

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00524

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

1. His No Pay/No Points status for Jul 21 to Jul 22 be void and he be awarded the associated points and back pay for the period.
2. He be paid for the two weeks of annual tour (AT) time he was denied performing duties.
3. He be credited with a satisfactory year of service for his retention/retirement (R/R) year.

### APPLICANT'S CONTENTIONS

A federal judge determined the Air Force's order to get the COVID-19 shot was not legal for those who qualified for a religious exemption. The order was against his rights given by the Constitution. Further, he received an age waiver for service and the loss of the good year of service will result in him not being able to retire due to the maximum age of 68 for retirement.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a currently serving Air Force Reserve lieutenant colonel (O-5).

On 16 Oct 21, the applicant submitted a waiver request for the COVID-19 vaccination on the basis of religious accommodation in accordance with AFI 48-123, *Medical Examinations and Standards*. In his opinion, the request would not interfere with his primary duties, which included being a clinical nurse. In his request, the applicant cited passages from the Bible and stated he believed the genetic manipulation would harm his body. The COVID-19 shot could potentially destroy his body that God gave him to take care of. He noted fully vaccinated people were dying. He had COVID-19 and survived. His God given body was more prepared for another COVID attack than an experimental jab.

On 17 Oct 21, the AFRC/CC notified the applicant's wing chaplain there were zero prior meetings with him to discuss the applicant's faith tradition and orient the applicant to the religious accommodation process and possible outcome. It was recommended a religious resolution team be appointed if needed, to include the chaplain, surgeon general and judge advocate and any other needed subject matter experts to determine the effect the request for accommodation may have on the specific military policy, practice or duty from which the waiver was requested.

On 18 Oct 21, based on the applicant's interview with the chaplain, the wing chaplain recommended the applicant's religious accommodation waiver request be approved, provided there was no compelling government interests to deny the request.

On 5 Jul 22, the applicant received a letter of reprimand (LOR) from the wing commander. The specific reason was he failed to comply with the order by failing to provide sufficient documentation of being vaccinated.

On 9 May 22, he was informed by phone, the AF/SG denied his request for a religious accommodation waiver.

On 15 May 22, he refused to receive the mandatory COVID-19 vaccination despite having been issued a lawful order to do so on 15 Oct 21. The LOR is not contained in the applicant's automated records management system (ARMS) record.

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

### **APPLICABLE AUTHORITY/GUIDANCE**

AFI 36-2254 V1, *Reserve Personnel Participation*. All members must meet the medical standards in AFI 48-123, Volume I, and applicable Reserve medical guidance to be considered medically qualified to participate in any pay or point gaining active duty. A member identified as having a potentially disqualifying condition in accordance with AFI 48-123, *Medical Examinations and Standards*, will not be allowed to participate in any pay or point gaining activity until the disqualifying condition has been removed or an approved waiver is received from AFRC/SG in accordance with AFI 48-123.

DAFI 52-201, *Religious Freedom in the Department of the Air Force*, Paragraph 2.2. Airmen and Guardians may request religious accommodations from a policy, practice or duty. As the right to request religious accommodation is based on the Constitution and federal statutes, it is critically important to fully consider and appropriately value an airman's or guardian's request. Airman and guardians may request religious accommodation when the request is grounded in a sincerely held belief, but a Department of Defense (DoD) or an Air Force mandated policy, practice or duty substantially burdens the exercise of it. Paragraph 2.3. The Department of the Air Force will approve a member's request for religious accommodation unless the request would have a real (not theoretical) adverse impact on military readiness, unit cohesion, good order, discipline, health or safety.

### **AIR FORCE EVALUATION**

AFRC/A1KK recommends denial. The applicant has not provided supporting documentation to prove he has exhausted all avenues to correct the credits point summary to be awarded a year of satisfactory federal service from 27 Jul 21 to 26 Jul 22. Additionally, pay is not authorized for the period for which retirement points are granted. The applicant should submit a package through his chain of command requesting point credit for the periods missed.

AFMAN 36-2136, *Reserve Personnel Participation*, paragraph 2.3.2, states "Award a year of satisfactory federal service for retirement when a reservist earns a minimum of 50 points (including membership points) in their full R/R year in accordance with DoDI 1215.07, *Service Credit for Non-Regular Retirement*."

The applicant's point credit summary (PCARS) indicate he was awarded 16 years of satisfactory service. The period from 27 Jul 21 to 26 Jul 22 reflects 48 points, which is the only period he does not meet the minimum points requirements for a year of satisfactory service.

In Sep 22, AFRC/A1 released a strategic message and procedures implementing the Chief of the Air Force Reserve delegation of authority to grant retirement points to Reserve Component Service

members. Air Reserve Component members may be granted up to 35 points in a one-year period, to qualify for a reserve retirement year, for days of previously scheduled active service or periods of drill, or equivalent instruction, they were unable to perform due to cancellation, travel or duty restrictions from 1 Mar 20 through the date upon which the National Emergency Declared in Proclamation 9994 is lifted. A talking paper on authorized retirement points due to the pandemic accompanied the procedural guidance. It states, “no pay may be given for the period for which retirement points are granted.” Therefore, the request for lost pay for the missed periods is not authorized.

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 23 Oct 23 for comment (Exhibit D) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant did not exhaust all available non-judicial relief before applying to the Board for the request for points. However, he exhausted all available non-judicial relief for the request for pay 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 AFRC/A1KK and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The Board notes the applicant requests points and pay; however, the AFRC/A1 Sep 22 strategic message and talking paper clearly state no pay may be given for the period which retirement points are granted. The Board recommends the applicant pursue requesting points and a “good year” of service through his command as recommended by AFRC/A1KK. Should the applicant receive an unfavorable response from his command, he may request the AFBCMR reconsider his request. Therefore, the Board recommends against correcting the applicant’s records.

## **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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-00524 in Executive Session on 30 Nov 23:

- , 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 5 Feb 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFPC/DP3SP, w/atchs, dated 2 Oct 23.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Oct 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.