[redacted]

UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF: [redacted]

DOCKET NUMBER: BC-2024-00325

COUNSEL: [redacted]

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. Her letter of reprimand be removed and expunged from her official military records.

2. She be given backpay and retirement points from 1 Oct 21 through 14 Nov 23.

3. She be given backpay for missed flight pay and be granted Command Pilot status.

4. Approve active-duty day-for-day towards reduced retirement pay age (RRPA) from 1 Oct 21 through 14 Nov 23.

5. Approve her request for retirement in the grade of O-6 or alternatively order a medical evaluation board (MEB) to determine if she is retirement eligible.

APPLICANT'S CONTENTIONS

Her request is based on the following legal errors: The [redacted] Air Force Commander ([redacted]/CC) violated due process by illegally separating her from Title 10 Military Personnel Appropriation (MPA) orders without a board of inquiry (BOI); and [redacted]/CC improperly issued her a LOR despite following her commander's orders. In addition, she is eligible for equitable relief for the following reasons: The [redacted]/CC violated her sincerely held religious beliefs; she was entitled to a Disability Evaluation Board prior to separation; and her honorable service history demonstrated she is deserving of both promotion and retirement.

According to DoDI 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, Enclosure 4, *Discharge Review Standards*, E.4.2.1, A discharge will be deemed proper unless it is determined that an error of fact, law, and procedure or discretion existed at the time the applicant was discharged, and the error prejudiced the rights of the applicant. Further, according to E4.2.1.1, such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made. Likewise, according to *Burton's Legal Thesaurus 4E*, 2007, a material injustice is any act or omission that is so inapposite to acceptable standards as to render some unavoidable harm, legal or otherwise.

The [redacted]/CC illegally violated the applicant's due process. The termination of a Reservist on Title 10 orders must comply with DAFI 36-3211, *Military Separations*. The applicant was not afforded any due process when the [redacted]/CC involuntarily separated her from active duty (Active Guard Reserve (AGR)) orders and involuntarily transferred her to Traditional Reserve (TR) status. At no point did the [redacted]/CC provide her a hearing or opportunity for rebuttal as required by law or

[redacted]

[redacted]

regulation. The Work-.../CC repeated this error when he again involuntarily separated her and transferred her to the non-participating Individual Ready Reserve (IRR) without a hearing. This decision was illegal, immoral, and unethical. DoDI 1332.30, *Commissioned Officer Administrative Separations,* Glossary, defines a "separation" as "general term that includes discharge, release from active duty, release from custody and control of the Military Services, transfer to the IRR, DFR, and similar changes in active or Reserve Status. Additionally, DAFI 36-2110, *Total Force Assignments,* applies because at the time she had over 18 years of active-duty time and less than 20 years active-duty time. ANGI 36-101, *Air National Guard Active Guard and Reserve (AGR) Program*, paragraph 8.1.1 states the Commanding General has "the final authority for determining whether individuals who *are not in sanctuary* (emphasis added) will be separated from the AGR program. According to DAFI 36-2110, paragraph 9.1.4, active-duty sanctuary is a "means to protect ARC members who attain 18 but less than 20 years of TAFMS while serving on active duty," and if an officer has sanctuary, they may invoke sanctuary and must be retained until 20 years." Furthermore, according to 10 USC 12686, *Reserves on active duty within two years of retirement eligibility: limitation on release from active duty*, paragraph a, "member of a Reserve component who is on active duty (other than for training) and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system … may not be involuntarily released from that duty before he becomes eligible for that pay, unless the release is approved by the Secretary." The Work-.../CC had no authority to involuntarily separate or transfer her to the TR or non-participating IRR as she had over 18 years of service. Furthermore, this separation violation occurred because she had expressed her intention to submit a Religious Accommodation Request (RAR) under 42 USC 2000bb, *Congressional Findings and Declaration of Purposes* and DoDI 1300.17, *Religious Liberty in The Military Services*. As such, the Work-.../CC's actions were in direct violation of DoDI 1332.30, AFPD 52-2, *Accommodation of Religious Practices in the Air Force,* DAFI 36-2110 and *Arnett*, et al.

The Work-.../CC improperly reprimanded her for submitting both religious accommodation and medical exemption requests. The LOR stated the applicant was reprimanded for failing to "follow both of <Work-.../CC's> lawful orders61048112 to receive the COVID-19 vaccine." Specifically, the LOR stated, the first "order required you to submit a Religious Accommodation Request *and/or* (emphasis added) medical exemption by 3 Oct 21" and she failed to follow the Work-.../CC's second order by failing to be vaccinated by 19 Dec 21. However, she followed the Work-.../CC's orders as evidenced by the acknowledgment on the LOR which states, she was ordered to submit "a completed accommodation addressed to AFRC/CC (delivered to me) or proof of a medical exemption approved by a military medical provider." In this regard, on 30 Sep 21, she did in fact submit a RAR and per the Work-.../CC's order there was no obligation to submit *both* (emphasis added) a RAR and a medical exemption by the deadline. In reference to her medical exemption, her TRICARE coverage lapsed when she was involuntarily separated. She was also restricted from travel, which delayed her ability to meet with her primary care doctor to obtain a medical exemption. Had she been able to remain on her MPA order, she would have been in a pay status and been able to meet with her medical provider. If the Work-.../CC believed she should have submitted both exemptions by the 3 Oct 21 deadline, then he had an affirmative duty to ensure his orders were clear and not ambiguous, and that she was provided the means to follow his orders. Further, she submitted multiple medical exemptions: an exemption based on natural immunity; an exemption based on her participation in a blind cohort study; and an exemption based on allergic reactions to Polysorbate and Polyethylene Glycol, two components of the COVID-19 vaccine. Finally, she was under no responsibility to adhere to the Work-.../CC's vaccine order as the order was illegal. According to Benchbook Instruction, 3-16-1, *Violating General Order or Regulation (Article 92)*, a lawful order is "An order or regulation is lawful if reasonably necessary to safeguard and protect the morale, discipline, and usefulness of the members of a command and is directly

connected with the maintenance of good order in the services." Here, the COVID vaccine order was manifestly illegal. There is no evidence the order to receive the COVID vaccine was necessary to safeguard or protect the morale, discipline, or usefulness of the member's command. Nor is there evidence the COVID vaccine order was directly connected with the maintenance of good order and discipline. Instead, it ordered the applicant to take a vaccine developed using aborted fetal cell lines in violation of her Christian beliefs. Therefore, the LOR served as nothing more than reprisal against the applicant for being openly Christian in the Air Force.

Perhaps the most heinous fact is the Work-.../CC discriminated against the applicant because of her religious beliefs. As a pro-life Christian, she opposes abortion because she believes all persons are created in the image of God and deserve basic human dignity from conception until natural death. As such, she believes the unlawful taking of a human life in the womb is murder. The COVID vaccine were messenger ribonucleic acid (mRNA) vaccines developed using aborted fetal cell lines. For her to take the COVID vaccine, she would have to willingly inject herself with a vaccine produced using cells taken from children who were aborted, in direct contravention of her sincerely held religious conviction. To make matters worse, she was involuntarily separated from AGR duty because she *intended* (emphasis added) to submit a RAR. According to AFPD 52-2, paragraph 1.1, the Air Force claims to place a "high value on the rights of Air Force members to observe the tenets of their respective religions." Here, the Work-.../CC involuntarily separated her from her active-duty position and transferred her to TR status for stating she would submit a RAR. Her RAR cannot be considered a threat to others, the Air Force, or national security. She worked for Work-... throughout the pandemic and never missed work due to illness and was commended in her final OPR for stellar performance in keeping the schoolhouse operational without significant delays. Finally, she lost her career, promotion to O-6, and her retirement because the Work-.../CC gave her a Hobson's Choice: Obey your God or the Air Force.

Had the Work-.../CC followed proper procedures, she would have been granted a medical evaluation board (MEB) prior to separation from the Air Force. The result of the MEB likely would have resulted in her being approved for either a medical retirement or medical separation as she is 80 percent disabled and still has open Department of Veterans' Affairs claims. While she was serving in the IRR and despite egregious actions against her, she was promoted to O-6. On 14 Nov 23, as a result of the 2023 NDAA, she was accepted back into the Air Force Reserve with her promotion to O-6 being backdated to 1 Apr 23. Therefore, she should be provided with backpay and retirement points for the period of 1 Oct 21 to 14 Nov 23.

Finally, without question she is one of the best and brightest the Air Force has to offer. She is an exceptional Airman, and her 19 years of honorable service history demonstrates she is deserving of her requested relief.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve (AFR) O-6.

On 20 Sep 18, the applicant was promoted to lieutenant colonel (O-5).

On 1 Oct 18, according to the Applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty,* she entered a period of active-duty service.

According to Special Order Work-Product dated 26 Dec 19, the applicant who was currently serving on extended active duty (voluntary) orders until 12 Jan 20 per 10 USC 12301(d) for duty in accordance with 10 USC 12310, is reassigned and continued on extended active duty (voluntary) in accordance with 10 USC 12310 with a new date of separation of 30 Sep 23, unless sooner relieved.

On 24 Aug 21, the Secretary of Defense issued a memorandum for Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members. The memo directed the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces and mandated that all service members comply with the Secretary of Defense directive.

According to Headquarters Fourth Air Force memorandum, dated 8 Sep 21, the Work-.../CC ordered the applicant to receive an initial dose of a COVID-19 vaccine with full licensure approval from the Food and Drug Administration (FDA) and provide proof by 3 Oct 21. Additionally, she was ordered to receive the second dose of the same vaccine and provide proof by 7 Nov 21. The memorandum further states the due date (3 Oct 21) also applied to exemptions and either a completed RAR addressed to the AFRC/CC or proof of a medical exemption approved by a military provider must be submitted.

On 11 Sep 21, the memorandum shows the applicant acknowledged receipt of the order.

According to Reserve Order Work-Product, dated 27 Sep 21, the member was to be placed on MPA orders for a period of 180 days, with an end date of 29 Mar 22, in accordance with Title 10 USC 12301(d) per Executive Order 89999M "MANDAYS (ALL OTHERS) and AFI 36-2619. However, on 29 Sep 21, according to email, Work-.../CC *Disapproval/Cancellation of MPA orders due to RAR*, the applicant confirmed her MPA orders from 1 Oct 21 to 29 Mar 22 "were no longer permitted by [Work-.../CC] due to her intent to submit a Religious Accommodation Request."

On 30 Sep 21, according to her DD Form 214, she was released from active duty with the narrative reason of separation of "Completion of AGR Military Duty Tour." On that same date, according to the memorandum, *Religious Accommodation Request* (RAR) *for Immunization Waiver*, she requested a religious accommodation waiver for the COVID-19 immunization.

On 2 Oct 21, according to the memorandum, *Acknowledgement of Counsel Given and Received,* the applicant acknowledged she was counseled by both her unit commander and Medical Group medical provider to ensure she is making an informed decision that non-compliance with immunization requests may result in adverse effects.

On 22 Oct 21, according to the memorandum, *Request for Immunization - <applicant>*, the AFRC/CC denied her request for a religious exemption.

On 30 Oct 21, according to memorandum, *APPEAL – Religious Accommodation for Immunization Waiver Denial*, she submitted an appeal of the AFRC/CC decision to deny her RAR to the Air Force Surgeon General (AF/SG).

On 2 Dec 21, according to memorandum, *Decision of Religious Accommodation Appeal*, the AF/SG denied her RAR appeal.

On 10 Dec 21, according to memorandum, *Reconsideration Request – Religious Accommodation for Immunization Appeal Denial*, she requested AF/SG reconsider the denial of her RAR request. On that same date, according to memorandum titled, *Medical Exemption Request,* addressed to AFRC/CC, the applicant also requested a 90-day medical exemption from the COVID-19 vaccine "due to the lack of current availability of an FDA fully approved and licensed COVID-19 vaccine, not under Emergency Use Authorization (EDA)."

On 13 Dec 21, according to an email, *Reconsideration Request of AF/SG Denial of Religious Accommodation Request*, she was informed in accordance with DAFI 52-201, paragraph 3.1, the AF/SG serves as the final appeal authority and their denial decision is final.

On 14 Dec 21, according to an email, *Medical Exemption Request – Determination Disapproved*, she was informed by the Wor... Aerospace Medicine Squadron (AMDS) SGA that her request for a medical exemption was not approved because it does not meet the medical exemption criteria.

On 16 Dec 21, according to memorandum addressed to Work-.../CC, *COVID-19 Vaccination Exemption Request*, she requested an approximate nine-month exemption due to her active participation in a cohort clinical study/trial. The study requires her to be unvaccinated for the duration of the trial.

On 4 Jan 22, according to a memorandum addressed to AFRC/CC, *Medical Exemption Request*, she submitted a second request for a medical exemption to the COVID-19 vaccine pursuant to AFI 48-110, *Medical Examinations and Standards*, paragraph 2.4. and sub paragraphs a, b, and c.

On 5 Jan 22, according to an email, *Denial of Temp Exemption Based on Study Participation*, the Wor... AMDS/SGN denied her request for a temporary medical exemption based on her admission to a cohort study, stating the only studies that were approved for an exemption were studies in which members received a COVID vaccine. On that same date, according to email traffic, *Medical Record Documentation* and *Allergy-based Med Exemption Request*, she requests an allergy-based exemption for the COVID-19 vaccine. AMDS/SGN's initial response grants a 30-day Temp Medical Exemption; however, later that same date, AMDS/SGN further replies stating "As you and I discussed tonight there will not be any TEMP MED EXEMPTION. Claiming an allergy to a preservative in a vaccine without having had the vaccine is not a reason AFRC will approve an exemption. What it comes down to is you must take at least one COVID vaccine and have had an adverse reaction before you can claim an allergy to it."

On 6 Jan 22, according to a memorandum, *Letter of Reprimand*, the applicant was issued an LOR by the Work-.../CC for failure to follow a lawful order to receive the COVID-19 vaccination.

On 22 Feb 22, according to a memorandum, *Notification of Involuntary Reassignment – Non-Participating Individual Ready Reserve (IRR)*, the Work-.../CC notified her they were initiating an involuntary reassignment to the non-participating IRR.

On 23 Mar 22, according to Reserve Order Work-Product dated 28 Mar 22, the applicant was relieved from Wo... AF and reassigned to ARPC (IRR).

On 1 Nov 23, according to Reserve Order Work-Product dated 13 Nov 23, she was reassigned from ARPC (NNRPS) and assigned to Wor... Combat Operations Squadron.

According to the applicants Point Credit Accounting and Reporting Summary (PCARS) report pulled from the Military Personnel Data System (MilPDS), for Retention and Retirement (R/R) year 29 Oct 21 – 28 Oct 22 the applicant was credited with 18 points towards retirement and for R/R year 29 Oct 22 – 28 Oct 23, the applicant was credited with 15 points towards retirement.

On 1 Apr 23, according to the Retrieval Applications Website (RAW) Report on Individual Personnel (RIP), the applicant was promoted to the grade of Colonel (O-6). In addition, the applicant has 9 years and 15 days of Total Active Federal Military Service (TAFMS) and 19 years of satisfactory service.

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

APPLICABLE AUTHORITY/GUIDANCE

10 U.S. Code § 12683 - ***Reserve officers: limitation on involuntary separation*****, (a)** An officer of a Reserve component who has at least five years of service as a commissioned officer may not be separated **from that component** without his consent except—**(1)** under an approved recommendation of a board of officers convened by an authority designated by the Secretary concerned; or **(2)** by the approved sentence of a court-martial.

10 U.S. Code § 12646 - ***Commissioned officers: retention of after completing 18 or more, but less than 20, years of service*****,** (d) Subsections (a) and (b) do not apply to—(1) officers who are discharged or transferred from an active status for physical disability, for cause, or because they have reached the age at which transfer from an active status or discharge is required by law;

DAFI 36-2619, ***Active-Duty Operational Support- Active Component Man-Day Program*****:**

1.1.3. Before volunteering for activation for an ADOS-AC man-day tour: ANG Airmen must have concurrence of their state and wing leadership; Unit Reservist must have concurrence of the supporting commander; Individual Mobilization Augmentees (IMA) must have approval of owning RegAF commander/director and detachment commander; Supporting units will verify all ARC Airmen meet AF readiness requirements as well as uniform, dress and appearance standards.

1.2.5. Supporting ARC Units and Units/Organizations to which ARC Airmen are assigned: Identifies volunteer filling the ADOS-AC tasking and ensure Airmen meet basic AF readiness requirements (e.g., training, fitness, **immunizations**, dental, medical, security clearance).

1.2.6. ARC Airmen. Maintains AF readiness requirements.

1.3.9. Once an ARC Airman begins an ADOS-AC man-day tour, they are obligated to fulfill the entire tour length unless: a) they are found not capable or unfit to perform the RegAF mission for which they were selected; b) the ARC commander (supporting commander) requests early termination based on ARC mission requirements; or c) the RegAF commander (supported commander) approves early release based on the ARC member's request.

2.3. Tour Curtailment Notifications. 2.3.2. Airmen may request curtailment of orders; however, approval is based on the needs of the RegAF commander and supported mission.

1.4. ADOS-AC Man-day Tour Eligibility; ARC Airmen: 1.4.3. Must meet requirements in AFI 36-2903, *Dress and Personal Appearance of Air Force Personnel,* AFI 36-2905, *Fitness Program,* **AFI 48-123, *Medical Examinations and Standards*,** and AFI 36-2651, *Air Force Training Program*. 1.4.6. Must gain approval from their Administrative Control (ADCON) commander before performing a man-day tour. Further, ADCON commander may withdraw his/her consent to release for cause, due to mission requirement, etc., as needed. If performing duty for another command, staff, or agency, the Airman remains obligated to fulfill necessary training requirements as directed by the supported unit or parent organization.

Air Force Guidance Memorandum (AFMAN11-401_AFGM2024-01, to Air Force Manual (AFMAN) 11-402, *Aviation and Parachutist Service*, Table 4.1. *Mandatory Requirements for Award of Aeronautical Ratings*. Use the following Table:

LINE	**A**	**B**	**C**	**D**	**E**
	Rating	Rated Service or Formal Training	Operational Flying Duty Accumulator	Military Flying Time	Application Required
4	Senior Pilot	At least 7 years rated service as a pilot, permanent award of USAF pilot aeronautical rating, **and**	72 Months **or**	At least 2000 total pilot hours **or** 1300 hours (any combination of primary, instructor, and/or evaluator pilot time)	No
5	Command Pilot	At least 15 years rated service as pilot, permanent award of USAF Senior Pilot aeronautical rating, **and**	144 months	At least 3000 total pilot hours **or** 2300 hours (any combination of primary, instructor, and/or evaluator pilot time)	No

Air Force Manual (AFMAN) 11-421, *Aviation Resource Management*, 23 Mar 20:

6.2. Types of Flight Pay. 6.2.1. AvIP. Rated officers must be entitled to basic pay, hold a current aeronautical rating or be enrolled in training leading to an aeronautical rating, and be qualified for aviation service in accordance with AFI 11-401 and AFMAN 11-402 to receive continuous or conditional AvIP.

6.2.4.6. When a rated officer or CEA is suspended from aviation service, entitlement to continuous AvIP or CSIP will stop effective the day prior to the date of suspension in accordance with AFMAN 11-402 (T-1) Once the suspension is removed and the member is returned to aviation service, entitlement to AvIP or CSIP will be effective the date of the original suspension.

DAFI 36-3204, *Service Retirements*, 29 Jan 21, paragraph 3.1.1.3. Sanctuary. Per 10 USC § 12686(a), *Reserves on Active Duty Within Two Years of Retirement Eligibility: Limitation on*

Release From Active Duty; Limitations, and 10 USC § 12646(e)*, Commissioned Officers: Retention of After Completing 18 or More, But Less Than 20, Years of Service*, traditional ANG or AFR members, including individual mobilization augmentees (IMAs), called to AD who have accumulated 18 years of TAFMS may be eligible to continue to 20 years on AD status unless the members waive sanctuary (Reference DAFI 36-2110, *Total Force Assignments,* for further guidance).

DAFI 36-2110, *Total Force Assignments*:

9.1.4. Active-Duty Sanctuary. Active-Duty sanctuary is a means to protect ARC members who attain **18 but less than 20 years of TAFMS** while serving on active duty (other than for training). Unless they have waived the right, voluntarily separated, medically disqualified for continued service, administratively discharged, or either separated or discharged for cause, these members may invoke sanctuary and must be retained on active duty until 20 years TAFMS.

11.2. Reassignment for Medical Reasons. To operate efficiently the Air Force must protect the health and safety of its military personnel.

11.2.1. IRs with expired Reserve Component Physical Health Assessment requirements will be restricted from participation (except for the purpose of obtaining their current exam). Members with any expired Individual Medical Readiness requirements in accordance with DAFMAN 48-123, *Medical Exemptions and Standards* are subject to involuntary reassignment to a non-participating status, (see **Table 12.3**, rule 7). **(T-2)**.

11.2.2. Expired Individual Medical Readiness Requirements. Unit Reservist should be involuntarily discharged if they have any expired Individual Medical Readiness requirements, in accordance with DAFI 36-3211. However, if the commander, for good cause, declines to initiate involuntary discharge, can initiate involuntary reassignment action in accordance with **paragraph 11.5** and **Table 12.3**, Rule 7 if a member fails to complete the Individual Medical Readiness requirements or provide documentation as required or directed.

Chapter 17, *Administration of Sanctuary in the Air Reserve Component*, 17.3. Guidance. If a member is not on a sanctuary waiver and desires to invoke sanctuary protection under 10 USC § 12686(a), they must claim such protection while on active-duty orders (other than for training) and while in the sanctuary zone. **(T-0)**. The request must be in writing and submitted in accordance with ANG or AFR program directives for processing. **(T-1)**. Absent a written claim for sanctuary zone protection, the component will consider the member's release from active duty as voluntary and sanctuary protection will be deemed not properly requested.

17.13. Reserve Sanctuary. 17.13.1. General Guidance: Reserve sanctuary under 10 USC § 1176 (b), *Enlisted Members: Retention After Completion of 18 or More; but less than 20, Years of Service* (enlisted), 12646(a) and (b) (officer) is provided for AFR and ANG members serving in an active Reserve status who have completed at least **18, but fewer than 20 years of satisfactory service.**

17.13.4. Officer Eligibility: 10 USC § 12646 allows officers within the age limitations, and physical qualifications, and otherwise eligible for continued service to be eligible for Reserve sanctuary, if they have completed 18, but less than 20 years of satisfactory service, and are otherwise eligible for Reserve retirement. 17.13.4.4. Members assigned to the Non-Obligated Non-Participating Ready Personnel Section and Inactive Status List Reserve Section are placed in

Reserve Sanctuary by ARPC/DPT, while unit and IMA members continue service with their assigned organization.

17.13.5. Officer Ineligibility: Officers who are discharged or transferred from an active status for physical disability, for cause, or because they have reached the age at which transfer from an active status or discharge is required by law, are not eligible for Reserve sanctuary under 10 USC § 12646.

17.13.9. Pre-Separation Counseling: A member in Reserve sanctuary shall receive pre-separation counseling as required by 10 USC § 1142, *Preparation Counseling; Transmittal of Certain Records to Department of Veteran Affairs*.

Table 12.3. Involuntary Reassignments to ARPC.

RULE	A **If the reason for reassignment is**	B **And member is obligated, assign to Reserve Section**	C **And member is non-obligated, assign to Reserve Section**	D **Use assignment action reason**	E **And award availability code and date**	F **Approval authority unit**	G **Approval authority IMA/IR**
*7	Failure to comply with requirement for Reserve Component Physical Health Assessment or Individual Medical Readiness requirements	Obligated Reserve Section-RA	Non-Obligated Non-Participating Ready Personnel Section-RD	RZ	PE (indefinite)	Wing/CC or equivalent	HQ AFRC/SG

AFI 36-3203, *Service Retirements*. 8.2.5. Three-Year TIG Requirement for Retirement Above the Grade of Major. To voluntarily retire in any grade higher than major, an officer must have satisfactorily served—as determined by the SecAF or designee—a minimum of three years TIG while on AD for AD retirements or during creditable service for AFR members retiring under 10 USC § 12731, unless granted a SecAF TIG waiver. 8.2.5.1. Waiver of three-year TIG Requirement for Retirement Above the Grade of Major. (See corresponding Rules and Notes at **Table 3.2**).

Table 3.2. *Retirement Restrictions and Waivable Conditions (Best Interest of the Air Force or Hardship Not Common To Other Air Force Members)*. Secretarial Restrictions Requiring Review by SecAF Personnel Council. Rule 1a. Member holds a commissioned grade higher than major and served on AD more than two but less than three years TIG as of the requested voluntary retirement date. (see Note 3). Approval: By SecAF or designee, as authorized by the Secretary of

Defense. ***Note 3***. Officers in grades above major wishing to voluntarily retire in the officer's grade must serve three years TIG or retire in the next lower grade as directed by 10 USC § 1370(a) for AD retirements and 10 USC § 1370(d) for reserve retirements. (The three-year TIG requirement does not apply to involuntary release from AD of retirement-eligible reserve and temporary officers in accordance with 10 USC § 1370(a)(3). (T-0). This provision is generally for involuntary release other than for cause. See paragraph 8.2 and the statute for other possible exceptions). The AF rarely waives TIG. An officer who cannot justify waiver of the TIG requirement, or whose waiver request the AF disapproves, may ask to retire in the next lower grade held satisfactorily for at least six months TIG.

AFI 41-210, *TRICARE Operations and Patient Administration Functions*, Section 4K—*Medical Evaluation of SMs for Continued Military Service*. 4.52.5.1. MEB Recommended. It is reasonably determined that the member is most likely not capable of performing the duties of his/her office, grade, rank or rating.

Department of the Air Force (DAFMAN) 48-123, *Medical Examinations and Standards*. This manual prescribes procedures and references the authority for retiring, discharging, or retaining members who, because of physical disabilities, are unfit to perform their duties. *Terms*. Medical Evaluation Board—For service members entering the DES, the MEB conducts the medical evaluation on conditions that potentially affect the service member's fitness for duty. The MEB documents the service member's medical condition(s) and history with an MEB narrative summary as part of an MEB packet.

AFI 36-2504, *Officer Promotion, Continuation, and Selective Early Removal in the Reserve of the Air Force,* Table 3.1, *Time in Grade,* states that for promotion to the grade of Colonel, a member must have four years' time in grade.

AIR FORCE EVALUATION

AFRC/JA recommends denying all requested relief. There are no errors or injustices in this matter warranting relief. In law, neither preventing the applicant from beginning her MPA tour nor involuntarily transferring her to the IRR requires a Board of Inquiry (BOI). This is because those are **assignment** (emphasis added) actions, not discharge or separation actions. AFR officers are entitled to a BOI when they are proposed to be separated from a component without consent. When her MPA tour was cancelled before it began and she was involuntarily transferred to the IRR, she was not separated from the Air Force Reserve or dropped from its rolls but rather had administrative assignment actions imposed by lawful authority and regulation. While the applicant cites DoDI 1332.30, *Commissioned Officer Administrative Separations* for the proposition that "separation" includes actions like these, the DoDI does not supersede Federal statute. Plus, Section 3 of the DoDI provides wide discretion for the Service Secretaries to implement BOIs by regulation. MPA tours are handled by their own regulation, DAFI 36-3211, *Military Separations*, and involuntary reassignment to the IRR are handled by the assignment's regulation, DAFI 36-2110, *Total Force Assignments*. The Work-.../CC's actions in cancelling the applicant's MPA tour before it began (while he retained full administrative control to do so) for her failure to maintain her individual medical readiness was a reasonable action within his authority, as outlined in DAFI 36-2619, and in compliance with SecAF's COVID-19 policy mandating it for all AFR members who ultimately remain unvaccinated. Additionally, the order reassigning the applicant to the IRR is titled "Assignment Order." Finally, assignment actions in the nature of curtailment or cancellation have never been interpreted as requiring a BOI and should not be now.

The Work-.../CC's LOR was properly issued to the applicant and is in accordance with departmental guidelines. Once her RAR and subsequent appeal were denied, along with the denial of her three attempts to obtain a medical exemption, the Work-.../CC issued a standard action authorized by SecAF's COVID-19 vaccination policies. Although there may be ambiguity in the matter whether she was required to file all her medical exemption requests by 3 Oct 21, the issue is moot since the LOR either never formally entered her records or was properly rescinded – in either event not causing harm to her career. The applicant was subsequently selected for promotion, was permitted to reenter the AFR, has received a favorable evaluation, and is currently serving as a colonel.

In regard to equity, the Work-.../CC was not a deciding authority for the applicant's RAR. Those authorities were the AFRC/CC and the AF/SG. This complaint appears more related to the reprisal allegation - that the Work-.../CC prevented the applicant's MPA tour simply because she notified Col H that she intended to file a RAR, and she objected based on her belief the vaccinations were closely developed with fetal cell lines. COVID-19 vaccination RARs were treated very seriously in AFRC channels and their processing received top priority. The command processed and reviewed approximately 2,200 RARs in the fall of 2021. This process was comprised of four Religious Resolution Teams consisting of approximately 20 personnel, excluding administrative assistance, and other Operational Planning Team members led by a major general. The Work-.../CC exercised prudence by cancelling the applicant's MPA tour while he still had full administrative control authority to do as she was not IMR compliant. This decision was pursuant to AFRC policy in place at the time to limit unvaccinated members' participation. Despite a preliminary nationwide injunction issued in one lawsuit, *Doster*, that paused many potential adverse effects from refusing to comply with the vaccination policy while litigation was pending, the same court held the DoD could still consider vaccination status, for "deployment, assignment, and other operational decisions."

ARFC/JA defers to whether the applicant was sanctuary eligible during the timeframe in question, particularly on 8 Mar 22, as this is the only date the applicant provides where sanctuary is mentioned in writing by her to Col H. However, this writing does not clearly invoke sanctuary but merely states she "would like to inquire about sanctuary." Even if she was sanctuary eligible and properly invoked it with this single writing, in this case sanctuary is inapplicable, in accordance with 10 USC 12646(d)(1) and DAFI 36-2110, paragraph 7.13.5, because she was **transferred from active status for cause** (emphasis added). The cause was her misconduct in refusing to comply with the vaccination policy to be IMR complaint. In addition, although her Department of Veterans' Affairs (DVA) disability process is unknown to this office, an official DVA letter, dated 8 Nov 23, reflects a disability rating of 80 percent. Even if she was entitled to a BOI, it is unclear whether dual processing would have been applicable. However, since she was not entitled to a BOI, no dual processing for a potential medical separation was required.

Although the applicant provides her career evaluations and many character references attesting to her value to the Air Force, this is irrelevant when it comes to analyzing a members sincerely held religious beliefs in a RAR. The most outstanding Airmen received the same consideration as the worst. This petition represents the applicant's disagreement with the policy in place and her displeasure with its effect upon her. That does not mean the policy was in error or an injustice. The US government's political branches settled whether SECDEF's policy could continue and the memoranda implementing the 2023 NDAA did not concede the policy was wrong; rather it highlighted it was appropriate to successfully address an emergency pandemic. In fact, DoD, Air Force, and AFRC COVID-19 policies developed as intended in the applicant's case. Her assertions she would have been on continuous orders, been permitted to fly, etc., are conjecture. The MPA order Work-.../CC lawfully cancelled was only through 29 Mar 22. It is speculation to

claim, absent this sequence of events, she would have remained in the position with the trajectory she claims without funding constraints, performance, or a host of other intervening factors that cannot be known. She did not comply with a lawful policy or serve duty and now seeks compensation and asks she be given the same benefits as those who complied with a lawful order without having performed that duty. She seeks to promote, continue to serve, and reach retirement – she is on track to accomplish all these goals without the Board's intervention.

Therefore, based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice warranting relief.

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 31 Jul 24 for comment (Exhibit D), and the applicant replied on 28 Aug 24. In her response, she contended through counsel the advisory opinion misapplies the law and misstates pertinent facts and therefore, the Board should ignore the advisory writer's recommendations and grant relief for the following reasons:

1. The cancellations of her RPA orders were unlawful. While the advisory states the RPA orders were withdrawn because "she did not intend to be vaccinated by her RPA tour start date," in actuality, her RPA orders were withdrawn because she informed the Work-.../CC of her intent to submit a RAR. The Work-.../CC's decision was not only arbitrary and capricious, it is per se religious discrimination and not only violated Title VII of the Civil Rights Act, but also the Religious Freedom Restoration Act (RFRA) and was designed to punish her for her religious beliefs and practices.

2. Her involuntary transfer to the IRR without a BOI was illegal and violated 10 USC 12683(a) which states "An officer of a Reserve component who has at least five years of service as a commissioned officer may not be separated from that component without his consent except" by "an approved recommendation of a board of officers'" or a court-martial and there is no question her transfer to the IRR was not under an approved recommendation or court-martial. Again, under DoD policy, DoDI 1332.30, Glossary, a separation is a "general term that includes … transfer to the Ready Reserve, DFR, and *similar changes* (emphasis added) in active or Reserve status. Importantly, since the DoDI broadly defines separation to include "*any similar changes*" (emphasis added) to active or Reserve states, this means no qualifying service member can face involuntary transfer from active status to Reserve status or Reserve status to IRR status without a BOI. Her, involuntary removal from TR to the IRR was contemplated by DoD and defined as "separation." Therefore, involuntarily transferring her from the TR to the IRR without a BOI violated both the DoDI and due process.

3. If she was entitled to a BOI, then she was also entitled to sanctuary. Again, the advisory misstates the law. There is no requirement for members with lengthy service to "invoke" sanctuary. Rather, IAW DAFI 36-2110, sanctuary applies if the member "has completed at least 18 years but less than 20 years of service credible toward a non-regular (Reserve) retirement." She did not need to request sanctuary, rather, the separation authority had a duty and failed to ensure the commander and applicant received the Secretarial Action form.

4. Finally, regardless whether the LOR issue is moot, the applicant requests the Board affirmatively take the following actions: find the LOR was illegally issued in violations of the

Civil Rights Act and RFRA; find the LOR was improper and should have been rescinded because she followed the Work-.../CC's guidance to submit a RAR or proof a medical exemption approved by a military medical provider; and instruct the LOR be rescinded and destroyed IAW with SecDEF's and SecAF's Vaccine Mandate rescission.

Merely removing adverse information from her record does not make the applicant whole. Because of the Air Force's illegal and discriminatory actions, she lost two years of pay, retirement points, flight pay, RRPA, in addition to losing years towards her high-3 retirement eligibility.

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 the victim of an error or injustice. While the Board notes the recommendation of AFRC/JA against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the Board finds the commander's actions regarding the issuance of the Letter of Reprimand (LOR) were consistent with the substantive requirements of the COVID-19 vaccine guidance in effect at the time and within the commander's discretion. While it appears, the LOR was never formally entered into her records or was properly rescinded; however, the Board recommends a subsequent review of the applicant's personnel records be completed in accordance with the 2023 National Defense Authorization Act, Secretary of Defense (SECDEF) and Secretary of the Air Force (SECAF) Vaccine Mandate Recission Memorandums dated 10 Jan 23 and 23 Jan 23, respectively. The Board also notes the applicant's involuntary reassignment to the Individual Ready Reserve (IRR) was consistent with the substantive requirements of the COVID-19 vaccine guidance in effect at that time and within the commander's discretion. However, the Board notes the applicant applied for both a religious and medical exemption from the COVID-19 vaccination, and noting the SECAF's 23 Jan 23 guidance that "no individuals currently serving in the Department of the Air Force shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative or medical grounds," therefore, the Board finds her placement in the IRR to be an injustice. While there is no DoD policy to provide back pay or credit points for service members who were involuntarily reassigned to the IRR or placed in a No Pay, No Points status for refusing a lawful order to take the vaccine, the only remedy available to the Board is to award the applicant backpay and points for the period of time spent in the IRR due to the COVID-19 vaccination mandate for non-compliance. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board, therefore, finds no basis to recommend granting that portion of the applicant's request. In this respect, the applicant requests she be given backpay for missed flight pay and be granted Command Pilot status. However, the Board finds the applicant has not provided sufficient evidence to show she performed or would have performed the requisite flight duty necessary for Aviation Pay or that she meets the criteria, IAW AFMAN 11-402, *Aviation and Parachutist Service*, Table 4.1, for the Command Pilot rating. With respect to the applicant's requests for active-duty day-for-day towards reduced retirement pay age (RRPA) from 1 Oct 21 through 14 Nov 23. The Board finds the applicant has failed to exhaust all avenues of administrative relief prior to coming to the Board. Specifically, the applicant has not provided sufficient evidence she applied for and was denied RRPA for the orders in question. The applicant

requests she be retired in the grade of O-6. However, based on the applicant's date of rank (20 Sep 18) to the grade of lieutenant colonel, she would not have been eligible for promotion to colonel (O-6) until 19 Sep 22, IAW AFI 36-2504, *Officer Promotion, Continuation and Selective Early Removal in the Reserve of the Air Force.* Specifically, promotion to the grade of O-6 requires four years' Time in Grade (TIG). As such, it appears the applicant's transfer to the IRR did not preclude her from obtaining the TIG required for promotion to O-6. In this regard, even if the applicant had remained in the Selected Reserve, she would likely not have been promoted to O-6 at an earlier date and therefore, would not have been eligible for retirement in the grade of O-6, as full retirement requires three years TIG. Finally, the applicant requests she be evaluated by a medical evaluation board (MEB) to determine her retirement eligibility. However, the Board finds the preponderance of the evidence does not support the applicant's request that she undergo a MEB. While the applicant contends, she has been rated by the Department of Veteran Affairs (DVA) with a compensable percentage for physical disability of 80 percent and still has open DVA claims; however, the applicant has provided no evidence to indicate she had a medical condition that interfered with or caused her to be unable to reasonably perform the duties of her office, grade, rank, or rating. Therefore, the Board finds there were no physical/medical conditions that would have been ratable by the DoD as to possibly attain a military medical retirement. Therefore, the Board recommends correcting the applicant's record as indicated below.

RECOMMENDATION

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

a. Her Letter of Reprimand dated 6 January 2022, be removed and expunged from her official military personnel records in accordance with the SecDEF's and SecAF's Vaccine Mandate Rescission.

b. She was placed on active-duty orders from 1 October 2021 through 14 November 2023.

c. She be issued all appropriate backpay, benefits and points associated with her active-duty service for the period 1 October 2021 through 14 November 2023.

d. She be issued a DD Form 214, *Certificate of Release or Discharge from Active Duty*, for her active-duty period of service from 1 October 2021 through 14 November 2023.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2024-00325 in Executive Session on 12 Nov 24:

Work-Product Panel Chair
Work-Product Panel Member

[redacted] Work-Product

[redacted] 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 22 Jan 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFRC/JA, w/atchs, dated 5 Jun 24.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Jul 24.
Exhibit E: Applicant's Response, dated 28 Aug 24.

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.

5/15/2025

X [redacted] Work-Product

[redacted] Work-Product
Board Operations Manager, AFBCMR
Signed by: [redacted] Work-Product