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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02915

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COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be promoted to the grade of lieutenant colonel (O-5) effective 18 Oct 21, the date of his Religious Accommodation Request (RAR) from the COVID-19 Vaccination.

APPLICANT'S CONTENTIONS

He was not able to be promoted to the grade of O-5 while serving as an Active Guard Reserve (AGR) in the grade of major (O-4) during the time he was waiting for approval of his RAR. He was deemed unqualified due to his vaccination status. Further, had he curtailed his AGR position for a traditional Reserve (TR) position, he would have immediately been placed in a No Pay/No Points status. His request is appropriate with the passage of the 2023 National Defense Authorization Act (NDAA) undoing the negative consequences tied to the COVID-19 vaccination policy.

Up until the COVID-19 vaccine mandate, there was never a question about his character, integrity or leadership. Although he engaged in no misconduct, followed proper procedures, and continued to perform at the highest level, he was denied the opportunity to accept a new position with promotion to the grade of O-5 because of his vaccination status. He properly filed a RAR waiver and should not have been discriminated against while the request was pending. The actions severely damaged his career and punished him because of his religious faith.

Counsel, on behalf of the applicant, contends the only reason he is not in the grade of O-5 is because he requested a RAR and was prevented from advancement due to his religious faith. Regardless of the legality of the COVID-19 vaccine mandate, the result was disparate treatment and discrimination based on religious faith. By not promoting him and adjusting his date of rank (DOR), the Air Force would be stunting the career of a remarkable airman and a man of exceptional character and potential.

The available evidence demonstrates the military had multiple methods to accommodate his sincere faith without negative impact to the mission. A military member may have a legal and moral obligation to disobey an unlawful order. The issues related to the vaccine mandate and the processing of accommodation requests have been deemed unlawful by federal court.

In support of his request, he provides AGR applications, dated 15 Feb 21, 15 Feb 21, 12 Aug 21 and 15 Feb 22, and letters of support for AGR positions.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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The applicant is a retired Air Force major (O-4).

In a memorandum dated 18 Oct 21, the applicant requested a RAR for waiver from the COVID-19 and all other immunizations. The applicant cited his beliefs as a non-denominational Christian. He stated he previously voluntarily took the influenza vaccine and was not aware he could request a RAR from vaccines.

Per Special Order **Work-Product**, dated 22 Mar 23, the applicant was retired in the grade of O-4, effective 1 Mar 24. His active service for retirement reflects 20 years and 13 days.

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

AIR FORCE EVALUATION

ARPC/DPAA recommends denial. There is no substantiated evidence to support the applicant was deemed unqualified for an O-5 billet solely based on his COVID-19 vaccine denial. Should the applicant have additional documentation from one or more hiring officials from the four vacancy positions to certify he was unqualified or not selected solely based on vaccination status, ARPC/DPAA and ARPC/PB can review for possible administrative correction.

The applicant provided source documentation for positions he was able to apply for, with the support of his commander, during the time his RAR was under review. However, there is no documentation to support his RAR was denied or prevented him from being considered for the vacancies he applied for. ARPC/DPAA has no record of his RAR being submitted to their office to begin voluntary or involuntary curtailment actions; thereby, his record was not flagged ineligible for future job opportunities. AGR members are unable to promote to the next grade unless they have applied for and have been hired for an AGR position at the higher grade.

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 24 Oct 23 for comment (Exhibit D), and the applicant replied on 27 Oct 23. In his response, the applicant contended there were policies in place in Sep 21 that prevented him from being promoted as an AGR or came with the financial consequence of being put in a No Pay/No Points status as a TR. The AFRC/CC's guidance for AGRs required being 100 percent green on individual mobilization readiness (IMR). If not, then an AGR application was not considered competitive and removed from consideration. Since the COVID-19 vaccine was added to the IMR, his AGR applications were not considered, and he was denied promotion. Had he elected to curtail his AGR tour and change his status to a TR, he would have been a victim of another policy by being placed in a No Pay/No Points status.

He was denied promotion due to the policies in place Aug 21 through Jan 23. Under the provisions of the NDAA, he qualifies for compensation and retirement in the grade of O-5 with his DOR backdated.

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 ARPC/DPAA and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The applicant contends he was denied an AGR promotion and assignment in the grade of O-5 due to his COVID-19 vaccination status; however, he has provided insufficient evidence to sustain his contention. As noted by ARPC/DPAA, the applicant’s records were not flagged to indicate his vaccination status and there is no evidence the applicant was denied an AGR position in the grade of O-5 based solely on his COVID-19 vaccination status. Further, two of the AGR applications provided by the applicant are dated 15 Feb 21, prior to the Sep 21 date when he states policies were put in place making him ineligible for promotion to the grade of O-5. The Board also finds no evidence the applicant was the victim of any disparate treatment or was discriminated against on the basis of his religious faith. Should the applicant provide specific evidence, such as letters from his commander or hiring authority confirming he was not selected for an AGR position in the grade of O-5 due to his COVID-19 vaccination status, the Board would be willing to reconsider his request. 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 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-2023-02915 in Executive Session on 13 Feb 24 and 13 Aug 24:

- 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 4 Sep 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPAA, dated 16 Oct 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Oct 23.
- Exhibit E: Applicant’s Response, dated 27 Oct 23.

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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.

9/26/2024

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Board Operations Manager, AFBCMR

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