

1. Applicant's Name: [REDACTED]**a. Application Date:** 16 November 2023**b. Date Received:** 16 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 and a narrative reason change.

The applicant states in effect, they enlisted as an Infantryman into the US Army to be nothing less than a great soldier. They believe they were just that. After basic training, they graduated from Airborne School and then went to Fort Bragg for Special Forces Selection Prep and Selection. They arrived in Italy, and while there they quickly rose above their peers, and soon found their self in leadership roles. They were promoted to Sergeant (E-5) in just over 3 years. They were a hard worker, strong leader, and they put their soldiers above anything else. They loved being a soldier and serving their country.

Their service was going great until the COVID-19 vaccination requirement was put into effect. For personal reasons including protection of their health, they respectfully refused the vaccination which resulted in their administrative discharge. This was the first, and only bad mark on their service; something that is no longer a requirement. They were not the type of soldier to commit a "serious offense". They took pride in their work, even when facing a chapter process, they went to BLC and earned the Commandant's list. They scored high on their APFT's and continued to lead soldiers in field trainings. Look at them for the soldier they were, and not just someone who did not want to put a brand new vaccine into their body.

b. Board Type and Decision: In a records review conducted on 31 May 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 applicant's current reentry eligibility (RE) code will not change.

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: 29 June 2022**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 29 March 2022

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

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

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 4 April 2022 / General, under honorable conditions.

2. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 August 2018 / 5 years.

b. Age at Enlistment / Education / GT Score: 20 / Associate Degree / 128

c. Highest Grade Achieved / MOS / Total Service: E-5 / 11B2P Infantryman / 3 years, 10 months, 24 days.

d. Prior Service / Characterizations: None.

e. Overseas Service / Combat Service: Italy / None.

f. Awards and Decorations: AAM, AGCM, NDSM, GWTSM, NCOPDR, ASR

g. Performance Ratings: NIF

h. Disciplinary Action(s) / Evidentiary Record:

(1) A Developmental Counseling Form dated 28 September 2021 provides the applicant was counseled by their commander after they declined to receive the COVID-19 vaccine on 23 September 2021.

(2) On 2 November 2021 the applicant received a General Officer Memorandum of Reprimand for disobeying a lawful order by refusing to become fully vaccinated against COVID-19. The applicant acknowledged receipt of the reprimand and elected to not submit written matters on their behalf.

(3) An Enlisted Record Brief (ERB) provides the applicant was flagged for adverse action on 6 October 2021 and flagged for involuntary separation on 21 March 2021.

(4) On 29 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.

(5) On 4 April 2022 the appropriate authority approved the administrative separation and directed a general, under honorable conditions characterization of service.

(6) A Certificate Of Release Or Discharge From Active Duty document provides the applicant was discharged on 29 June 2022, they completed 3 years, 10 months, and 24 days of their contractual obligation.

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

j. **Behavioral Health Condition(s):** None.

(1) **Applicant provided:**

(2) **AMHRR Listed:**

3. APPLICANT-PROVIDED EVIDENCE: An online DD Form 293 (Record Review) application, DD Form 214, GOMOR they received for disobeying a lawful order, Notification of administrative separation memorandum dated 29 March 2022, Administrative separation approval memorandum dated 4 April 2022 and two character letters that describes their work ethic, performance, and their character.

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

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, 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
- 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 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 20, they declined the COVID-19 vaccine and received a GOMOR for disobeying a lawful order by refusing to become fully vaccinated and were subsequently 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. A review of the AMHRR provides administrative irregularity occurred in the proper retention of required records; specifically, the AMHRR is void of documentation to support if they applicant was afforded the opportunity to consult with counsel. Notwithstanding the lack of evidence, the record provides the applicant was notified of the intent to separate them for failing to obey a lawful order and the appropriate approving authority approved the administrative separation. On 29 June 2022 the applicant was discharged under the provisions of AR 635-200, they received 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 diagnosis: GAD

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found anxiety symptoms secondary to the separation process.

(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 as it was secondary to the separation process rather than prior to. The Board's Medical Advisor applied liberal consideration and opined that given the anxiety symptoms were secondary to the separation there are no conditions influencing the separation. However, I would recommend retaining the reentry code given service connection for GAD and overall, 100% rating requiring waivers.

(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 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.

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, Quality). 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 determined that an upgrade to character of service and reason was warranted but retain the RE code due to the applicant's service connected BH condition.

(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.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20240000088

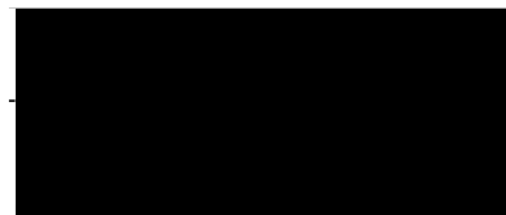
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation due to the applicant's behavioral health condition.

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:

10/29/2024



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