

1. Applicant's Name: [REDACTED]

- a. Application Date: 20 April 2023
- b. Date Received: 26 July 2023
- c. Counsel: None

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

- a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is under honorable conditions (general). The applicant requests an upgrade to honorable and a narrative reason change.

The applicant states in effect, they were wrongfully discharged for refusing to take the Covid-19 vaccine, they had no other adverse actions. They had to write a paper to their superior officer explaining their reasoning behind refusing the vaccine.

- b. **Board Type and Decision:** In a records review conducted on 01 May 2024, and by a 5-0 vote, the determined the discharge was inequitable and voted to grant relief in the form of an upgrade of the characterization of service to honorable, changed the separation authority to AR 635-200, Chapter 4, and the narrative reason for separation to Completion of Required Active Service, with a corresponding separation code to KBK. The reentry eligibility (RE) code will also change to 1.

*Please see Section 9 of this document for more detail regarding the Board's decision.
(Board member names available upon request)*

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:** 31 May 2022

- c. **Separation Facts:**

- (1) **Date of Notification of Intent to Separate:** 1 March 2022

- (2) **Basis for Separation:** The applicant received a permanently filed GOMOR and by Army Directive 2022-02, paragraph 4c (1) administrative separation under 14-12 must be initiated.

- (3) **Recommended Characterization:** General, under honorable conditions.

- (4) **Legal Consultation Date:** 29 April 2022

- (5) **Administrative Separation Board:** N/A

- (6) **Separation Decision Date / Characterization:** 9 May 2022 / General, under honorable conditions.

SERVICE DETAILS:

d. **Date / Period of Enlistment:** 10 August 2020 / 4 years.

e. **Age at Enlistment / Education / GT Score:** 18 / High School Diploma / 100

f. **Highest Grade Achieved / MOS / Total Service:** E-3 / 15P10 Aviation Operations Specialist / 1 year, 9 months, 21 days.

g. **Prior Service / Characterizations:** None.

h. **Overseas Service / Combat Service:** South Korea / None.

i. **Awards and Decorations:** NDSM, GWOTSM, ASR, OSR

j. **Performance Ratings:** N/A

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

(1) Developmental Counseling Form dated 22 September 2021 provides the applicant was counseled after declining the COVID-19 vaccine on 8 September 2021.

(2) On 5 October 2021 it was requested that a General Officer Memorandum of Reprimand be initiated against the applicant due to them disobeying the lawful order to receive the mandatory COVID-19 vaccine. The applicant did not have a pending medical or administrative exemption request.

(3) On 13 October 2021 the applicant received a General Officer Memorandum of Reprimand for failing to comply with a lawful order to become fully vaccinated against COVID-19. The applicant acknowledged receipt of the reprimand and elected to submit written matters on their behalf; they did not submit those matters within the time frame allotted.

(4) A Report of Medical Examination document dated 11 February 2022, provides the applicant received a separation medical examination.

(5) On 1 March 2022 the applicant's immediate commander notified them of their intent to separate them for commission of a serious offense. The commander recommended a General (under honorable conditions) characterization of service. The applicant acknowledged the commander's notification and basis for separation, they consulted with counsel and completed their election of rights indicating they understood the prejudices that may occur in receiving a characterization of service of less than honorable.

(6) A Report of Mental Status Evaluation document dated 16 March 2022, provides the applicant received a separation evaluation that psychologically cleared them for administrative action.

(7) The command did not concur with the commander's discharge recommendation, they recommend an Honorable discharge and on 9 May 2022 the appropriate authority approved the separation after careful consideration of all matters and directed a general, under honorable conditions characterization of service.

I. Lost Time / Mode of Return: None.

m. Behavioral Health Condition(s): None.

(1) Applicant provided:

(2) AMHRR Listed:

4. APPLICANT-PROVIDED EVIDENCE: An online DD Form 293 (Discharge Review Application) and an essay they wrote to their superior officer explaining their reasoning behind refusing the vaccine.

5. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their application.

6. 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, 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.

d. 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.

e. 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.

f. 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 mandating the COVID-19 vaccination, 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.

g. Office, Assistant Secretary of the Army, Manpower and Reserve Affairs (SAMR) memorandum (Correction of Military Records for Former Members of the Army Following Rescission 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: JFF
- 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.

h. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel provides the authorized types of characterization of service or description of separation.

(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) An Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(4) 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.

(5) 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.

i. 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).

j. 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:

- 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.
- 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.
- RE-4 Applies to: Person separated from last period of service with a nonwaivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

7. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable and a narrative reason change. The applicant's DD Form 214 provides the applicant received a general (under honorable conditions) characterization of service for refusing to comply with the covid-19 vaccination mandate.

b. Based on the available evidence the applicant enlisted in the army at the age of 18. On 8 September 2021 they declined the COVID-19 vaccine and received a GOMOR for disobeying a lawful order; to receive the mandatory COVID-19 vaccine and were processed for administrative separation due to having a GOMOR permanently filed in their AMHRR.

- The applicant's AMHRR is void of any indiscipline or misconduct prior to and after they declined the COVID-19 vaccination.
- The applicant's AMHRR provides the applicant did not request a medical or religious exemption to the COVID-19 vaccination mandate.

c. The applicant was notified of the intent to separate them, they acknowledged understanding the basis for separation under the provisions AR 635-200 Ch14-12c. The applicant consulted with counsel and on 31 May 2022 they were discharged under the provisions of AR 635-200, CH 14; they received a general, under honorable conditions characterization of service after completing 1 year, 9 months, and 21 days of their contractual obligation.

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. Chapter 14 establishes policy and prescribes procedures for members being separated for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is 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.

f. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

8. BOARD DISCUSSION AND DETERMINATION:

a. 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? **No.** The Board's Medical Advisor reviewed DoD and VA medical records and found no mitigating BH diagnoses on the applicant. The applicant provided no documents or testimony of a condition or experience, that, when applying liberal consideration, could have excused, or mitigated a discharge.

(2) Did the condition exist, or experience occur during military service? **N/A**

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

(4) Does the condition or experience outweigh the discharge? N/A

b. Response to Contention(s):

(1) The applicant contends they were wrongfully discharged for refusing the Covid-19 vaccine. The board considered this contention valid and voted to grant relief.

c. The board determined the discharge was inequitable based on the 24 February 2023 SECARMY Policy Memo “Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission”. The board specifically referenced paragraph 5, which directs the removal of any negative documentation, GOMOR, EVALs, Flags and Bars, referencing failure to comply with a lawful order. Additionally, the board members discussed the applicant’s file and based on the length of service, no other misconduct, and the COVID-19 vaccination refusal as the sole reason for separation, and the change in policy since the applicant’s involuntary separation, the board concurred determined the current discharge is inequitable and warranted an upgrade. The board found that, but for the refusal to take the COVID-19 vaccine, the applicant would have completed the term of enlistment. Therefore, the board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, the narrative reason for separation to Completion of required Active Service with a corresponding separation code of KBK, and the reentry code to RE-1.

d. Rationale for Decision:

(1) The board voted to change the applicant’s characterization of service to honorable because based on the 24 February 2023 SECARMY Policy Memo “Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission” mitigating the applicant’s misconduct of COVID vaccine refusal, and the lack of any other misconduct by the applicant. Thus, the prior characterization is no longer appropriate.

(2) The board voted to change the applicant’s reason for discharge to Completion of required Active Service under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is KBK.

(3) The board voted to change the RE code to RE-1.

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9. BOARD ACTION DIRECTED:

- a. Issue a New DD-214 / Separation Order:** Yes
- b. Change Characterization to:** Honorable
- c. Change Reason / SPD code to:** Completion of required Active Service/ KBK
- d. Change RE Code to:** RE-1
- e. Change Authority to:** AR 635-200

Authenticating Official:

7/25/2024



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