



UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01583

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His application for an Active Duty Service Commitment (ADSC) Waiver for Hardship be approved.

APPLICANT'S CONTENTIONS

The request for an ADSC waiver for Hardship was due to his son's medical condition (autism) and new symptoms that began to develop in late 2019. As such, he and his wife began to reassess his son's condition and attempted to get him additional treatment; however, their location in Enid, OK and the Oklahoma City Metropolitan area experienced a severe reduction in medical services related to his son's condition and due to the pandemic, his son's assessment and therapy was delayed for over two years. In addition, the applicant also had to undergo the process of requesting a religious accommodation request (RAR) for the COVID-19 vaccine and when his request, as well as his appeal was denied, he was given a direct order from his commander to submit his ADSC waiver for Hardship and his application for retirement. However, due to the delay with his son's medical assessments he had trouble getting the documentation to justify his waiver and the Secretary of the Air Force Personnel Council (SAFPC) denied his request. After he obtained the documentation, he appealed to SAFPC for reconsideration, but was notified that his case was closed, and further review of his application would not be entertained [sic].

He is currently still unable to obtain the prescribed and required therapy for his son and the waiver would allow him to retire and relocate to his home of record, where services are available, and his family would receive support from his extended family.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force lieutenant colonel (O-5).

On 5 Dec 17, the applicant signed an FY17 Aviation Bonus (AvB) Program Agreement and committed to an ADSC expiring on 26 Feb 25 in exchange for a Tier 2 Contract with annual payments of \$30,000.

The Military Personnel Database System (MilPDS), confirms the applicant's ADSC of 26 Feb 25 for his Aviation Bonus.

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On 18 Oct 21, the applicant submitted a request for ADSC Hardship waiver due to the increasing challenges of raising his autistic son and requested to retire on 1 Mar 22.

On 23 Nov 21, a policy memorandum from USAF/A1, announced guidance on Permanent Change of Station (PCS) restrictions for Active Duty Airmen who are not fully vaccinated against COVID-19 and restricted members not fully vaccinated from a PCS until fully vaccinated or they receive an approved medical exemption or religious accommodation.

On 17 Dec 21, according to the Air Force Personnel Board (AFPB) Vote Sheet, the SAFPC Board considered and unanimously disapproved his request for waiver of his ADSC due to Hardship. In this regard, according to an “Action on behalf of the Secretary of the Air Force” Instrument, dated the same date, SAFPC denied the request as the evidence presented was not sufficient to conclude that a hardship uncommon to other Air Force members exists. While the applicant did provide some documentation related to his son’s condition, most of this documentation is years old and does not speak to the current challenges articulated by the applicant. Furthermore, they also considered the request under the best interest of the Air Force criteria. However, given the acute need for rated personnel and the applicant’s lengthy service commitment, the evidence was not sufficient to conclude that releasing the applicant three years prior to the expiration of his commitment was in the best interest of the Air Force.

On 22 Feb 22, a memorandum from the USAF/SG states that the applicant’s final appeal of the RAR request for the COVID-19 vaccine was denied and on 23 Feb 22, the applicant acknowledged that he had five calendar days to receive the vaccine or apply for retirement or separation. As such, he opted to apply for retirement by 28 Feb 22.

On 27 Feb 22, the applicant submitted his second request for an ADSC Hardship waiver. The reasons for his waiver included becoming the primary care giver for his autistic son, as well as the denial of his RAR request for exemption to the COVID-19 vaccination.

On 1 Apr 22, according to the AFBP Vote Sheet, the SAFPC Board reconsidered the applicant’s request and unanimously disapproved the applicant’s request for a Hardship waiver. Of note, the Vote Sheet states that the applicant’s justification “provided 2021 mental health and autism diagnoses, but nothing more recent. Additionally, no EFMP (Exceptional Family Member Program) case management, primary care giver, or current education documentation.”

On 18 Apr 22, according to a memorandum titled “Appeal Regarding SAFPC – Retirement Request,” provided and signed by the applicant, he submitted an appeal to SAFPC’s decision and indicated that because he was ordered to apply for retirement within five days of the denial of his RAR for COVID-19, he was forced to resubmit the waiver prior to collecting all of the documentation on his son’s condition. As such, he requested that SAFPC reconsider his RAR request. In addition, he attached the following support documents not considered by SAFPC relating to the severity of his son’s autism: Tricare Diagnostic Checklist, dated 29 Mar 22; DD Form 2792, *Family Member Medical Summary*, dated 18 Apr 22; and an Initial Assessment and Treatment Plan.

On 27 Apr 22, according to an “Action on behalf of the Secretary of the Air Force” instrument, which amended an instrument signed on 11 Apr 2022, SAFPC reconsidered the applicant’s request for a Hardship waiver and Best Interest of the Air Force. The instrument notes that the applicant provided a copy of his son’s November 2021 psychological evaluation, which indicated a

diagnosis of Generalized Anxiety Disorder and Autism (high functioning). However, review by a SAF Personnel Council physician found that the documents did not show the severity of his son's autism and while some medical services may not be available in the immediate local area, the Board determined the applicant had not exhausted all avenues to resolve the situation, such as a request for a PCS. It further notes that members who apply for separation or retirement in lieu of receiving the COVID-19 vaccine and require a service commitment waiver are afforded the same opportunities as all other requests prior to 2 Nov 21. The Board recognizes the applicant may be subject to administrative discharge actions for refusal to obey a lawful order to receive the COVID-19 vaccine.

On 27 Apr 22, according to a myPers thread, the applicant received the corrected SAFPC instrument denying his hardship waiver request. In addition, the thread stated that the decision provided is final and indicated that his 18 Apr 22 appeal would not be reviewed, and he must apply to the BCMR for further consideration.

On 6 Jun 22, a memorandum from the Vance Exception Family Member Program Management (EFMP-M) Office, provided by the applicant, indicates that the applicant's, "child is not receiving the level of care recommended per his treatment plan. This inability to access the full breadth of ABA Therapy services outlined in the treatment plan could delay progress towards goals and have a profound effect on the child's overall prognosis."

On 30 Jun 22, a policy memorandum from USAF/A1 rescinded the Permanent Change of Station restrictions for active duty Airmen who were not fully vaccinated against COVID-19.

On 27 Jul 22, the district court filed a preliminary injunction against the DAF, which prevented commanders from taking adverse administrative actions to include administrative discharges on service members who had a submitted a religious accommodation request or had a request denied.

On 23 Dec 22, the President of the United States signed the National Defense Authorization Act into law and rescinded the US military's COVID-19 vaccine mandate and on 23 Jan 23, the Secretary of the Air Force published a memorandum rescinding the requirement for the COVID-19 vaccine and ordered that no individuals should be separated solely based on their refusal to receive the vaccine.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force (DAF) Mandatory COVID-19 Vaccine FAQ sheet, dated 15 Oct 21, states the following regarding members retiring or separating in lieu of taking the COVID-19 vaccine:

- In order to retire or separate in lieu of taking the COVID-19 vaccine, regular [or active component] Active-Duty Airmen and Guardians must have a commander-approved submission prior to 18 October 2021, and the approved retirement or separation date must be no later than 1 April 2022 (the first day of the fifth month following the COVID-19 mandatory vaccination date of 2 November 2021). If a member does not have an approved

effective retirement or separation date in line with the aforementioned timelines, they are required to be vaccinated.

- Active Duty Service Commitment waivers will not be automatically granted; however, Airmen and Guardians may, in accordance with AFI 36-3203, Service Retirements, paragraph 3.8., “Waiver of Restrictions,” request an Active Duty Service Commitment waiver in conjunction with their retirement or separation application.
- Regular [Active component] Airmen and Guardians may request to adjust their approved retirement or separation date to be effective NLT 1 April 2022 (the first day of the fifth month following the COVID-19 mandatory vaccination date of 2 November 2021).
- Service members with a request for medical, religious, or administrative exemption will be temporarily exempt from the COVID-19 vaccination requirement while their exemption request is under review. Service members who receive a denial of their medical, religious, or administrative exemption request have five (5) calendar days to begin a COVID-19 vaccination regimen, request an appeal, second opinion (medical exemptions), or initiate a request to retire/separate (AFR members cannot initiate a separation request but rather be involuntary reassigned to IRR).

Secretary of Air Force Supplemental Coronavirus Disease 2019 Vaccination Policy Memo, dated 7 December 2021, states:

- Pending Separation or Retirement - unvaccinated regular Airmen and Guardians who submitted a request to retire or separate prior to 2 November 2021, with a retirement or separation date on or before 1 April 2022, may be granted an administrative exemption from the COVID-19 vaccination requirement until their retirement or separation date.
- **Medical, Religious or Administrative Exemption** - unvaccinated regular Airmen or Guardians with a request for medical, religious, or administrative exemption will be temporarily exempt from the COVID-19 vaccination requirement while their exemption request is under review. **Service members who receive a denial of their medical, religious, or administrative exemption request have five (5) calendar days from that denial to do one of the following:** 1) Begin a COVID-19 vaccination regimen. If the service member indicates his or her intent is to begin the vaccination regimen, commanders may use their discretion to adjust the timeline based on local COVID-19 vaccination supplies; 2) Submit an appeal to the Final Appeal Authority or request a second opinion (medical). If a final appeal or exemption is denied, the service member will have five (5) calendar days from notice of denial to begin the COVID-19 vaccination regimen; 3) **If able, based upon the absence of or a limited Military Service Obligation (MSO), and consistent with opportunities afforded service members prior to 2 November 2021, request to separate or retire on or before 1 April 2022, or no later than the first day of the fifth month following initial or final appeal denial.**

Active Duty Service Commitment Waiver Requests

AFI 36-3203 3.8.2.1. Waiver Requests Based on Hardship. Applicants must explain, in writing, and provide detailed documentation to show the hardship, how retirement will ease or eliminate the hardship, and how the hardship condition arose or worsened after the service commitment or restriction occurred and what other efforts the member took to remedy the situation (e.g., request

for humanitarian/join spouse assignment, enrollment in the Exceptional Family Member Program, daycare, in-home care), before requesting a waiver to retire. A hardship situation cannot be common to other military members in the course of a military career. The AF recognizes timing of civilian employment, business opportunities, plans for higher education or training, ownership of property, family separation, and other inconveniences as common situations and will not approve waiver requests for these reasons alone. If the hardship request is based on the medical condition of a family member, the documentation provided must describe the assistive care required, as well as the prognosis (e.g., whether the condition is temporary or permanent).

Hardship—A fully-documented situation or circumstance that imposes undue privation or suffering on the member, household, or immediate family that has occurred since the member applied for retirement. Circumstances common among retirement-eligible members are not hardships, such as employment prospects or school year considerations.

AFI 36-3203 3.8.2.2. Waiver Requests Based on Best Interest of the Air Force. An application citing “best interest of the Air Force” as a basis for a waiver must clearly show how retirement would serve Air Force interests. Members and commanders should not use “best interest of the Air Force” as a basis for a waiver when an administrative or punitive action may be warranted or more appropriate. Further, waivers submitted for common situations such as those mentioned in paragraph 3.8.2.1, or based solely on manning or to save the AF money will not be considered.

Best Interest of the Air Force—A significant situation or circumstance, as determined by the member’s commander or other senior official, adversely affecting the unit or Air Force mission if the member’s request for waiver is not approved for retirement restriction, withdrawal or extension.

AIR FORCE EVALUATION

AFPC/DP3SA recommends denying the application. SAFPC considered the applicant’s request for both Hardship and Best Interest of the Air Force and ultimately disapproved the request and referred the applicant to the AFBCMR for further appeal. While it is unusual for SAFPC to refer a case to the AFBCMR for further consideration, DP3SA can only speculate that it may have been due to the COVID vaccine mandate and the process in place at the time. As such, there is no evidence of an error or injustice occurring in the processing of his previous retirement applications. After review of the documentation provided with the AFBCMR request, DP3SA did not find additional compelling information to warrant approval by the AFBCMR. The applicant was aware of the child’s diagnosis when he accepted the lengthy bonus commitment. While it is difficult to anticipate how a child’s development will change over the years and impossible to anticipate something like the COVID pandemic, the applicant was aware of the child’s medical condition at the time of accepting the service commitment and could have accepted a shorter commitment at that time which would have provided him more flexibility. Further, with the preliminary injunction preventing commanders from taking adverse action against members of the class who have not been vaccinated for COVID, that portion of his claim is now moot. Therefore, DP3SA finds that the applicant did not provide new evidence to show that he was experiencing a hardship uncommon to other service members. Further, if the EFMP program currently available to his child is insufficient to meet their needs, the applicant should pursue reassignment through that process rather than requesting such a lengthy waiver of the service commitment he voluntarily accepted.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 11 Oct 22 for comment (Exhibit D), and the applicant replied on 28 Oct 22. In his response, the applicant states that DP3SA has mis-stated his alleged error or injustice. He is not arguing that either of the two denials for his waiver were unwarranted. Instead, he contends that his family's position was never fully reviewed for consideration of hardship, and he requests that either SAFPC or AFBCMR review the complete waiver request with supporting documentation and then make a determination. He goes onto specifically respond to portions of the advisory and states:

He agrees with DP3SA that SAFPC likely referred his case to the AFBCMR due to the COVID vaccine mandate and further speculates that SAFPC understood his order to apply for retirement, prior to his son's assessments being complete so that he could gather the needed documentation.

He did not supply information to AFBCMR to overturn the decision of SAFPC and the amount of information is due to the 25-page limitation of the application process. Instead, he appeals for a review of the requested documentation from the first waiver denial, which he provided. Regarding the comment about him accepting a lengthy bonus commitment when he was aware of his child's diagnoses, he argues that it is difficult to anticipate how a child's development will change and it is impossible to anticipate something like the COVID pandemic, which is the very reason a hardship waiver exists.

The applicant goes onto state that DP3SA's recommendation to deny his request because he should have anticipated hardship in the future and applied for a shorter commitment is unreasonable. Furthermore, EFMP does not provide services for his situation. EFMP helps coordinate services from local providers and base agencies. In his case, EFMP states that the required services are unavailable to his family at Vance AFB or in the local community. Finally, DP3SA states reassignment to a location with available services should be pursued. However, he is not eligible for reassignment under current Air Force policy and even if he was, the reassignment would incur an additional commitment which his family cannot afford.

In support of his rebuttal, the applicant provides the same documents from his original BCMR submission, which includes the documentation not reviewed by SAFPC when considering his Hardship waiver request. In addition, he provides a new letter of support from his Group Commander along with referenced attachments. According to the letter, his commander recommends that the AFBCMR approve the request and indicates that when the applicant applied, he was precluded by policy from a PCS and given his families situation and the 24 months left on his ADSC, a PCS would be of little to no benefit based on the short duration of service at the PCS location.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP3SA and finds

a preponderance of the evidence does not substantiate the applicant's contentions. In this regard, the Board reviewed the applicant's waiver for hardship in its entirety and while we understand the challenge of raising an autistic son, the Board notes that at the time the applicant accepted the aviation bonus and incurred the ADSC, he was aware of his child's medical condition. The Board further notes that the restrictions precluding a PCS are no longer in place and while it may not be the most convenient option, the applicant can apply for a PCS under the exceptional family member program to move to a location where more optimal services could be provided for his family. As such, the Board does not find that the applicant's situation rises to a level of hardship uncommon to other service members and if he so chooses, he has avenues he could pursue to help resolve the situation, such as a PCS. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-01583 in Executive Session on 28 March 2023:

Work-Product, Panel Chair
Work-Product Panel Member
Work-Product Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 7 Jun 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP3SA, dated 3 Oct 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Oct 22.
- Exhibit E: Applicant's Response, w/atchs, dated 28 Oct 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

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