

**1. Applicant's Name:** [REDACTED]

- a. **Application Date:** 8 December 2023
- b. **Date Received:** 8 December 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 General (Under Honorable Conditions). The applicant requests an upgrade to show the characterization of service as Honorable along with a narrative reason change.

b. **Board Type and Decision:** In a records review conducted on 26 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, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The reentry eligibility (RE) code will not change.

*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 / General (Under Honorable Conditions)

b. **Date of Discharge:** 1 August 2022

c. **Separation Facts:** Provided by applicant.

(1) **Date of Notification of Intent to Separate:** 7 June 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:** On 17 June 2022, the applicant waived the right to consult with counsel.

(5) **Administrative Separation Board:** NA

(6) **Separation Decision Date / Characterization:** NIF

**4. SERVICE DETAILS:**

a. **Date / Period of Enlistment:** 22 September 2020 / 3 years, 29 weeks

b. **Age at Enlistment / Education / GT Score:** 23 / HS Graduate / 126

**c. Highest Grade Achieved / MOS / Total Service:** E-3 / 35F10, Intelligence Analyst / 1 year, 10 months, 10 days

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

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

**f. Awards and Decorations:** NDSM, GWOTSM, ASR

**g. Performance Ratings:** NA

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

(1) DA Form 268 (Report To Suspend Favorable Personnel Actions (Flag), 11 May 2022, reflects a flag was initiated against the applicant for involuntary separation effective 10 May 2022.

(2) The applicant was counseled on 11 May 2022 for declining to receive the COVID-19 vaccine and twice for being notified of a flagging action due to the intent to initiate separation proceedings. The applicant AMHRR is void of any other negative counseling.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** On-Line Application, Separation File

**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, 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.

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.

f. 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).

g. 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:

(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 waiverable. 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 along with a narrative reason change in accordance with the rescinded COVID-19 vaccination mandate. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects 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 and a RE Code of 3. The applicant was counseled and flagged for refusing to comply with the COVID-19 mandate. 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: Adjustment Disorder and Anxiety Disorder with Depressed Mood

(2) Did the condition exist or experience occur during military service? **Yes.** Adjustment Disorder and Anxiety Disorder with Depressed Mood

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor determined that the medical condition does not mitigate. The Board's Medical Advisor applied liberal consideration and opined that while the applicant's struggle with adjusting to service did underlie his decision to pull his exemption request, this doesn't rise to the level of symptoms and diagnoses which impact decision making capacity calling for liberal consideration relief. However, it can be considered. Given the in-service diagnoses and the applicant's assertion the military was not a good fit occurred less than 3 years ago, I'd recommend retaining the re-entry code.

(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 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, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. The reentry eligibility (RE) code will not change.

e. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable. The Board members discussed the applicant's file, the length and quality of service, no prior misconduct, COVID-19 vaccination refusal as the sole reason for separation, and the applicant's request for a religious exemption. Based on a preponderance of evidence, the Board found the current discharge inequitable and warranted an upgrade. The Board found that, but for refusal to take the COVID-19 vaccine, the applicant would have completed their term of enlistment. The Board voted to retain the RE Code of RE-3 based on the diagnosis of Adjustment Disorder and Anxiety Disorder with Depressed Mood which requires a waiver.

(2) The Board voted to change the applicant's narrative reason for discharge to Secretarial Authority, with a corresponding separation code to JFF, as the reason the applicant was discharged was both improper and inequitable.

(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:** Yes
- b. **Change Characterization to:** Honorable
- c. **Change Reason / SPD Code to:** Secretarial Authority / JFF
- d. **Change RE Code to:** No change
- e. **Change Authority to:** AR 635-200

**Authenticating Official:**

7/5/2024

