

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02354

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

1. His letter of admonishment (LOA) dated 29 Jul 21 be removed from his record.
2. His Article 15 dated 24 Oct 21 be removed from his record.
3. The AF Form 709, *Promotion Recommendation Form* (PRF), dated 22 Dec 21 be removed from his record.

### APPLICANT'S CONTENTIONS

The unjust documents were placed in his records and submitted to the CY22A Major Medical Service Corps/Nurse Corps (MC/NC) Central Selection Board (CSB). The unjust documents have resulted in his discharge from active duty.

On 29 Jul 21, he received a LOA for failing to obtain the annual flu vaccination. He was accused of endangering himself, his co-workers and patients and creating "grave risk." There was no evidence supporting the conclusions. The LOA further stated he could face trial by court-martial for failing to comply with military orders.

On 24 Oct 21, he received nonjudicial punishment (NJP) from his numbered air force commander (NAF/CC) for not obtaining the flu vaccine as ordered by the medical group deputy commander (MDG/CD).

His adverse reactions to the flu vaccine range from painful skin ailments, headaches, depression, neurologic issues and pain, bleeding, anemia, abdominal pain, joint pain and swelling, respiratory and pulmonary issues, pneumonia, hearing loss and vision problems. The hearing loss and vision problems started within 30 minutes of his flu vaccination on 19 Dec 19. He explained the circumstances to his MDG leadership many times and that his health was at stake. His MDG primary care manager (PCM) wrote in his medical records it was reasonable for him to be precluded from receiving future doses of the flu shot. He was also referred to allergy and pulmonary specialists. He provides medical documentation.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force captain (O-3).

In a memorandum for record (MFR) dated 4 Dec 20, his commander recommended the applicant's request for a pending religious accommodation waiver for the flu vaccine be denied. His commander stated he appeared to be trying whatever he could to get what he wanted and did not have sincerely held religious beliefs consistent with conscience objection to the flu vaccine. Last

year, he presented an opinion he had an allergy to the vaccine and yet he had never had any symptoms during multiple years of vaccinations. He was granted a consult with an allergist who evaluated him and confirmed he had no evidence of any allergy to the vaccine. He also met with the dermatologist who concurred that the applicant did not have any evidence of an allergic reaction. He was given a direct order from his squadron commander to get the flu vaccine.

On 3 Mar 21, his civilian pulmonologist wrote the applicant was allergic to the flu vaccine and should be exempt from getting it. He also had difficulties breathing when wearing masks and that it caused him throat infections. It was advised he wear face masks only when in direct patient care.

On 29 Jul 21, the applicant received an LOA. He was ordered multiple times verbally and in writing to take the annual flu vaccination. However, he failed to comply with the direct order. The LOA stated as a nurse, vaccination from infectious disease was critical to his safety and his patients. Per DoD 6205.02, *DoD Immunization Program*, all health care personnel working in DoD medical treatment facilities (MTF) were required to receive the annual seasonal influenza immunization or obtain an exemption. He was evaluated on 20 Nov 19 by an allergist who found he did not have a history of anaphylaxis to the flu vaccine. A review of his records also did not support a diagnosis of any type of true allergic reaction to the flu vaccine. He received the annual flu vaccine in the past with no true allergic reaction. On 24 Jun 21, the major command commander (MAJCOM/CC) denied his religious accommodation request. In his response dated 3 Aug 21, he requested the LOA be withdrawn based on fundamental fairness and that his career should not be defined by the incident. He stated he had a documented history of allergic reactions to the vaccine and his PCM acknowledged this in his medical record. The order given to him was not appropriate due to documented medical conditions he brought to his commander's attention. He continues to be denied both his religious and medical exemption requests, while there are policies allowing for both. He followed proper procedures and did not mislead anyone.

AF Form 3070C, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, dated 30 Aug 21, shows the applicant received an Article 15 for failure to obey a lawful order on 19 Aug 21 to obtain his flu vaccine. Punishment included forfeiture of \$3,011.00 pay per month for two months. The portion of forfeiture in excess of \$3,011.00 pay per month for one month was suspended through 25 Apr 22.

AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*, dated 29 Dec 21, shows the applicant's suspended punishment was vacated for failure to undergo COVID-19 screening testing on 6 Dec 21 as lawfully ordered.

On 26 Apr 22, the applicant was informed he was not selected for promotion by the CY22A Major (MSC/NC) CSB. Since this was his second non-selection, he was informed he would be separated no later than 31 Oct 22.

The Mental Health Template Medical Evaluation Board Narrative Summary, dated 10 May 22 shows his commander directed a mental health evaluation. It states when considering whether a person suffers from a delusion it must be verified that their belief is not supported by objective indicators. The MDG allergist concluded the applicant's complaints of psoriasis, and the flu vaccine had no basis in science. It did not appear the original complaint the applicant tied to the vaccination had an empirically supported connection in reality, and the record seemed to reflect psychological decompensation over time. From a diathesis-stress perspective, the applicant was a well-performing officer with a genetic predisposition for conditions on the schizophrenic spectrum experienced significant psychosocial stress that caused or exacerbated a low level psychological condition to emerge. He appeared to have decompensated over time as administrative pressures mounted against him, which helps explain why he appears to have become more perseverative and rigid in thinking over time.

On 21 Dec 22, he was retired in the rank of captain for permanent disability with a compensable rating of 100 percent.

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

### **APPLICABLE AUTHORITY/GUIDANCE**

Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, and DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph A14.2.1. All adverse information an officer receives will be filed in the OSR and be considered by promotion selection, special selection, and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have "extraordinary adverse information"). Adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be adverse, the information must be derogatory, unfavorable or of a nature that reflects unacceptable conduct, integrity or judgment on the part of the individual. Adverse information includes but is not limited to any substantiated finding or conclusion from an investigation or inquiry, regardless of whether command action was taken, court-martial findings of guilt, nonjudicial punishment (NJP) pursuant to Article 15, LOR, LOA, relief of command for cause, removal from developmental education for cause, and letter of counseling. All adverse information as defined will be permanently placed in the record. Except for set aside of a court-martial or NJP action, removal of adverse information from the records may only be directed by an AFBCMR recommendation.

### **AIR FORCE EVALUATION**

The AFBCMR Medical Advisor finds no basis to recommend granting any of the relief sought in the application. The applicant, although citing many physical and mental complaints, did not have a true and undeniable allergy to the flu vaccine. The objective evidence to prove an allergy existed was severely lacking and any recommendation to be exempted from the vaccine was based solely on subjective reporting by the applicant.

A typical vaccine-associated anaphylaxis could occur at more than four hours after immunization. There remains no question he received his first flu vaccine in Jan 07 and his last flu vaccine on 19 Dec 19. The referral to the allergist, dermatologist and pulmonologist were appropriate specialty referrals; however, there are inconsistent dates, self-symptom reporting and conflicting evaluations. There was an extreme lack of medical record documentation of his many stated physical complaints when compared to his firm stance that practically all his symptomatic medical history was the result of receiving the flu vaccine.

At least five months prior to his receiving his first flu vaccine, he complained of various bleeding issues and nasal inflammation that he later complained were caused by the flu vaccine. Other reported symptoms and conditions occurred outside of a medically plausible timeline from receiving the vaccine. This included the onset of depression approximately six months after the flu vaccine, despite having significant marital problems. Other examples included a diagnosis of pneumonia and throat inflammation/infections after five months of receiving the vaccine and mild nasal congestion 16 months after the flu vaccine. His belief of a nexus between his medical complaints and the flu vaccine remained emphatically rigid despite lacking biologic plausibility. Given such an uncompromising belief coupled with other highly outrageous comments made to mental health professionals led to his diagnosis of a delusional disorder.

Despite all of the applicant's physical and mental complaints, all which he rigidly related to receiving the flu vaccine, he would take the vaccine if he was to be deployed. Additionally, his

self-reporting of receiving 11 flu shots from 2007 and 2019 included him feeling “sickly” which was not subsiding. He progressively got sicker over a 12 year period. However, the intense degree of sickness was not evidenced within the reviewed records and did not rise to a level of a hospital visit. Lastly, he often claimed that adverse symptoms or reactions to receiving the flu vaccine occurred weeks to many months after getting the vaccine. This sort of claim is not medically known as a delayed immunologic response. An allergic reaction can be delayed by hours but is not biologically plausible to occur as delayed by weeks and months.

The complete advisory opinion is at Exhibit C.

AF/JA recommends denial. There were no errors or abuse of discretion in the LOA, the NJP or other administrative actions by the commander. Instead, there is ample evidence there were lawful orders that the applicant violated. Furthermore, the punishment imposed was within the permissible range for the offenses. The applicant waived his right to litigate his case before a jury of his peers after consulting with an attorney, and the NJP received multiple levels of legal review and appeal. The applicant has not submitted any new evidence or information that casts doubt on the legal sufficiency of the LOA, the NJP or other administrative actions.

The complete advisory opinion is at Exhibit D.

## **APPLICANT’S REVIEW OF AIR FORCE EVALUATION**

The Board sent copies of the advisory opinions to the applicant on 9 Nov 22 for comment (Exhibit E) but has received no response.

## **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 recommendations of the AFBCMR Medical Advisor and AF/JA and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The applicant contends the flu vaccination caused him adverse reactions and he blamed the flu vaccinations for his medical conditions. However, he has provided insufficient evidence to show a nexus between the flu vaccination and his documented medical conditions. Based on the evidence, it appears the adverse personnel actions were the result of the applicant’s refusal to follow lawful orders. Moreover, the Board finds the issuance of the LOA, NJP and PRF were within his commander’s discretion and authority and find no evidence the actions violated any regulations or were unjust. 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-2022-02354 in Executive Session on 21 Dec 22:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 1 Jun 22.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, Medical Advisor, dated 4 Oct 22.  
Exhibit D: Advisory Opinion, AF/JA, dated 6 Nov 22  
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Nov 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.