

1. Applicant's Name: [REDACTED]**a. Application Date:** 13 November 2023**b. Date Received:** 27 November 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, separation code change and a narrative reason change.

The applicant states in effect, they are submitting documentation to be able to use Veteran Affairs resources and benefits to pursue further educational opportunities in their now civilian life. They were separated from military service on May 31, 2022, due to being a COVID-19 refusal. They had been affected by COVID-19 and was quarantined by both Womack Army Hospital and their assigned unit for approximately three months, which played a part in their mental and behavioral health declining. They were diagnosed with high levels of anxiety, PTSD, as well as depression due to their time being quarantined and sick with both variants of COVID-19. After returning to their unit, they were informed to get vaccinated immediately or deal with the consequences, as they were going to get the shot one of their troops had a heart attack during morning PT, which was deemed a result of the COVID-19 vaccine. They then refused to be vaccinated due to that, as well as being informed by Womack Army Hospital staff that the vaccines and current antibodies in their system from being exposed for three months might not co-exist and potentially make them sicker.

Three months before their separation, they were informed by the out-processing staff at the soldier support center that they were able to receive any VA health and educational benefits upon separation. Following their separation, they attended SAUK Valley Police academy and a VA representative arrived to speak with a few military personnel in the academy about educational benefits and informed them that they did not qualify for any VA benefits and would need a discharge upgrade. They then contacted their VA Assistance Commission about submitting an upgraded discharge packet, they were informed that all COVID-19 refusals discharged with a general, under honorable conditions were all getting reversed so that they all would have access to their benefits. They were told they had access to educational benefits now, they submitted an online request for educational benefits and later they received a letter from the VA stating that they needed to meet the eligibility requirements for the educational benefits. It stated they did not have enough time on active duty, which requires 90 days. They enlisted February 2019, and was separated May 2022 which is well over 90 days on active duty.

Furthermore, it should be noted that on December 23, 2022, Section 525 of the 2023 National Defense Authorization Act required the Secretary of Defense to rescind the COVID-19 vaccination mandate for service members. Following this mandate on December 29, 2022, the Army directed commanders to suspend separation actions for soldiers refusing the COVID-19 vaccine. Additionally, the same day the Pentagon set the deadline for the services to enact the

mandate, the Army issued guidance stating they would remove or correct any adverse actions related to COVID-19 vaccine refusal in their records. Despite the reversal mandated by the Secretary of the Army, they have not received their updated service records reflecting this mandate. Once again, their sole and primary reason for separation from the United States Military was the refusal of the COVID-19 vaccine. Disregarding the COVID-19 vaccine refusal, they do not have any misconduct or neglect actions on their military record.

b. Board Type and Decision: In a records review conducted on 7 June 2024, and by a 5-0 vote, the Board 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, and the narrative reason for separation to Completion of Required Active Service, with a corresponding separation code to KBK. The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

Please see Section 9 of this document for more detail regarding the Board's decision.

1. 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: 8 April 2022

(2) Basis for Separation: The applicant failed to obey a lawful order to receive the COVID-19 vaccination.

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

(4) Legal Consultation Date: 12 April 2022

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 2 May 2022 / General, under honorable conditions.

2. SERVICE DETAILS:

a. Date / Period of Enlistment: 19 August 2019 / 5 years.

b. Age at Enlistment / Education / GT Score: 19 / High School Diploma / 97

c. Highest Grade Achieved / MOS / Total Service: E-4 (Specialist) / 31B10 Military Police / 2 years, 9 months, 12 days.

d. Prior Service / Characterizations: None.

e. Overseas Service / Combat Service: None.

f. Awards and Decorations: NDSM, GWTSM, ASR

g. Performance Ratings: N/A

h. Disciplinary Action(s) / Evidentiary Record:

(1) A Developmental Counseling Form dated 24 September 2021 provides the applicant was counseled by their commander after they declined the COVID-19 vaccine. They declined the vaccine three times.

(2) The applicant received a General Officer Memorandum of Reprimand for failing to obey a lawful order to receive the COVID-19 vaccination. The applicant acknowledged receipt of the reprimand on 14 October 2021 and elected to submit matters on their behalf.

(3) On 8 April 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.

(4) On 26 April 2022 the command endorsed and concurred with the commander's discharge recommendation and on 2 May 2022, the appropriate authority approved the separation and directed a general, under honorable conditions characterization of service.

(5) A Certificate Of Release Or Discharge From Active Duty document provides the applicant was discharged on 31 May 2022, they completed 2 years, 9 months, and 12 days of their contractual obligation.

i. Lost Time / Mode of Return: None.

j. Behavioral Health Condition(s): Anxiety, PTSD, and depression.

(1) **Applicant provided:** The applicant did not submit any documentation to support their mental health diagnosis.

(2) **AMHRR Listed:** None.

3. APPLICANT-PROVIDED EVIDENCE: A DD Form 293 (Discharge Review) application and a VA Form 21-4138 (Statement in Support of Claim) document in support of their petition.

4. POST SERVICE ACCOMPLISHMENTS: The applicant attended the SAUK Valley Police Academy in Dixon, Illinois on 9 January 2023.

5. 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 Recission of August 24, 2001 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.

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 waiverable and nonwaiverable 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 waiverable. Eligibility: Ineligible unless a waiver is granted.
- RE-4 Applies to: Person separated from last period of service with a nonwaiverable 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.

6. 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, a separation code change 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 19. On 24 September 2021 they declined the COVID-19 vaccine and received a GOMOR for failing to obey a lawful; to receive the COVID-19 vaccination and were processed for administrative separation.

- 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 with a general, under honorable conditions characterization of service.

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.

7. 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? **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: diagnosed in-service with Other Specified Anxiety Disorder and Adjustment Disorder unrelated to the vaccine. He did report inappropriate behavior by a leader noting the individual was a sexual predator but has not directly asserted MST.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant was diagnosed in-service with Other Specified Anxiety Disorder and Adjustment Disorder unrelated to the vaccine. He did report inappropriate behavior by a leader noting the individual was a sexual predator but has not directly asserted MST.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor determined that the medical condition is not mitigating and due to lack of information on potential LC experience this cannot be applied at this time. The Board's Medical Advisor applied liberal consideration and opined that while documentation does not suggest the diagnoses were related to the refusal and separation, the applicant did report inappropriate behavior by a leader which may have influenced his decision. The reported maltreatment could be considered by the Board in making a determination. At a minimum, recommend retaining the reentry code given the applicant's assertion of trauma which would benefit from evaluation prior to reenlistment.

(4) Does the condition or experience outweigh the discharge? **No.** Based on liberally considering all the evidence before the Board, the ADRB determined that the condition or experience did not outweigh the basis of separation.

b. Prior Decisions Cited: None.

c. Response to Contention(s): None.

d. 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. Therefore, the Board 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, the narrative reason for separation to Completion of Required Active Service, with a corresponding separation code to KBK. The reentry eligibility (RE) code will not change due to the applicant's service connected condition.

e. Rationale for Decision:

(1) The Board considered the applicant's statements, record of service, nature of misconduct, and the reason for separation- Applicant failed a lawful order to receive the COVID-19 vaccine for personal reasons. 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 also found sufficient evidence of in-service mitigating factors of (Length). Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation and the character of service the applicant received upon separation were inequitable. The applicant didn't have any additional misconduct. The Board accepted the B/I and determined that an upgrade to character of service and reason was warranted but retain the RE code due to the applicant's service connected condition that requires a waiver.

(2) The Board voted to change the applicant's narrative reason for separation to Completion of required Active Service with a corresponding separation code of KBK, as the reason the applicant was discharged was inequitable.

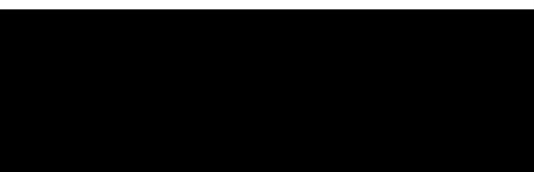
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

8. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Completion of Required Active Service/KBK
- d. Change RE Code to: No change
- e. Change Authority to: AR 635-200

Authenticating Official:

1/14/2025



Legend:
AWOL – Absent Without Leave

AMHRR – Army Military Human
Resource Record

BCD – Bad Conduct Discharge
BH – Behavioral Health

CG – Company Grade Article 15

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20230014357

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