



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2025-02403

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, including, all associated backpay, benefits and entitlements for the time his orders were curtailed on 17 Jun 22 to the date he was placed back on duty in the Air Force in Aug 2023.
- 3) He be credited with time in service (TIS) and time in grade (TIG) based on his constructive service.
- 4) Restoration of all points, Satisfactory years of service, as well as entitlement to any benefits lost during the time he was discharged and prohibited from drilling or participating as a Reserve officer.
- 5) Any reference of misconduct related to the COVID-19 vaccine mandate be removed from his record.
- 6) Constructive service necessary to deem any contractual obligation fulfilled for any bonus and/or associated cancellation of indebtedness and retroactive restoration of entitlement to any and all veterans' benefits, including Post-9/11 GI Bill benefits, to include transfer of benefits (TEB), by appropriately backdating eligibility dates commensurate with the facts of his case.

APPLICANT'S CONTENTIONS

The applicant's counsel contends that he should receive the 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 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

AFBCMR Docket Number BC-2025-02403

Work-Product

Work-Product

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.

The applicant's counsel further contends that the applicant, a 20+ year veteran whose Religious Accommodation Request (RAR) from the COVID vaccine mandate was denied, despite the fact that his command recommended approval, and his commanding General initially granted the request.

The applicant served on active duty for 14 years (2004-2018) and was a KC-135 instructor pilot "with eight deployments, over 1,000 combat hours", and the associated medals and awards for such service. After he left active duty in 2018, and transitioned to the Air Force Reserve, he began doing one-year Individual Mobilization Augmentee (IMA) orders. As such, the applicant should be returned to the status quo ante as best as is possible in order for the Board to meet its mandate of "full and fitting relief." His treatment by the Air Force was ridiculous given that his Command approved his RAR and then kept him in the same job as an unvaccinated civilian - because he is one of "perhaps ten people in the country that are qualified to do his job." He should receive all emoluments, a clean record, and the difference between his civilian pay and benefits and his military pay and benefits, and all reasonable, associated out-of-pocket expenses for the time he was forced into being a civilian, not allowed to drill, lost benefits, and was forced out of family housing.

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) 37-1, which includes documentation regarding the applicant's RAR and duty history.
- b) Declaration on Motion, [REDACTED], dated 22 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 Judgement, Case No. [REDACTED]" [REDACTED] 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. [REDACTED]
- e) Updated applicable AR documentation regarding the applicant's [REDACTED]
- f) Amended Class Action Complaint for Case No. [REDACTED], 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 former Air Force Reserve lieutenant colonel (O-5) who now serves in the Air National Guard.

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

On 16 September 2019, Reserve Order Number [REDACTED] 4 was published and placed the applicant on Military Personnel Appropriation (MPA) Orders from 29 October 2019 through 26 February 2020.

On 20 February 2020, an amendment to Reserve Order Number [REDACTED] was published and extended the applicant's MPA tour to 27 September 2020.

On 30 March 2021, according to AF Form 4406, *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 an end date of 9 March 2025.

On 1 October 2021, Reserve Order Number [REDACTED] was published and placed the applicant on 12 days of Annual Training (AT) from 19 October 2021 through 30 October 2021.

On 1 October 2021, Reserve Order Number [REDACTED] was published and placed the applicant on MPA Orders from 31 October 2021 through 30 September 2022.

On 13 October 2021, the applicant submitted a RAR and requested a religious accommodation waiver for the COVID-19 vaccine.

On 15 October 2021, AF Form 174, *Record of Individual Counseling*, shows that the applicant submitted a RAR waiver for the COVID-19 vaccine and he was counseled by his commander on the potential consequences of noncompliance with the vaccine requirement.

On 16 February 2022, the Air Mobility Commander (AMC/CC) denied the applicant's RAR request.

On 4 March 2022, the applicant submitted an appeal of his denied RAR request.

On 15 May 2022, the USAF Surgeon General (SG) denied the applicant's appeal for a religious accommodation from the COVID-19 vaccine.

On 1 June 2022, an amendment to Reserve Order [REDACTED] was published and curtailed the end date of the original MPA orders to reflect 16 June 2022.

On 19 September 2022, Reserve Order Number [REDACTED] was published and placed the applicant on 12 days of Annual Training (AT) from 19 October 2022 through 30 October 2022.

On 9 August 2023, Reserve Order Number [REDACTED] was published and placed the applicant on MPA Orders from 22 August 2023 through 30 September 2023.

On 26 September 2023, Reserve Order Number [REDACTED] was published and placed the applicant on MPA Orders from 1 October 2023 through 1 January 2024.

On 3 September 2024, Special Order Number [REDACTED], shows that the applicant transferred from the AFR and was extended Federal Recognition in the Air National Guard with an effective date of 2 January 2024.

According to the Military Personnel Database System (MilPDS), the applicant's Point Credit Summary Report (PCARS) from 2020 to 2025, 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)
15 May 20 - 14 May 21	344	30	15	365	010000
15 May 21 - 14 May 22	335	24	15	365	010000
15 May 22 - 14 May 23	121	24	15	160	010000
15 May 23 - 14 May 24	267	0	15	365	010000
15 May 24 - 14 May 25	365	0	15	365	010000

On 22 May 2025, in the case of *Bassen, et al. v. United States*, Case Number 23-211, 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

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.

FINDINGS AND CONCLUSION

1. The application was timely filed.

2. The applicant exhausted all other available administrative remedies before applying to the Board.

3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice and finds a preponderance of the evidence substantiates the applicant's contentions in part. In accordance with EO 14184 and subsequent Department of Defense and Department of the Air Force guidance, the Board acknowledges that the COVID-19 mandate, and the limited due process afforded to those seeking religious accommodation, constituted an injustice. In this case, the Board notes, that the applicant was never discharged from the service, but is requesting corrections to his record based on other harms from the COVID-19 vaccine mandate. As such, the Board finds that portions of the request from the applicant's counsel are unclear or outside of the Board's statutory authority, but considered each request based on its own individual merit.

Regarding the applicant's request for constructive service, including all associated backpay, benefits and entitlements for the time his orders were curtailed on 17 June 2022 to the date he was brought back on duty in August of 2023, it appears that the applicant continued to perform periods of duty. Specifically, Reserve Order Number [REDACTED] shows the applicant completed his AT from 19 October 2022 through 30 October 2022 and his PCARS report shows that he performed all 24 IDTs he was allotted in his IMA position for R/R year 15 May 2022 through 14 May 2023. The Board, however, does recognize that while no specific evidence was provided showing he was placed in a "no pay/no points status" on 17 June 2022; after his RAR appeal was denied on 15 May 2022, his MPA orders (# [REDACTED]) for period 31 October 2021 through 30 September 2022, were curtailed to end on 16 June 2022. As such, the Board finds the applicant's argument reasonable that his orders were in fact curtailed on 16 June 2022 due to his unvaccinated status and therefore recommends that the record be corrected to show that he instead remained on the active duty MPA orders through the original 30 September 2022 end date. However, given that the applicant was then allowed to perform his AT and IDTs, and there is no evidence to show that the applicant would have remained on full-time active duty orders through August of 2023, the Board finds the evidence insufficient to approve placing the applicant on active duty orders for the full period requested. Nevertheless, the Board's rationale for correcting the applicant's record to reflect credit of constructive service and backpay in this particular case is due to the fact that he has continued to serve in the Air Force and therefore meets the intent of fulfilling a service obligation normally associated with the benefits of reinstatement.

With respect to the 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.

In addition, and in reference to the applicant's 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.

As for the applicant's request for TIS and TIG the Board notes that the applicant was never discharged and there is no record of a break-in-service and therefore he has already been credited with the appropriate constructive service. Similarly, in regards to the request for restoration of points and satisfactory service from the time he was prohibited from drilling as a Reserve officer, the Board finds that the correction to his MPA orders will provide the points he would have otherwise received and as his record currently stands, he has already earned the satisfactory years of service for the Retirement and Retention years in question.

Moreover, 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 he has or will be credited with. 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 30 March 2021 and was given a military service obligation end date of 9 March 2025. Given that the applicant has continued to serve and has obtained satisfactory years since he initiated the request, it appears that the applicant has already fulfilled the required 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. As such, the Board recognizes that the COVID-19 vaccination is now considered an unlawful order and has recommended correcting the records where appropriate. Therefore, the Board recommends correcting the applicant’s records as indicated below.

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

- a) On 17 June 2022, the applicant was not released from his active duty Military Appropriation (MPA) Orders with Reserve Order Number [REDACTED], but was continued to the original end date of his orders on 30 September 2022.
- b) He be issued a DD Form 214, *Certificate of Release or Discharge from Active Duty*, for his period of active duty service from 31 October 2021 through 30 September 2022.
- c) He be credited with all points, backpay, benefits and entitlements, minus any required offsets, based on his active duty service from 17 June 2022 through 30 September 2022.

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-2025-02403 in Executive Session on 13 January 2026:

- [REDACTED] Panel Chair
- [REDACTED] Panel Member
- [REDACTED] Panel Member

All members voted to correct the record. The panel considered the following:

Work-Product

- 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

Work-Product

AFBCMR Docket Number BC-2025-02403

Work-Product

8

Work-Pro...