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UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01274

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. The following documents and actions be removed/expunged from his official military records:
 - a. Letter of Reprimand (LOR), dated 24 Mar 22.
 - b. Letter of Reprimand, dated 5 Apr 22.
 - c. Unfavorable Information File (UIF), dated 30 Mar 22.
 - d. Demotion to senior airman (E-4), dated 3 May 22.
2. Restoration of his grade to staff sergeant (E-5) with a date of rank (DOR) of 1 Feb 19.

APPLICANT'S CONTENTIONS

After his request for a religious accommodation to be exempt from receiving the COVID-19 vaccine was denied, he subsequently received two LORs for disobeying lawful orders to be vaccinated and then received an administrative demotion even though he voluntarily requested to be allowed to separate, which too was denied. Secretary of Defense (SecDEF) memorandum, *Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces*, dated 10 Jan 23, and Secretary of the Air Force (SecAF) memorandum, *Rescission of 3 September 2021 Mandatory Coronavirus Disease 2019 Vaccination of Department of the Air Force Military Members and 7 December 2021 Supplemental Coronavirus Disease 2019 Vaccination Policy Memoranda*, dated 23 Jan 23, both state that "The Military Departments will update the records of such individuals to remove any adverse actions solely associated with denials of such requests, including letters of reprimand." In accordance with Department of the Air Force Instruction (DAFI) 36-2502, *Enlisted Airman Promotion and Demotion Programs*, paragraph 6.1.6.1 states, "In the cases where the demotion reason has been removed the original date of rank and effective date will be restored." Further, it states in paragraph 6.9.3, "Revoke demotion orders and restore the Airman's grade, date of rank and effective date if the demotion authority determines there was no basis for the demotion."

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force senior airman (E-4).

On 28 Feb 22, according to memorandum, *Decision Regarding Religious Accommodation Request -<applicant's name>*, dated 28 Feb 22, the Air Force Global Strike Commander (AFGSC/CC)

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disapproved the applicant's request for religious accommodation to be exempt from the Air Force's COVID-19 immunization requirement.

According to documentation provided by the applicant:

On 1 Mar 22, according to memorandum, *Order Following Disapproval of Religious Accommodation Request for COVID-19 Vaccination Exemption - <applicant's name>*, his squadron commander ordered him to receive an initial dose to a COVID-19 vaccination and provide proof by 6 Mar 22 and that if he received an initial dose, he ordered him to receive the second dose of the vaccine and provide proof by 27 Mar 22.

On 24 Mar 22, according to memorandum, *Letter of Reprimand*, his squadron commander issued a LOR for disobeying a lawful order issued on 1 Mar 22 to provide proof of receiving his COVID-19 vaccination by 6 Mar 22, specifically for "disobeying a lawful order by refusing to obtain the vaccine." Additionally, he was informed of his commander's consideration of establishing an Unfavorable Information File (UIF) and placing him on a control roster.

On 30 Mar 22, according to AF Form 1058, *Unfavorable Information File Actions*, his squadron commander informed him of the decision to establish a UIF and to place him on a control roster.

On 5 Apr 22, according to memorandum, *Letter of Reprimand*, his squadron commander issued a LOR for disobeying a lawful order given on 24 Mar 22 to provide proof of receiving his Covid-19 vaccination by 29 Mar 22, specifically for "disobeying a lawful order by refusing to obtain the vaccine".

On 5 Apr 22 22, according to memorandum, *Order Following Disapproval of Religious Accommodation Request for COVID-19 Vaccination Exemption - <applicant's name>*, dated 5 Apr 22, his squadron commander ordered him to receive an initial dose of a COVID-19 vaccination and provide proof by 10 Apr 22 and that if he received an initial dose, he ordered him to receive the second dose of the vaccine and provide proof by 1 May 22.

On 11 Apr 22, according to memorandum, *Order Following Disapproval of Religious Accommodation Request for COVID-19 Vaccination Exemption - <applicant's name>*, dated 11 Apr 22, his squadron commander ordered him to receive an initial dose to a COVID-19 vaccination and provide proof by 16 Apr 22 and that if he received an initial dose, he ordered him to receive the second dose of the vaccine and provide proof by 7 May 22. On this same date, according to *Administrative Demotion of Airmen Memorandum*, the applicant's commander notified him of his decision to recommend he be demoted to the grade of E-4. On 3 May 22, the demotion authority, the 509 Maintenance Group Commander, decided the demotion to the grade of E-4 was appropriate with a new date of rank of 3 May 22.

Effective 3 May 22, according to *Special Order* Work-Product, dated 18 May 22, the applicant was demoted from the permanent grade of staff sergeant (E-5) to the permanent grade of senior airman (E-4) with a date of rank of 3 May 22.

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

AIR FORCE EVALUATION

AFPC/DPMSSM, recommends granting the request. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. He requested a

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religious accommodation waiver to be exempt from the COVID-19 vaccine. In AFGSC/CC memorandum dated 28 Feb 22, his request was disapproved. He was then issued an order on 1 Mar 22 to receive an initial dose of COVID-19 vaccination, which it was later noted he failed to provide proof and refused the vaccine. Due to his refusal, he received the first LOR, dated 24 Mar 22, and his commander established a UIF on 30 Mar 22. He received a second order to receive the vaccination on 24 Mar 22, in which he again refused or failed to provide proof of vaccination. As a result, applicant received the second LOR on 5 Apr 22, which was also placed in his UIF.

Both LORs were administered correctly, per DAFI 36-36-2907, *Adverse Administrative Actions*, paragraph 2.4, and applicable subparagraphs. Additionally, the UIF was established, and documents were filed in the UIF in accordance with paragraph 3.2. At the time of the administrative actions, the unit commander was within authority to administer LORs and establish a UIF for failing to comply with a direct order.

According to the SecDEF's memorandum dated 10 Jan 23, the COVID-19 vaccination mandate regarding members of the Armed Forces was rescinded. In the memorandum, the SecDEF directs the Military Departments to update the records of individuals who refused the vaccination, to remove any adverse actions solely associated with denials of such requests, including LORs. The SecAF's memorandum echoed SecDEF's guidance.

Therefore, as directed by both SecDEF's and SecAF's Recission of Coronavirus Disease 2019 Vaccination guidance, the LORs, dated 24 Mar 22 and 5 Apr 22, and the UIF should be removed from the applicant's record.

The complete advisory opinion is at Exhibit C.

AFPC/DPMSSP recommends granting the request. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. According to SecDEF's memorandum, dated 10 Jan 23, the COVID-19 vaccination mandate regarding members of the Armed Forces was rescinded. The memorandum directs the Military Departments to update the records of individuals who refused the vaccination, to remove any adverse actions solely associated with denials of such requests, including LORs. As he has met the qualifications of SecDEF's 10 Jan 23 memorandum, both the LORs and the UIF should be removed from his military record and his demotion should be rescinded and his grade be restored.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 3 Nov 23 for comment (Exhibit D), 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 the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPMSSM and AFPC/DPMSSP and finds a preponderance of the evidence substantiates the applicant's

contentions. Therefore, the Board recommends correcting the applicant’s records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

- a. The Letters of Reprimand dated 24 Mar 22 and dated 5 Apr 22, and the Unfavorable Information File dated 30 Mar 22 be declared void and expunged from all his records.
- b. The demotion action initiated and directed under the provisions of Air Force Instruction 36-2502, *Airman Promotion/Demotion Programs*, which demoted him from the permanent grade of Staff Sergeant to the permanent grade of Senior Airman, effective 3 May 22, be declared void and expunged from his records.
- c. He be reinstated to the grade of Staff Sergeant with his original effective date of 1 Feb 19.
- d. He receive all backpay and allowances associated with the removal of the demotion action and his reinstatement to the grade of Staff Sergeant.

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-2023-01274 in Executive Session on 9 Jan 24:

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

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 17 Apr 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPMSSM, dated 10 Oct 23.
- Exhibit D: Advisory opinion, AFPC/DPMSSP, dated 11 Oct 23.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 3 Nov 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.

4/28/2024

X Work-Product

Work-Product

Board Operations Manager, AFBCMR

Signed by: Work-Product