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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03470

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His Letter of Reprimand (LOR) dated 10 Mar 22, be removed from his personnel records.
2. His Meritorious Service Medal (MSM) be added to his personnel record (**Administratively Corrected**).

APPLICANT'S CONTENTIONS

In Feb 22, he was under intense pressure from his leadership to receive the COVID-19 vaccination. On 25 Feb 22, he was ordered by his commander to receive the COVID-19 vaccine by 2 Mar 22 or submit a request to retire within six months. On 2 Mar 22, he submitted a retirement request instead of receiving the COVID-19 vaccine. On this same date, he received an email from his commander ordering him to receive the influenza vaccine (flu shot) by 9 Mar 22 or he would receive an in-person counseling session. He attempted multiple times throughout the week to get the flu shot, but the medical clinic was closed due to a base exercise.

On 11 Mar 22, the medical clinic opened, and he was able to get the flu shot. While he attempted to get the flu shot by 9 Mar 22, he was blindsided when he checked the Personnel Records Display Application (PRDA) in Jul 23 and discovered he was issued an LOR for failure to get the flu shot. As such, the issuance of the LOR represents an injustice because he attempted to get the flu shot before 9 Mar 22 and believes it was given in retaliation for his decision to retire instead of receiving the COVID-19 vaccine. He further contends his commander did not follow the procedures outlined in DAFI 36-2907, *Adverse Administrative Actions*, as he was unaware the LOR was placed in his records and was denied the opportunity to contest the creation of the Unfavorable Information File (UIF).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 10 Mar 22, the applicant acknowledged receipt of an LOR for failure to receive the mandatory influenza vaccination. On 15 Mar 22, he was notified by his commander he considered his response and decided to sustain the LOR. The commander further notified the applicant the final document would be placed in a UIF, and he was considering whether to place the LOR in his Officer Selection Record (OSR). The applicant acknowledged receipt and was given the opportunity to submit a response to the filing of the documents in the OSR. On 16 Mar 22, he

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provided a response for consideration, his commander considered the response and decided to file the LOR in his OSR. On this same date, the applicant acknowledged receipt of the final decision.

On 11 Mar 22, according to DD Form 2766C, *Vaccine Administration Record*, provided by the applicant, he was administered the influenza vaccine.

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

APPLICABLE AUTHORITY/GUIDANCE

Title 10, United States Code, Subchapter X – Punitive Articles, §892 – Article 92: Failure to obey order.

Any person subject to this chapter who

- (1) Violates or fails to obey any lawful general order or regulation;
- (2) Having knowledge or any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or
- (3) Is derelict in the performance of his duties;

Shall be punished as a court-martial may direct.

DAFI 36-2907, *Adverse Administrative Actions*,

2.3.5. Letter of Reprimand (LOR). Administrative censure for violation of standards which is more severe than a RIC, LOC, and LOA and indicates a stronger degree of official censure. It may also be issued when other, less severe methods have failed to correct behavior.

2.3.5.1. For officers only: Only supervisors and members of the officer's current administrative or operational chain of command may issue a LOR to an officer. (T-1) If the person who issues the LOR is not the officer's unit commander, the person who issued the reprimand must send it to the administrative unit commander. (T-1) The administrative unit commander acknowledges and endorses the DAF Form 1058, *Unfavorable Information File Actions* establishing the UIF or, if the member has an existing UIF, adds the document to the member's UIF. (T-1) Include the member's written acknowledgment and any documents submitted by the member in response to the administrative action taken. (T-2) See paragraph 1.2 and Attachment 8 for filing adverse in the OSR.

2.3.5.2. The DAF Form 1058 does not need to be referred to the officer for a response because LORs for officers are mandatory UIF filings. The DAF Form 1058 is used only to obtain the commander's acknowledgment of the action (for LOR administered by personnel other than the commander) and to refer the LOR for file in the UIF. The LOR will also be filed in the Master Personnel Record Group (MPerRGp) and Officer Selection Record (OSR). (T-0)

3.2. Initiating a UIF. The appropriate UIF authority initiates a UIF by referring applicable documents to the member using a DAF Form 1058. (T-1)

3.2.1. Officer UIFs. Optional documents (LOA and LOC) for officers are referred to the offending member with a DAF Form 1058 before establishing a UIF. For mandatory documents (Article 15s,

LOR, court-martial or civilian court convictions), **the DAF Form 1058 does not need to be referred to the officer for a response.** Should a member be issued an AF Form 3070C, *Record of Nonjudicial Punishment Proceedings (Officer)*, (for ANG use AF Form 3070D, *Record of Nonjudicial Punishment Proceedings (Officer) – Air National Guard Only*) then a DAF Form 1058 is not required because the UIF is established with the AF Form 3070C/E alone.

AIR FORCE EVALUATION

AFPC/DPMSSM recommends denying the applicants request to remove the LOR received on 10 Mar 22 and related adverse information from his Air Force records. He contends the LOR was retaliatory because he did not take the COVID-19 vaccine. He further contends he was unaware the LOR was in his personnel records and was not provided the opportunity to contest the creation of the UIF because his commander did not follow procedures according to DAFI 36-2907, paragraph 2.3.5.1. On 25 Feb 22, the applicant was ordered to receive the COVID-19 vaccine. He elected to retire in lieu of receiving the vaccination. Subsequently, his commander ordered him to get the mandatory influenza vaccination by 9 Mar 22. On 10 Mar 22, he was issued an LOR for failure to obey a lawful order to receive the mandatory influenza vaccination, in accordance with Article 92 of the Uniform Code of Military Justice (UCMJ). Paragraph 5 of the LOR states “If this LOR is sustained, it will be placed in an Unfavorable Information File (UIF) and will be referred for inclusion in your OSR.” He acknowledged receipt and understanding of the LOR on 10 Mar 22. On 15 Mar 22, the applicant acknowledged receipt and understanding of the commander’s decision to sustain the LOR and file it in the applicant’s UIF. Subsequently, on 16 Mar 22, the applicant acknowledged receipt and understanding of the commander’s decision to file the LOR in his OSR.

Finally, the applicant was administered an Article 15 on 11 May 22; however, the Wing Commander withdrew the Article 15 in “light of pending retirement.” Based on documentation provided by the applicant and analysis of the facts, there is no evidence of error or injustice on the part of the Air Force. The applicant acknowledged the LOR would establish a UIF and would be placed in his Air Force records. Furthermore, the applicant’s interpretation of DAFI 36-2907, paragraph 2.3.5.1 is not completely accurate. According to DAFI 36-2907, paragraph 3.2.1, “For mandatory documents (Article 15s, LOR, court-martial or civilian court convictions), the DAF Form 1058 does not need to be referred to the officer for a response.” Therefore, the commander was not required to notify the applicant when the UIF was created.

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 12 Dec 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 AFPC/DPMSSM and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The Board found the applicant acknowledged receipt of the LOR for failure to obey a lawful order to receive

the mandatory influenza vaccination, and that it would establish a UIF and be placed in his Air Force records. Furthermore, according to DAFI 36-2907 if an officer is issued an LOR then it is mandatory a UIF be established and therefore is not required to be referred to the officer for a response. Finally, the Board finds the actions taken by his commander were within his authority and finds no evidence that would justify overturning his decision to issue the LOR. 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-2023-03470 in Executive Session on 12 Mar 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 3 Oct 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSM, w/atchs, dated 27 Nov 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Dec 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.

4/24/2024

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