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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02239

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His notice of relief of command letter, dated 4 November 2021, be removed from his records.
2. His AF Form 711, *Promotion Recommendation Form (PRF)*, dated 11 November 2021, "Do Not Promote" recommendation be declared void and removed from his records.
3. His referral AF 707, *Officer Performance Report (OPR) (Lt thru Col)*, rendered for the period 17 June 2021 thru 2 December 2021, be declared void and removed from his permanent records and replaced with a statement of non-rated time.
4. He be considered for promotion under January 2022 IPZ 0522A promotion board by a special selection board (SSB), after the removal of the contested relief of command letter, PRF, and referral OPR.

APPLICANT'S CONTENTIONS

He enrolled in a waitlist for government-registered COVID-19 clinical trials before the COVID-19 vaccine mandate because he has an autoimmune condition called Hashimoto's Thyroiditis. He is also allergic to two ingredients found in the vaccine. He would not have been under intense and unjust pressure to find alternative means to meet the 24 August 2021 Secretary of Defense (SecDef) vaccination mandate, had his medical exemption request been rightfully approved on 23 September 2021. The vaccination mandate included the statement that "service members who are actively participating in COVID-19 clinical trials are exempted from mandatory vaccination against COVID-19 until the trial is complete in order to avoid invalidating such clinical trial results." He submitted for temporary medical and religious exemption from the COVID-19 vaccine requirement until a new type of vaccine was available and while awaiting the determination, he proactively looked for a government-registered COVID-19 clinical trial to find an alternate vaccination method to meet the intent of the SecDef mandate. He discussed it in person several times with his Group Commander and he indicated his support. Moreover, his Group Commander stated that he did not need permission to enter the trial and granted him duty time to accomplish the intake examination. He accomplished the Tricare beneficiary counseling paperwork and received electronic mail from his primary care manager (PCM) in which he interpreted as giving support to receive the trial injection the next day. He now realizes that he misinterpreted his PCM's email and that it was preferred for him to route an elective surgery worksheet, though he did not state this in the email. Nevertheless, he notified the Group Commander upon his return and provided the Wing Commander with notification the following

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week. He was removed from command for joining the clinical trial two days later, which his leadership interpreted as a refusal to vaccinate because the trial would have temporarily exempted him from vaccinating for six months in accordance with the exemption listed in the SecDef vaccination mandate memorandum. He discovered a traditional World Health Organization (WHO) approved vaccine that was available and immediately traveled overseas at his own expense to complete a full series of a vaccine that was consistent with his medical risks and religious beliefs. He is fully vaccinated and remains worldwide deployable. He is in a position where less relief is available to him despite being more cooperative and proactive than those who outright refused to vaccinate after denial of their exemption, because of a semantic nuance in the guidance. His request for adverse actions removal falls under the intent of the Fiscal Year 2023 National Defense Authorization Act (NDAA) and the 10 January 2023 SECDEF Memorandum. Specifically, it states, "the Military Departments will update the records of such individuals to remove any adverse actions solely associated with denials of such request...". He was selected for promotion to lieutenant colonel with a promotion date of 1 May 2024. However, with the removal of the requested adverse actions, his promotion should be retroactively reinstated to the prior year lieutenant colonel promotion group. He has exhausted all other available means of administrative relief, to include a written request to his Group Commander to recharacterize his removal from command to "not for cause;" however, he never received a response, and the request was never filed in his officer selection record (OSR). After his relief of command, he was not notified that his relief of command letter would be filed in his OSR, nor of his opportunity to provide a response to that filing. His Deputy Mission Support Group Commander told him that they were not planning to issue a referral OPR; however, three months later he received a backdated change of rater and then received a referral OPR for taking part in the trial "without proper approval." He has been unable to locate any written standard for how to document participation in a clinical trial. He applied to the Evaluation Reports Appeal Board (ERAB) for the removal of his OPR but received a denial citing insufficient documentation showing an error or injustice occurred. However, at the time of his request the only documentation available was the 2022 SecDef Memorandum and denial of his medical and RAR. Subsequently, with the release of the Secretary of the Air Force (SecAF) memorandum, dated 24 February 2023, concerning the "Department of the Air Force Guidance on Removal of Adverse Actions and Handling of Religious Accommodation Request (RAR)," his referral OPR and P0522A PRF should be voided from his record. His OPR reflects a markdown for a single isolated miscommunication. He had no misconduct, loss of bearing or professionalism, or violation of the Uniform Code of Military Justice. His former Group Commander, in a discussion with his current senior rater, stated his performance as an officer and a commander was outstanding and his referral OPR was solely COVID-19 related. While the adverse action does not use the words "refused to vaccinate", the vaccine mandate is unquestionably the sole cause of the OPR reflecting that he "did not meet standards" by joining a COVID-19 clinical trial. His OPR reflect he entered an "experimental research study;" however, the trial he entered was a COVID-19 clinical trial officially registered by National Institute of Health on Clinicaltrials.gov with an assigned Trial Identifier. His OPR contained erroneous verbiage by avoiding the usages of terminology in the SecDef vaccine mandate and associated Air Force Implementation Guidance, which authorized vaccination exemptions for service members participating in "COVID-19 clinical trials" until the trial is complete. Also, the derogatory comment he took part in the study without proper approval from his commander, primary care manager, or any other military medical personnel, is inaccurate. In addition, his rater did not accomplish feedback, the closeout date was extended nearly one month past the date he was relieved of command, and his response to the referral OPR was not filed into his Personnel Records Display Application (PRDA).

His Major Command (MAJCOM) Chaplain and Headquarters Air Force Chaplain both attested to the sincerity of his religious beliefs, finding that the vaccine requirement placed a significant burden on the expression of his beliefs. He submitted an RAR to vaccinate when a new vaccine option became available or to enter a clinical trial for new treatments and vaccines. The MAJCOM Chaplain explained in a memorandum that there was a new vaccine available overseas that offered a lesser restrictive means to meet the government interest. He asked his leadership for a copy of his RAR package when his initial request was denied. However they withheld the memorandum along with the available lesser restrictive means identified by the MAJCOM Chaplain, and he did not find out about the alternate vaccination option until informed by fellow service members in the same predicament. He would have been able to meet the SecDef vaccine mandate well before his referral OPR, had he been given the MAJCOM Chaplain's memorandum when requested. He experienced a series of compounding injustices directly associated with the denial of his requests for a temporary exemption to the vaccine mandate. He was not trying to defy the vaccination mandate but to comply with it as soon as a non-mRNA method consistent with his medical risk and religious beliefs became available.

His fellow squadron commander, in the same year group at another base, another officer in his year group, and a colleague did not experience the same pressure as he did. The inconsistent approaches between various senior leaders demonstrates the unjust conditions at his base, which created an environment hostile to the approval of any kind of medical, religious, or administrative exemption. His rater/senior raters support the removal of his adverse actions. He substantially doubts that he would have been relieved of command, issued a "Do-Not-Promote PRF," and received a referral OPR for receiving elective health care while in leave status, under current policies. Especially when that care had no impact to his readiness or the performance of his duties. His medical exemption was wrongfully denied based on the 2024 NDAA verbiage, which confirms the need to monitor for hyperimmune response-related adverse events.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Lieutenant Colonel (O-5).

On 23 September 2021, according to documentation provided by the applicant, he requested through the Chief of Medical Staff, a temporary medical exemption for 90-days from receiving the COVID-19 vaccines, so that his individual medical concerns could be evaluated.

On 23 September 2021, according to documentation provided by the applicant, the Chief of Medical Staff advised the applicant's commander that he does not meet criteria for a temporary medical exemption from the COVID-19 vaccines.

On 28 September 2021, according to documentation provided by the applicant, he requested from the Surgeon General and the Major Command Commander, a temporary RAR waiver of the COVID-19 vaccinations requirement, due to his personal moral and spiritual beliefs. Specifically, he requested a temporary exemption from the mandate until the Food and Drug Administration's approval or Emergency Use Authorization of a COVID-19 vaccine or treatment.

On 7 October 2021, according to documentation provided by the applicant, the Wing Chaplain notified the Wing Commander that the Religious Resolution Team met and recommended that the applicant's RAR waiver be denied.

On 12 October 2021, according to documentation provided by the applicant, the Wing Commander notified the Numbered Air Force of her recommendation to deny the applicant's request for exemption from mandatory vaccinations against COVID-19.

On 15 October 2021, according to documentation provided by the applicant, he advised the Chief of Medical Staff of his eligibility and acceptance into a Phase 2/3 COVID-19 trial and wanted to discuss the process with someone from medical.

On 18 October 2021, according to documentation provided by the applicant, the Chief of Medical Staff, recommended the applicant have a discussion with his primary care manager.

On 22 October 2021, according to documentation provided by the applicant, he acknowledged receipt of an Elective Civilian Care Health Benefit Counseling. Moreover, he indicated "not applicable" for the choice of acknowledging that elective surgery performed off-base and not coordinated or approved by the Medical Treatment Facility (MTF)/TRICARE is prohibited without prior written approval of his commander and the MTF Commander.

On 4 November 2021, the applicant's commander notified him of his relief of command for cause in accordance with Air Force Instruction (AFI) 51-509, *Appointment to and Assumption of Command*.

On 8 November 2021, according to documentation provided by the applicant, he requested for recharacterization of his removal of command "for cause" to show "not for cause". It is his belief the cause of removal for, "participation in a clinical trial without medical authorization," is in error since he fully met the guidelines for participation.

On 11 November 2021, according to AF Form 709, *Promotion Recommendation*, provided by the applicant, due to loss of trust/confidence, the applicant was relieved of command and therefore his overall promotion recommendation reflects, "Do Not Promote" for Promotion Zone I/APZ Board P0522A.

On 1 December 2021, according to documentation provided by the applicant, the Deputy Command Chaplain recommended for the Major Command Commander's approval of the applicant's RAR.

On 10 January 2022, according to documentation provided by the applicant, he was notified of the Major Command Commander's decision for disapproval of his RAR for exemption from the COVID-19 vaccine.

On 15 January 2022, according to documentation provided by the applicant, he appealed to the Surgeon General regarding the disapproval of his RAR for a temporary exemption of the COVID-19 vaccinations.

On 21 January 2022, according to documentation provided by the applicant, the Major Command Commander denied the applicant's RAR.

On 27 January 2022, according to documentation provided by the applicant, the Chaplain indicated the applicant has a sincerely held religious belief and the COVID-19 vaccine constitutes a substantial burden upon his belief.

On 6 February 2022, the applicant's medical provider non-concurred with his RAR.

On 8 February 2022, according to documentation provided by the applicant, the applicant's package for his RAR was found to be legally sufficient and the Judge Advocate recommended denial of his request.

On 9 February 2022, the applicant was issued a referral OPR for the reporting period ending 2 December 2021. The OPR shows the applicant was rated as "Does Not Meet Standards" in sections III and IX, *Performance Factors*, for judgment and decisions. Specifically, he was relieved from command for cause after taking part in COVID-19 experimental research study without proper approval from his commander, primary care manager, or any other military medical personnel.

On 10 February 2022, the Surgeon General advised the applicant that his final appeal for an RAR was denied, specifically for an exemption from the COVID-19 immunization.

On 14 February 2022, the applicant refuted his referral OPR and requested it to be changed to a "Meet Standards" evaluation. Specifically, he argued there are no existing regulations or documents requiring service members to seek specific approval prior to participating in COVID-19 clinical trials. In addition, it is his belief the current vaccines cause a form of genetic modification in violation of God's intended design for his body. Also, it has shown to be associated with higher risk of exacerbating existing autoimmune conditions and existing clotting factors, both of which he has. He "met standards" throughout the rating period because he met the only authoritative Department of Defense (DoD) and Air Force standards that address participating in the COVID-19 clinical trials.

On 28 February 2022, according to documentation provided by the applicant, his doctor indicated he is allergic to polyethylene glycol (PEG) and polysorbate (PS), which are ingredients in the COVID-19 vaccine and according to the Center for Disease Control (CDC) guidelines, he should not receive a COVID-19 vaccine.

On 1 March 2022, according to documentation provided by the applicant, via an addendum, his doctor clarified his positive skin test places him at a high risk of anaphylaxis to vaccines that contain PEG or PS.

On 7 March 2022, according to documentation provided by the applicant, he requested his medical group provide him with documentation for a COVID-19 vaccine medical exemption due to a known diagnosis of an allergy he has with two ingredients in the mRNA COVID-19 and Johnson and Johnson/Janssen vaccines.

On 22 June 2022, according to documentation provided by the applicant, the Wing Commander informed the Wing Group and Squadron Commanders that the applicant's removal from command had nothing to do with his performance in executing his duties as commander.

On 15 November 2023, according to the *Application for Correction/Removal of Evaluation Reports*, provided by the applicant, his request for removal of his referral OPR and to void "Do Not Promote" on his PRF for the P0522A O-5 Board, was denied. It was determined that although the President of the United States/Secretary of Defense rescinded the COVID-19 mandatory for

the vaccination, this rescinding only applied to refusal to receive the vaccination and adverse administrative actions taken against an individual.

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

AIR FORCE EVALUATION

AF/JAJI recommends denying the application. There is insufficient evidence to demonstrate a legal error or injustice. The underlying reason justified the applicant's relief of command for cause and the collateral administrative documentation. In accordance with (IAW) Air Force Instruction 51-509, *Appointment to and Assumption of Command*, every reasonable inference from the evidence supports the decisions of the principals who resolved questions of fact and took the actions at issue. The applicant was afforded due process in all actions. Although the SecDef and SecAF directed service member records be updated to remove any adverse actions solely associated with denial of an RAR, the actions taken in the applicant's case do not fall under this direction. They are not solely associated with denial of his RAR or because of vaccine refusal. The applicant was relieved of command due to participation in a clinical trial without obtaining required approval. The "Do Not Promote" recommendation on his PRF and referral OPR were followed on actions.

The complete advisory opinion is at Exhibit C.

AFPC/DP3SP recommends denying the applicant's request to void the contested OPR and PRF. The applicant has not provided compelling evidence to substantiate the contested report was rendered inaccurately, unfairly or unjustly. Also, the applicant has failed to provide the necessary information/support from any rating official on the contested OPR. Without the benefit of these statements the only conclusion is that the OPR is accurate as written. SecAF's guidance on the removal of adverse actions and handling of religious accommodations, indicate referral OPRs issued solely for vaccine refusal after requesting exemption is cause for the referral report's removal and replacement with a statement of non-rated time. Where the referral report addresses additional misconduct, the report will be redacted to remove all language associated with the member's refusal to receive the COVID-19 vaccine and the rater and/or additional rater will reassess if the remaining report should be a referral. The applicant's referral OPR comment does not reference refusal to get the vaccine. Therefore, the SecAF guidance as described does not apply to the applicant's case. Furthermore, regarding the guidance on the referral report addressing additional misconduct, not only did the applicant not provide any supporting documents from his rater and additional rater for the OPR and PRF, but he also acknowledges he is aware his OPR does not meet the requirement of the SecAF memorandum. While the applicant contends his feedback was not accomplished IAW Department of the Air Force Instruction (DAFI) 36-2406, *Officer and Enlisted Evaluations Systems*, it does not appear that he sought any remedies to obtain feedback, if it was not completed. The applicant has not provided any relevant documents to prove this allegation. IAW DAFI 36-2406, it is the ratee's responsibility to notify the rater, and if necessary, the rater's rater when a required or requested feedback did not take place. Moreover, IAW DAFI 36-2406, a rater's failure to conduct a required or requested feedback session or document the session on a Performance Feedback Worksheet (PFW), does not invalidate a performance report. In addition, while current Air Force policy requires performance feedback for personnel, a direct correlation between information provided during feedback sessions and the assessments on evaluation reports does not necessarily exist. The applicant further contends his closeout date was extended nearly one month past the date he was relieve of command. IAW

DAFI 36-2406, a rater will use the day before the effective date of a change for the close-out date. Without statements or source documents from the rater the reasoning for why the closeout date was 2 December 2021 cannot be confirmed. It is noted the applicant stated the comment, “entry into experimental research study & without proper approval from commander, Primary Care Manager or any other military medical personnel,” is inaccurate. However, he failed to provide any supporting documentation showing the Group Commander or anyone else gave approval for his participation in the trial. Lastly, the applicant contents his referral rebuttal was not included in his official record. It is with recommendation his referral rebuttal be placed with the contested OPR to be filed in his OSR. In summation, the applicant has not substantiated that the contested OPR was not rendered in good faith by all evaluators based on the knowledge available at the time.

The complete advisory opinion is at Exhibit D.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 10 September 2024 for comment (Exhibit E), and the applicant replied on 9 October 2024. In his response, the applicant contended the overall intent of the SecDef memorandum should be considered. Specifically, in which 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. His adverse actions were solely associated with the denial of his medical exemption request. If his medical exemption request had been fairly examined on its merits and not categorically denied, he would not have been pressured to seek other methods to comply with the SecDef mandate. His original medical and religious exemption requests were reasonable. He only asked for more time to wait for a more traditional non-mRNA vaccination or preventive treatment since several companies were close to bringing these to the market. The 2023 SecDef rescission memorandum provides relief to those who requested an exemption and completely refused to vaccinate. The intent of the policy should also offer relief to those who actively sought alternative means to comply with the vaccine mandate. As further evidence of his intent and willingness to comply, he immediately traveled at his own expense to India to receive a traditional COVID-19 vaccine as soon as he discovered the vaccine was approved by the WHO and met the DoD requirements.

His last rater was able to contact both evaluators of his referral OPR, they indicated all three actions were only based on administrative circumstances rooted in the COVID-19 vaccination direction. There were no other performance factors that led to his removal from command, referral OPR or “Do Not Promote” PRF. The SecDef’s guidance compels the removal of these effected records. His contested referral report was erroneous because no standard exists for gaining approval to participate in a COVID-19 clinical trial. No guidance, regulation, or worksheet defines what constitutes proper approval for COVID-19 clinical trials. He attempted to identify processes needed to document his participation in the COVID-19 clinical trials. However, his Group Commander told him that he did not need medical permission, and they had no authority to deny his participation. The SecDef’s mandatory vaccination memorandum and Air Force Implementation Guidance gave approval for servicemembers to participate in COVID-19 clinical trials, as did 32CFR Part 199 and the TRICARE Policy Manual 6010.60-M. The BCAC counselor advised him to write “N/A” on the worksheet in the portion addressing elective surgeries because the clinical trial was not a surgery, only an injection. Also, AFI44-102, *Medical Care Management*, and AFMAN 41-210, *Tricare Operations and Patient Administration*, only require specific approvals from medical personnel or the chain of command when a member is seeking and elective surgery.

He would have been provided an earlier option to get the traditional COVID-19 vaccine in India in December, had his Wing Commander not withheld information from the MAJCOM Chaplain in his RAR package. He would have been enabled to get vaccinated well before the referral OPR was issued. He was still ordered by the Wing Commander to receive the vaccine, in clear violation of CDC guidance and his positive allergy test that indicated he was allergic to the ingredients in the mRNA COVID-19 vaccine. His making a decision about off duty, non-surgical medical care that had no impact on his duty performance would not be grounds for a referral OPR and its associated permanent adverse impact, under normal circumstances. The 2022 NDAA and the 2022 SecDef memorandum removed the vaccination requirement and directed the reversal of harm associated with the blanket exemption denials.

The applicant's complete response is at Exhibit F.

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 AF/JAJI and AFPC/DP3SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the applicant contends his adverse actions were a direct consequence of his medical exemption request being unfairly denied, and that a proper review would have negated his need to seek other ways to comply with the Secretary of Defense mandate and further believing that the 2023 policy should offer relief to those who actively sought such alternatives, we believe the evidence on record tells a different story. His disciplinary actions were the direct result of his enrollment in an off-base clinical trial without obtaining the required official authorization. Specifically, he did not adhere to the appropriate procedures for gaining approval for participation in clinical trials from his commander, primary care manager, or any other military medical personnel. 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 that the evidence does 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-2024-02239 in Executive Session on 16 April 2025:

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Panel Chair

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Panel Member

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Panel Member

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All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 23 June 2024.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JAJI, w/atchs, dated 21 August 2024.
- Exhibit D: Advisory Opinion, AFPC/DP3SP, dated 29 August 2024.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 10 September 2024.
- Exhibit F: Applicant's Response, w/atchs, dated 9 October 2024.

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.

7/20/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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