

1. Applicant's Name: [REDACTED]

- a. Application Date: 27 December 2023
- b. Date Received: 4 July 2024
- 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 uncharacterized. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, they were involuntary separated for refusing to receive the COVID-19 vaccination. They are requesting correction of their military records, benefits reinstatement and an honorable discharge following the rescission of the COVID-19 requirement.

b. In a records review conducted on 7 February 2025, the board determined by a vote of 4-1 that the discharge was inequitable, referencing the Secretary of the Army's policy memo dated February 24, 2023, which rescinded the COVID-19 vaccination mandate. The board examined the applicant's file and noted the applicant had submitted a request for religious accommodation; the only other document in the file was a counseling form advising the applicant not to report for drill until receiving the COVID-19 vaccine. Taking these factors into account, the board concluded that the discharge was inequitable and warranted an upgrade. As a result, the board voted to change the characterization of service to honorable, the narrative reason for separation to Secretarial Authority. The board voted to change the reentry eligibility (RE) code to RE-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: PE PRE-INIT AD TNG DSCHRG / NGR 600-200 / NA / RE-3 / Uncharacterized

b. Date of Discharge: 17 August 2022

c. Separation Facts:

(1) Date of Notification of Intent to Separate: NIF

(2) Basis for Separation: Entry Level Performance and Conduct – Failure to Report to drill

(3) Recommended Characterization: Uncharacterized

(4) Legal Consultation Date: NIF

(5) Administrative Separation Board: N/A

(6) Separation Decision Date / Characterization: 17 August 2022 / Uncharacterized

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 11 July 2019 / 8 years.

b. Age at Enlistment / Education / GT Score: 23 / Baccalaureate Degree / 106

c. Highest Grade Achieved / MOS / Total Service: E-4 (Specialist) / 42A10 Human Resources Specialist / NIF

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: NDSM, ASR

g. Performance Ratings: None

h. Disciplinary Action(s) / Evidentiary Record:

(1) Two Certificate of Release Or Discharge From Active Duty documents indicates that the applicant completed the required active service from 20191029 – 20200401 and from 20210630 - 20210903.

(2) An Enlisted Record Brief (ERB) dated 2 April 2020 indicates that the applicant was flagged for involuntary separation on 28 February 2020.

(3) A Developmental Counseling Form signed 21 July 2022 indicates that the applicant was counseled by their commander after they declined the COVID-19 vaccine on 17 July 2022.

(4) A Developmental Counseling Form signed 21 July 2022 indicates that the applicant was notified that they were not authorized to participate in drills, training, or other duties. No credit or excused absences were authorized to them while they were not fully vaccinated, exempt or pending exemption from vaccination against COVID-19.

(5) On 13 October 2021 the applicant received a General Officer Memorandum of Reprimand (GOMOR) for failing to obey a lawful order by refusing to become fully vaccinated. The applicant acknowledged receipt of the reprimand and they did not submit matters in response to the reprimand.

(6) On 17 August 2022 the applicant's immediate commander recommended separation from the New Mexico Army National Guard. The chain of command endorsed and concurred and the commander's discharge recommendation.

(7) On 17 August 2022 the applicant requested a discharge from the New Mexico Army National Guard.

i. Lost Time / Mode of Return: None.

j. Behavioral Health Condition(s): None.

(1) Applicant provided:

(2) AMHRR Listed:

5. APPLICANT-PROVIDED EVIDENCE: A DD Form 149 (Correction of Military Record) application, Religious accommodation request for exemption from immunizations memorandum, and a Medical Counseling for religious exemption request to vaccination memorandum in support of their application.

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

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. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

c. 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.

d. National Guard Regulation (NGR) 600-200 and Army Regulation (AR) 135-178 govern procedures covering enlisted personnel of the Army National Guard. Chapter 6 of NGR 600-200 sets the policies, standards, and procedures for the separation of enlisted Soldiers from the ARNG/ARNGUS. The character of service for administrative separation is based on a determination reflecting a Soldier's military behavior and performance of duty during a specific period of service. At separation, characterization of service are authorized: Honorable, General (Under Honorable Conditions), and Under Other Than Honorable Conditions. The service of Soldiers in entry level status is normally described as uncharacterized. Separation with an

uncharacterized description of service applies when separated in an entry-level status; or fraudulent entry, erroneous enlistment, reenlistment, void enlistment; or by being dropped from the rolls of the Army. Further, any of the types of characterization or description of service listed may be used in appropriate circumstances unless a limitation is set forth in section III of this chapter. Characterization of service as a result of administrative action is governed by this regulation and the service of Soldiers is either characterized or uncharacterized when they are separated from the ARNG.

(1) Paragraph 2-9b, prescribes, if a Soldier's service has been honest and faithful, it is appropriate to characterize that service as general (under honorable conditions). Characterization of service as general (under honorable conditions) is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

(2) Glossary states upon enlistment, a Soldier qualifies for entry level status during: The first 180 days of continuous active military service or the first 180 days of continuous active service after a service break of more than 92 days of active service. A member of a reserve component who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry level status upon enlistment in a reserve component. Entry level status for such a member of a reserve component terminates as follows: 180 days after beginning training if the Soldier is ordered to ADT for one continuous period of 180 days or more; or, 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active duty. For the purposes of characterization of service, the Soldier's status is determined by the date of notification as to the initiation of separation proceedings.

e. National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), establishes standards, policies, and procedures for the management of the Army National Guard (ARNG) and the Army National Guard of the United States (ARNGUS) enlisted Soldiers in the functional areas of: Classification and Reclassification; Personnel Management; Assignment and Transfer, including interstate transfer; Special Duty Assignment Pay; Enlisted Separations; and Command Sergeant Major Program.

(1) National Guard Regulation 600-200, paragraph 6-35 provides for State ARNG separations and reasons for separation from the State ARNG. All involuntary administrative separations require commanders to notify Soldiers concerning intent to initiate separation.

f. 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) 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.

8. 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 benefits reinstatement. The applicant's Separation Orders indicates that the applicant received an uncharacterized characterization of service.

b. Based on the available evidence the applicant enlisted in the Army National Guard and completed their required active duty training. The applicant formally declined to receive vaccination against COVID-19 and received a GOMOR for failing to obey a lawful order. They were recommended for discharge due to Entry Leve Performance and Conduct – Failure to Report to Drill. Evidence indicates that the applicant was not authorized to participate in drills while unvaccinated and their absence was not excused.

- The applicant's AMHRR indicates that they were flagged for involuntary separation before and after they declined the COVID-19 vaccination.
- The applicant provided documentation that indicates that they requested a religious exemption to the COVID-19 vaccination mandate. The Chaplain recommended approving their religious exemption.

c. 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

d. 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.

9. 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): The applicant requests an upgrade to honorable.

The board considered this contention during proceedings and granted an upgrade to honorable in accordance with the Secretary of the Army's Policy Memo dated February 24, 2023, which implemented the rescission of the Department of Defense's COVID-19 vaccination mandate. Additionally, the applicant provided a memo requesting religious accommodation to be exempted from receiving the vaccine.

c. The board determined the discharge is inequitable based on the Secretary of the Army's policy memo dated February 24, 2023, which rescinded the COVID-19 vaccination mandate.

The board examined the applicant's file and noted the applicant had submitted a request for religious accommodation; the only other document in the file was a counseling form advising the applicant not to report for drill until receiving the COVID-19 vaccine. Taking these factors into account, the board concluded that the discharge was inequitable and warranted an upgrade to honorable.

d. Rationale for Decision:

(1) The board voted to change the applicant's characterization of service to honorable based on the 24 February 2023 SECARMY Policy Memo regarding the rescission of the Secretary of Defense Coronavirus Disease 2019 (COVID-19) vaccination mandate. The applicant provided a religious exemption request and included documentation from their chain of command, which instructed them not to attend drills until they received the vaccine. Therefore, the previous characterization is no longer appropriate.

(2) The board voted to change the reason for discharge to Secretarial Authority under the same rationale, thus the reason for discharge is no longer appropriate.

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

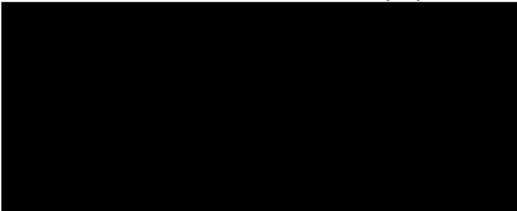
ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE
AR20240003990

10. BOARD ACTION DIRECTED:

- a. Issue a New NGB 22:** Yes
- b. Change Characterization to:** Honorable
- c. Change Reason to:** Secretarial Authority
- d. Change RE Code to:** RE-1
- e. Change Authority to:** NGR 600-200, Paragraph 6-35k

Authenticating Official:

8/22/2025



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