

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-01449

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His official military personnel record amended to reflect:

- a. Removal of Letter of Reprimand (LOR).
- b. Pay and points for a satisfactory year.

### APPLICANT'S CONTENTIONS

He was involuntarily sent to the Individual Ready Reserve (IRR) for disobeying a lawful order because he refused the COVID shot due to the fact that the shot on order, first of all, was not available in the United States. Second, it was an unlawful order, just like with anthrax. Therefore, he wants the LOR removed from his military record and back pay and points as a good year. If not for this unlawful order, he would have stayed in and finished his 20 years to get his retirement at age 60. Just retire him out because if he goes back to the base, he will probably face blow back with the upper command. He thinks he should get his retirement points restored up to date. In Dec 21, he was told not to report to base due to no pay, no points. An apology would be nice.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an Air Force Reserve staff sergeant (E-5) assigned to the Non-Participating Individual Ready Reserve.

On 28 Sep 18, according to Military Personnel Data System, the applicant enlisted in the Air Force Reserve for a period of six years, establishing a Date of Separation of 27 Sep 24.

On 3 Dec 21, according to Commander, XXXXXXXX Memorandum, Subject: Notification of Initiation of Involuntary Reassignment to the Non-Participating Individual Ready Reserve (IRR) and Denial of Participation, provided by the applicant, his involuntary reassignment to the IRR was initiated due to his failure to get the COVID-19 vaccine thereby failing to complete Individual Medical Readiness requirements. He was placed in a restricted participation status, prohibited from participating in any pay- or point-gaining activity during the reassignment process.

On 15 May 22, according to Reserve Order XXXXXX, dated 6 May 22, the applicant was reassigned to the Non-Participating Ready Reserve under the authority of Department of the Air Force Instruction (DAFI) 36-2110, *Total Force Assignments*, Table 12.3., Rule 7. Failure to comply with requirement for Reserve Component Physical Health Assessment or Individual Medical Readiness requirements.

As of 9 Jan 24, according to the Point Credit Accounting Record System (PCARS), the applicant did not earn sufficient points for a satisfactory year for the period 28 Sep 21 – 27 Sep 22.

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

## **APPLICABLE AUTHORITY/GUIDANCE**

On 23 Jan 23, the Secretary of the Air Force issued a memorandum rescinding the mandatory COVID-19 vaccination. In addition, it states, "No individuals currently serving in the Department of the Air Force shall be separated solely on the basis of their refusal to receive COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds. The Department of the Air Force will update the records of such individuals to remove any adverse actions solely associated with denials of such requests, including letters of reprimand. The Department of the Air Force will cease any ongoing reviews of current Service members religious, administrative or medical accommodation requests solely for the exemption from the COVID-19 vaccine or appeals of denials of such requests. Former Department of the Air Force Service members may petition the Air Force Discharge Review Board and Board for Correction of Military Records to individually request a correction to their personnel records, including records regarding characterization of their discharge. Additional guidance on implementation of the memorandum will be forthcoming, as needed."

## **AIR FORCE EVALUATION**

AFRC/A1KK recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice.

The applicant received the XXXXX memorandum, dated 3 Dec 21, notifying him of initiation of involuntary reassignment to the Non-Participating IRR and denial of participation due to failure to get the COVID-19 vaccine and failure to complete individual medical readiness requirements. The memorandum referenced DAFI 36-2110, paragraph 11.5., *Involuntary Reassignments to ARPC*, and Table 12.3., Rule 7, Failure to comply with requirement for Reserve Component Physical Health Assessment or Individual Medical Readiness requirements. Approval authority for unit level is Wing/CC or equivalent. Additionally, in accordance with Air Force Manual (AFMAN) 36-2136, *Reserve Personnel Participation*, Table 1.2., Note 3, the applicant was placed in a restricted participation status preventing him from participating in any pay- or point-gaining activity other than a military medical/dental evaluation or examination required for retirement processing.

The memorandum granted 15 calendar days to respond to the notification. Failure to acknowledge receipt of the memorandum or response within the 15 calendar days after receipt constituted a waiver of rights, with the result that the case would be processed based on the information available and without further notice. The memorandum [provided by the applicant] was not signed by him and there was no evidence of a response from the applicant. The third indorsement is also missing the commander's signature.

At the time the actions were taken, they were appropriate, equitable, and in accordance with valid, lawful policy. There were no records found to suggest the applicant submitted an accommodation request for the mandated vaccination requirements that were in effect during the time he was issued the LOR and assigned to the IRR. Service members must have formally sought an accommodation on religious, administrative, or medical grounds prior to, or concurrent with, the official initiation of the adverse action in order to receive relief.

Rescission of the Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces memorandums dated 24 Aug 21 and 30 Nov 21, and all Department of Defense (DoD) Component policies, directives, and guidance implementing those vaccination mandates

were in effect until 10 Jan 23. The applicant was issued the notification of initiation of reassignment to the IRR and NPNP [no pay/no points] on 3 Dec 21. Currently there is no DoD policy to provide back pay or point credit for service members who were involuntarily reassigned to the IRR or placed into NPNP for refusing a lawful order to take the vaccine.

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 10 Aug 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 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 commander's actions regarding involuntary reassignment of the applicant and his no pay/no points status were consistent with the substantive requirements of the COVID-19 vaccine guidance in effect at that time and within his discretion. There is no evidence the applicant requested accommodation based on religious, administrative, or medical grounds and no evidence he acknowledged the notification memorandum or submitted matters in his own support; thereby waiving his rights regarding the commander's actions per the memorandum instructions. The Board considered removal of the LOR referenced, but not provided, by the applicant; however, there is no evidence an LOR was issued and no copy of an LOR in his military human resources record. 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-2023-01449 in Executive Session on 21 Feb 24:

, 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 27 Apr 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRC/A1KK, dated 10 Jul 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Aug 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.

X

---

Board Operations Manager, AFBCMR