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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2025-02401

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

- 1) He receive the same apology letter from the Secretary of War (SecWar) currently being given to other similarly wronged veterans and it be placed in his official record (*Outside of the Board's Authority*).
- 2) He be provided constructive service sufficient to compensate for his lost civilian wages and associated entitlements as an Air Reserve Technician (ART) for the period 2 April 2022 through 20 January 2023, including, time in service and time in grade.
- 3) He receive all associated backpay and allowances, special and incentive pays, lost retirement, or disability pay, Thrift Savings Plan (TSP) contributions, and any other entitlements and emoluments, to include: backpay for the time from his involuntary retirement on 2 April 2022 through the end of his Air Guard Reserve (AGR) orders that ended on 30 January 2023.
- 4) Remove any reference to his refusal to take the COVID-19 vaccination or related to the COVID-19 mandate from his record (e.g. Letters of Reprimand, evaluations, etc).
- 5) If applicable, he receive retroactive restoration of entitlement to any and all veterans' benefits, including Post-9/11 GI Bill benefits (including transfer of educational benefits) by appropriately backdating eligibility dates and providing constructive service necessary to deem any contractual obligation.

APPLICANT'S CONTENTIONS

The applicant's counsel contends that he should receive corrections to his record based on two claims:

Claim I: Because the Department of Defense (DoD) did not have any licensed vaccine available for its mandate, a legal prerequisite under 10 USC §1107a, as well as an explicit term of the Secretary of Defense 23 August 2021 order to be vaccinated. As such, it was impossible for the applicant to comply with the order on its own terms; and because it was illegal as implemented

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using available-but-unlicensed products in lieu of unavailable-but-licensed ones. Everything done thereafter to the applicant was legally void as the product of unlawful orders in implementation.

Claim II: Because the DoD, while fully aware of the facts of Claim I, simultaneously granted some administrative and some medical exemptions, but violated Religious Freedom Restoration Act (RFRA) by (a) removing people from positions while their Religious Accommodations (RAs) were pending in violation of the DoD RFRA instruction, (b) denied virtually all religious exemptions, and (c) failed to conduct the requisite to the person analysis [sic]. In sum, the DoD rubber-stamped the violation of a vast swath of religious-minded servicemembers. Everything done to members thereafter was void.

In support of the appeal, the applicant's counsel lists and provides the following attachments:

- a) Applicable Administrative Record (AR) ico of Bassen vs. US, Electronic Case File (ECF) **Wor...** **W...** which includes documentation regarding the applicant's RAR and duty history.
- b) Declaration on Motion, **Work-Product** executed on 12 September 2023, which includes the applicant's complaint and motion for Stay, Declaratory and Injunctive Relief. The document explains that his RAR for COVID-19 vaccine was denied and the harms he suffered due to the mandate.
- c) "Plaintiffs' Motion for Judgment on the Administrative Record (MJAR) or, In the Alternative, Motion for Summary Judgment, Case No. **Work-Product** ECF 43) certified on 16 August 2024, which explains the violations committed against the applicant and similarly situated service members.
- d) "Plaintiffs' MJAR Table," which provides the administrative record citations for the applicant's statement of undisputed facts in Case No. **Work-Product**
- e) Updated applicable AR documentation regarding the applicant's RAR (44-1).
- f) Amended Class Action Complaint for Case No. **Work-Proc W...** dated 14 July 2023 that was submitted on behalf of members of the Armed Services who were wrongfully denied pay under Title 10 by virtue of being wrongfully or constructively discharged.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve (AFR) senior master sergeant (E-8) awaiting retired pay at age 60.

According to the documents in the applicant's record and provided by the applicant's counsel:

On 5 April 2013, according to *Post 9/11 G.I. Bill Transfer of Educational Benefits Statement of Understanding* the applicant elected to transfer his educational benefits to his dependents in exchange for a four-year military service obligation with and end date of 23 July 2017.

On 28 February 2019, the applicant was issued Order Number AAJ2C9 authorizing extended active duty as an Air Guard Reserve (AGR) per 10 USC 12301(d) with an effective date of duty on 2 April 2019 and a Date of Separation (DOS) of 30 April 2022.

On 2 March 2022, Order Number AAJ2C9 was amended to reflect a DOS of 31 January 2023.

On 24 September 2022, the applicant submitted a RAR and requested a religious accommodation waiver for the COVID-19 vaccine.

On 27 October 2022, the AFR Commander (AFRC/CC) denied the applicant's RAR request.

On 30 October 2022, the applicant submitted an appeal of his denied RAR request.

On 1 December 2022, the USAF Surgeon General (SG) denied the applicant's appeal for a religious accommodation from the COVID-19 vaccine.

On 31 March 2022, Order Number AAJ2C9 was amended due to "Voluntary Curtailment," and the applicant's DOS was changed to reflect 2 April 2022.

On 2 April 2022, according to DD FM 214, *Certificate of Release or Discharge from Active Duty*, the applicant received a "Honorable" discharge in the grade of senior master sergeant (E-8) after completing a period of active duty service from 2 April 2019 through 2 April 2022. The applicant was credited with 3 years and 1 day of net active service for the period and the narrative reason for separation reflects "Completion of Required Active Service."

On 3 April 2022, Standard Form 50-B, *Notification of Personnel Action*, shows the applicant was removed from his Air Reserve Technician (ART) position. The reason for removal states "per Special Order No. [Redacted] you lost active reserve status, a condition of your civilian employment, when you voluntarily retired from the military on 31 January 2022."

On 5 April 2022, the applicant acknowledged notification of a decision to be non-disciplinarily removed from his ART position due to his voluntary retirement from the AFR on 3 April 2022.

On 29 April 2022, according to AF Form 100, *Request and Authorization for Separation*, Special Order Number [Redacted] was published and shows that the applicant was released from active duty effective 2 April 2022.

On 4 May 2022, Reserve Order [Redacted] the applicant was assigned to the Retired Reserve Section effective 3 April 2022.

According to the Military Personnel Database System (MilPDS), the applicant's Point Credit Summary Report (PCARS) from 2019 to 2022, he was credited with the following Active Duty (AD), Inactive Duty for Training (IDT), membership (MBR), and retirement points:

R/R Year	AD	IDT	MBR	Retirement	Satisfactory Service (Year)
29 Mar 19 - 28 Mar 20	362	0	0	366	010000

29 Mar 20 - 28 Mar 21	365	0	15	365	010000
29 Mar 21 - 28 Mar 22	365	0	15	365	010000
29 Mar 22 – 3 Apr 22	5	0	0	0	000000

On 22 May 2025, in the case of *Bassen, et al. v. United States*, Case Number [Work-Product] the United States Court of Federal Claims issued an Opinion and Order and also granted the government’s motion for a remand and stay of proceedings pending proposed remand instructions to address a class action complaint from 10 current and former service members of the United States Army, Air Force, and Marine Corps, who alleged that they suffered adverse personnel action due to their failure to comply with the COVID-19 vaccine mandate issued by the Secretary of Defense. On 16 June 2025, the court issued a remand order to the Air Force Board for Correction of Military Records (AFBCMR). Specifically, the Court directed that the AFBCMR consider the application in light of the Court’s May 22, 2025, Opinion and Order. which requires consideration of how Executive Order 14184 and subsequent DoD guidance affects the validity of the actions by the Air Force, at issue in this case.

For more information, see the excerpt of the applicant’s record at Exhibit B and the Applicable Authority at Exhibit C.

APPLICABLE AUTHORITY/GUIDANCE

On January 27, 2025, the President of the United States issued Executive Order 14184, “Reinstating Service Members Discharged under the Military’s COVID-19 Vaccination Mandate”. The President’s guidance further directed that the Secretary of Defense or the Secretary of Homeland Security shall take all necessary action permitted by law to make reinstatement available to service members involuntarily discharged, solely for refusal to receive the COVID-19 vaccination, who request to be reinstated, and to revert to their former rank and receive full back pay, benefits, bonus payments, or compensation.

Office of the Undersecretary of Defense for Personnel and Readiness memorandum, dated 1 Apr 25, with SUBJECT: Updated Guidance on Correction of Military Records for Service Members Involuntarily Separated for Refusal to Comply with Coronavirus Disease 2019 Vaccination Requirements

On 1 Apr 25, the Undersecretary of Defense for Personnel and Readiness (OSD(P-R)), issued additional guidance on the implementation of the President’s Executive Order and directed that the Secretaries of the Military Departments will process reinstatements for individuals either involuntarily discharged or those who voluntary left the service or allowed their service to lapse, rather than be vaccinated under the vaccine mandate based on the provided guidance.

In cases where the Service member was involuntarily separated the Secretaries of the Military Departments will contact such Service members and make available to them reinstatement via the Boards for Correction of Military/Naval Records (BCM/NRs) process. The BCM/NRs should exercise their broad discretion to order all appropriate retroactive corrections of the Service member's record.

Summary of Guidance on Involuntary Separations:

Consistent with EO 14184, the Secretaries of the Military Departments were directed to invite these Service members to seek reinstatement by applying to have their records corrected to reflect continued service such that back pay, benefits, bonus payments, or other compensation, subject to required offsets. The BCM/NRs are to assess each case to determine if an error or injustice exists within the former Service member's record and order all appropriate records corrections, which may include but is not limited to reinstatement with no break in service, restoration of the member's previous grade or rank, and credit for lost service time due to separation. Furthermore, if a Service member is granted reinstatement but denied additional claims for relief (e.g., retention bonuses, missed promotion opportunities, special pay), the disapproval authority for the additional requested relief may be delegated at the discretion of the Secretary concerned if reinstatement is otherwise approved.

If the BCM/NR finds that the record should be corrected to reflect reinstatement, they will issue a contingent decision that permits calculation of associated pecuniary benefits but predicates final record correction upon acceptance of reinstatement by the Service member. The contingent decision of the BCM/NR will be the final decision of the review board and will not require additional action by the BCM/NR to implement the relief directed.

Furthermore, reinstatement will not be afforded to service members who were involuntarily separated who are unwilling or unable to return to active service, or active status, as applicable, for at least 4 years. However, for individuals who would have become eligible for a regular or non-regular retirement in 2 years or less from the date of their separation, only a 2-year minimum service obligation is required.

Summary of Guidance on voluntary separations:

For service members who voluntarily left the service or allowed their service to lapse according to appropriate procedures, rather than receive the COVID-19 vaccination, to return to service with no impact on their service status, rank, or pay through re-accession; however, re-accession under this policy will not include backpay, credit for lost service, or similar relief associated with reinstatement. While re-accession does not require BCMR approval, the policy does state that nothing prohibits or prevents those former Service members seeking re-accession from seeking additional relief such as backpay or lost service credit through the normal BCM/NR process.

Office of the Undersecretary of Defense for Personnel and Readiness memorandum, dated 7 May 25 with SUBJECT: Supplemental Guidance to the Military Department Discharge Review Boards and Boards for Correction of Military/ Naval Records Considering Requests from Service Members Adversely Impacted by Coronavirus Disease 2019 Vaccination Requirements

On 7 May 25, the Undersecretary of Defense for Personnel and Readiness (OSD(P-R)) issued supplemental guidance to the Military Department Discharge Review Boards and the Boards for Correction of Military Record considering service members adversely impacted by Coronavirus Disease 2019 Vaccination Requirements. The guidance states in general that the requirement that Service members receive a coronavirus disease 2019 (COVID-19) vaccine without an adequate due process mechanism for vaccine accommodations was an injustice.

The supplemental guidance addresses the ***“Removal of Adverse Actions and Information Solely Associated with COVID-19 Vaccine Mandate”*** and states:

- The Department’s COVID-19 vaccine mandate also caused harms that were not reflected on separation documents. For instance, some Service members received administrative letters of reprimand, negative or inconsistent evaluations, or withholding of opportunities for Reserve Component personnel to perform inactive duty training for pay to achieve a “good year” for participation and retirement purposes.
- While previous guidance required the Secretaries of the Military Departments to update Service member personnel records to remove adverse actions solely associated with denials of requests for exemption from the COVID-19 vaccine mandate on religious, administrative, or medical grounds, this relief should not have been limited to Service members who formally filed an exemption request. The inadequacy of the consideration afforded to those who submitted accommodation requests undermined the faith of many Service members, and they should not be penalized for deciding not to request an exemption that had little or no likelihood of success.
- To ensure that present and former Service members are not penalized for pursuing religious and other exemptions to the COVID-19 vaccine mandate in good faith, the BCM/NRs will carefully consider applications by individuals who request correction of records containing adverse information or reflecting adverse action solely associated with a request for exemption from the COVID-19 vaccination mandate, or with appeals of denials of such requests. Additionally, any present or former Service member who attests that they would have filed a request for exemption from the COVID-19 vaccine mandate were it not for the Department’s very high rate of disapproval of such requests shall be evaluated as if they had requested, and been denied, such an exemption.
- If adverse information associated solely with a request for exemption from the COVID-19 vaccination mandate is found within an applicant’s official military personnel file, the BCM/NR should, as appropriate, exercise its broad discretion to assess the potential impact on the Service member’s career and correct impacted personnel records appropriately.

It further addresses, *“Other Harms or Injustices Suffered by Service Members Not Specifically Addressed in this Guidance”* and states:

- Present and former Service members may have suffered other harms from the COVID-19 vaccine mandate that are not specifically addressed in this guidance. Adverse action may include the overt withholding of favorable personnel actions, including such actions as removing individuals from approved lists to attend training or professional military education, to assume leadership positions, or to conduct a permanent change of station transfer on schedule.
- Many Service members may have been denied these opportunities while waiting for the adjudication of their administrative or medical exemption requests. Even more concerning, some have reported that they were pressured to voluntarily separate from the military due to their COVID-19 vaccine status, even while awaiting adjudication of their exemptions.
- If adverse information associated solely with a request for exemption from the COVID-19 vaccination mandate is found within an applicant’s official military personnel file, the BCM/NR should, as appropriate, exercise its broad discretion to assess the potential impact on the Service member’s career and correct impacted personnel records appropriately.

Office of the Undersecretary of War memorandum, dated 2 October 2025 with SUBJECT: Additional Guidance on Process for Reinstating Service Members Negatively Impacted by the Coronavirus Disease 2019 Vaccination Mandate

On 2 October 2025, the Office of the Undersecretary of War issued supplemental guidance to the Secretaries of the Military Departments emphasizing the importance of continuing reinstatement efforts “until we get it right.” The guidance addresses a more streamlined reinstatement process, but also states that “Beyond reinstatement, the Department is evaluating broader remedies related to the COVID-19 vaccination mandate,” which includes:

- Proactive reviews of personnel records and discharge characterizations for those involuntarily separated solely due to COVID-19 vaccine refusal.
- Consideration of restoring recouped bonuses of those who were involuntarily separated.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted other available administrative remedies before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant has not demonstrated the existence of an error or injustice warranting correction of his military records at this time. The Board notes that while OSD P-R guidance does not explicitly address service members who retired in lieu of receiving the COVID-19 vaccine, it acknowledges that the applicant’s separation from the AFR was influenced by the Department of the Air Force’s implementation of the mandate. In light of EO 14184 and subsequent Department of Defense and Department of the Air Force guidance, the Board acknowledges that the mandate, and the limited due process afforded to those seeking religious accommodation, constituted an injustice. The Board further acknowledges the applicant’s assertion that his decision to retire was driven by the COVID-19 vaccine requirement. However, based on a preponderance of the evidence and the applicable guidance, the Board does not recommend the relief requested. The Board also notes that portions of the request from the applicant’s counsel are unclear or outside of the Board’s statutory authority; nevertheless, each request was considered on its own individual merit.

Regarding the applicant’s request for the apology letter issued by the Secretary of Defense to certain veterans, the Board finds this relief falls outside the statutory authority of the Secretary of the Air Force and therefore cannot be granted.

With respect to the request to remove any record of the applicant’s COVID-19 vaccination status or refusal, the Board found no entries in the applicant’s official military records reflecting vaccination status or noncompliance with the mandate. As such, either the records have already been removed, or did not require filing in the applicant’s official military record. Therefore, based on this part of his request, there is nothing for the Board to correct.

Concerning the applicant’s request for constructive service to compensate for lost civilian wages and entitlements as an ART, the Board notes it has no authority to correct Dual Status Technician records if an error or injustice occurred in service under Title 5, United States Code status. However, based on the request for compensation as an ART and the applicant’s subsequent request for all associated backpay and allowances from the time of his involuntary retirement on 2 April 2022 through the end of his active duty AGR orders that were projected to end on 30 January 2023,

it appears he is seeking credit for the AGR service he may have performed had he remained in the service. In this regard, the Board notes that the applicant has not requested reinstatement, which is a prerequisite for constructive service credit under current reinstatement policy. As such, the Board finds no basis to grant the applicant's request for constructive active duty service credit or lost retirement pay for that period of service. Under OSD P-R guidance, members who are seeking reinstatement, whether involuntarily discharged or those who voluntarily separated in lieu of the COVID-19 vaccination, may be afforded the benefits of reinstatement; however, such benefits require a commitment to the associated military service obligation. Without such a commitment, the requested relief cannot be granted. Should the applicant seek reinstatement, and upon meeting the medical and physical retention standards be willing to fulfill a minimum two-year service obligation, the Board would be willing to reconsider this portion of his request.

Similarly, the applicant's request for retroactive restoration of entitlement to any and all veterans' benefits, would generally either fall outside of the AFBCMRs purview or would be associated with the constructive service credit that is only creditable upon reinstatement. However, the Board opines that while the Post 9/11 G.I. Bill program is a Department of Veterans Affairs program, the request for transfer of education benefits is executed while in the service and is based on a four-year military service obligation. As such, the record currently shows that the applicant transferred his educational benefits to his dependents on 5 April 2013 and was given a military service obligation end date of 23 July 2017. Given the applicant's service history, he already obtained the satisfactory years required to fulfill the commitment and there is nothing further for the Board to correct.

The Court directed that the AFBCMR consider how EO 14184 and subsequent DoD guidance affect the validity of the actions by the Air Force at issue in this case. While the Board recognizes that the COVID-19 vaccination is now considered an unlawful order and is willing to correct records where appropriate, it appears in this case, the applicant's records and the requested relief either already reflect the required corrections, the requested relief exceeds the Secretary of the Air Force's authority, or the requested relief does not align with the guidance provided to the military review boards. Accordingly, the Board concludes the applicant's circumstances may meet the intent of EO 14184 and the criteria outlined in the subsequent guidance; however, absent amended requests, specifically a request for reinstatement, the Board is unable to provide the requested relief. 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. ^W considered Docket Number BC-2025-02401 in Executive Session on 13 January 2026:

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Panel Chair

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Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 16 July 2025.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Applicable Authority for COVID-19 Reinstatement.
- Exhibit D: CoFC Remand Order, dated 16 June 2025.
- Exhibit E: CoFC Opinion and Order, dated 22 May 2025.

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.

1/15/2026

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