army Board for Correction of Military Records to request corrections to their personnel records regarding the characterization of their discharge.

**h.** Office, Assistant Secretary of the Army, Manpower and Reserve Affairs (SAMR) memorandum (Correction of Military Records for Former Members of the Army Following Recission of August 24, 2021 and November 30, 2021, Coronavirus Disease 2019 Vaccination Requirements for Former Soldiers), 6 September 2023, provided supplemental guidance to the Army Discharge Review Board (ADRB) and the Army Board for Correction of Military Records (ABCMR) when considering requests for discharge upgrade requests involving former service members who did not meet the COVID-19 vaccination mandate. If the Board determines relief is warranted, this does not imply the vaccination mandate or involuntary separation itself constituted an "injustice" or "inequity" as the vaccination mandate was a valid lawful policy at the time. Consistent with previous published Under Secretary of Defense, Personnel and Readiness Guidance and Board processes regarding changes to policy and/or standards, the COVID-19 vaccination requirement rescission is a relevant factor in evaluating an application for upgrade of the characterization of service. Reinstatement is not under the purview of the Military Review Board. Former Soldier would need to submit their requests for reinstatement to the Army Board for Correction of Military Records. Additionally, the Board should:

**(1)** Generally grant a request to upgrade the characterization of service from a former Soldier when they were involuntarily separated, and the Reentry Code would prevent them from rejoining the military without a waiver should they desire to do so; and meet three conditions:

(1) The original action was based solely on refusal to receive the COVID-19 vaccination, (2) The former Soldier formally sought an accommodation on religious or medical grounds prior to contemporaneous with official initiation of the action; and (3) there are no aggravating factors in the member's record, such as misconduct.

(2) If the above conditions are met, normally grant enlisted requests to show the following correction:

- Separation Authority: Army Regulation 635-200, Chapter 15
- Separation Code: JKA
- Reenlistment Code: RE1
- Narrative Reason for Separation: Secretarial Plenary Authority
- Character of Service: Honorable

(3) Officer records should be changed to have similar effect.

(4) It further states to apply existing policy that requires the former Soldier to establish evidence of an error, impropriety, inequity, or injustice in support of their petition in cases with multiple reasons for separation.

i. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) An Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(2) A General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(3) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Paragraph 14-12c, states a Soldier is subject to action per this section for commission of a serious military or civilian 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.

(4) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

j. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

k. Army Regulation 601-210, Regular Army, and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and nonwaivable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

#### **8. SUMMARY OF FACT(S):**

a. Standard of Review. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. The applicant requests an upgrade of the characterization of service to reflect Honorable in accordance with the rescinded COVID-19 vaccination mandate. The applicant was separated under the provisions of Army Regulation 635-200, Chapter 14-12c, due to Misconduct (Serious Offense), with a General (Under Honorable Conditions) discharge. The applicant was counseled on 17 September 2021 for declining to receive the COVID-19 vaccine. On 15 March 2022, the applicant was counseled pertaining to the initiation of separation proceedings for failing to obey a direct order and for the solicitation of prostitution. The applicant was counseled and received a GOMOR for declining the COVID-19 vaccine. The applicant's AMHRR is void of any other negative counseling. The applicant's AMHRR is void of any other disciplinary actions.

c. The applicant's AMHRR is void of evidence which reflects the applicant requested a religious or medical exemption request to the COVID-19 vaccination mandate.

d. The rescission of the COVID-19 vaccination mandate does not negate the propriety of the discharges or separations that occurred prior to this policy change or imply the vaccination mandate or involuntary separation constituted an inequity; it was a valid lawful policy at the time. However, the COVID-19 vaccination requirement rescission is a relevant factor in evaluating an application for discharge upgrade relief based on religious or medical grounds prior to or simultaneously with the official initiation of the separation action; and there are no aggravating factors of indiscipline and/or misconduct.

e. Published Department of Defense guidance indicates the guidance is not intended to interfere or impede on the Board's statutory independence. The Board determines the relative weight of the action that was the basis for the discharge and whether it supports relief or not. In

reaching its determination, the Board considers the applicant's petition, available records and any supporting documents included with the petition.

#### 9. BOARD DISCUSSION AND DETERMINATION:

a. KURTA FACTORS: As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: The applicant held in-service diagnoses of Adjustment Disorder with Mixed Anxiety and Depression with service connection for the same. The applicant was an offender of IPV. Of note, the applicant is asserting an MST in-service.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant held in-service diagnoses of Adjustment Disorder with Mixed Anxiety and Depression. The applicant was an offender of IPV. Of note, the applicant is asserting an MST in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** Medical records appear to support the applicant obtained the required vaccinations. This in combination with a March 2022 counseling, noting the basis for separation was refusing an order and prostitution, raises the question of whether the ultimate basis was not for lack of vaccination but initial disobeying an order with additional misconduct.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder with Mixed Anxiety and Depression outweighed the medically unmitigated multiple instances of IPV, felony shooting allegations, and aggravated assault. The chain of command recommendations reflect there was probable cause to believe the applicant committed the offense of domestic violence and that this dependent abuse offense factored into the decision to initiate separation proceedings. The Board found by a preponderance of evidence that the asserted MST and other behavioral health disorders did not outweigh the unmitigated misconduct.

b. Response to Contention(s): The applicant contends there is no other derogatory information in his records apart from the initial refusal to receive the COVID-19 vaccine, which he subsequently received prior to the involuntary separation. However, the Board noted that the commander's report and recommendations during the separation process reflect that, on 28 October 2021, the applicant allegedly strangled and assaulted his spouse and that probable cause existed to believe the applicant committed the offense of domestic violence. The report and recommendations specifically note that this dependent abuse offense factored into the decision to initiate separation.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable. The Board considered the asserted MST and determined it does not outweigh the applicant's multiple, major misconduct. Based on evidence of significant misconduct in the applicant's file, pending trial for felony

shooting, three prior arrests for weapon on post, domestic violence, and aggravated assault, the Board determined the applicant's SPD, narrative reason and characterization were proper and equitable. The Board considered the Army guidance regarding discharge upgrade requests from former service members involuntarily separated for refusal to receive the COVID-19 vaccination, but noted there was no evidence the applicant sought an exemption to the vaccine mandate and there were aggravating factors in the applicant's record, specifically misconduct. As such, based on a preponderance of evidence, the Board found a discharge upgrade was not warranted.

**d. Rationale for Decision:**

**(1)** The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant's Adjustment Disorder with Mixed Anxiety and Depression did not excuse or mitigate the offenses of pending trial for felony shooting, three prior arrests for weapon on post, domestic violence, and aggravated assault. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

**(2)** The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the reason the applicant was discharged was both proper and equitable.

**(3)** The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**10. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order:** No
- b. Change Characterization to:** No Change
- c. Change Reason / SPD Code to:** No Change
- d. Change RE Code to:** No Change
- e. Change Authority to:** No Change

**Authenticating Official:**

4/3/2024

**X**

---

Presiding Officer, COL, U.S. ARMY  
Army Discharge Review Board

**Legend:**

AWOL – Absent Without Leave  
AMHRR – Army Military Human Resource Record  
BCD – Bad Conduct Discharge  
BH – Behavioral Health  
CG – Company Grade Article 15  
CID – Criminal Investigation Division  
ELS – Entry Level Status  
FG – Field Grade Article 15

GD – General Discharge  
HS – High School  
HD – Honorable Discharge  
IADT – Initial Active Duty Training  
MP – Military Police  
MST – Military Sexual Trauma  
N/A – Not applicable  
NCO – Noncommissioned Officer  
NIF – Not in File  
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty  
OBH (I) – Other Behavioral Health (Issues)  
OMPF – Official Military Personnel File  
PTSD – Post-Traumatic Stress Disorder  
RE – Re-entry  
SCM – Summary Court Martial  
SPCM – Special Court Martial

SPD – Separation Program Designator  
TBI – Traumatic Brain Injury  
UNC – Uncharacterized Discharge  
UOTHC – Under Other Than Honorable Conditions  
VA – Department of Veterans Affairs