



**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2025-02886

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

- 1) He receive the same apology letter from the Secretary of Defense (SecDef) 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, flight pay, benefits and entitlements for the time his orders were curtailed on 30 Jul 22 to 30 Sep 22.
- 3) Remove any record of a Letter of Reprimand (LOR) if one is associated with his record.
- 4) Remove any record of his COVID-19 vaccination status per Office of Personnel Management (OPM) for federal employees policy.

APPLICANT'S CONTENTIONS

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

Claim 1: The federal government violated the Militia Clauses of the Constitution by governing, and punishing, non-federalized State Guardsmen. *Abbott v. Biden*, 70 F.4th 817 (5th Cir. 2023). The federal government had no lawful authority to cut funding for State Guardsmen based on federal eligibility requirements for State service.

Claim 2: The federal Vaccine Mandate was unlawful because there was no licensed vaccine and the Adirim Interchangeability Memo both violated 10 USC § 1107a, as well as the Department of Defense (DoD) governing regulations (to say nothing of dozens of statutes and regulations under Title 21, governing biologics).

Claim 3: With full knowledge of facts of Claim 2, DoD still subjected religious members to a sham religious accommodation process - an insult and indignity to people of faith. This was a clear violation of Religious Freedom Restoration Act (RFRA) and the applicable DoD regs. In sum, 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 provided:

- a) "Declaration of [applicant] in Support of Plaintiff's Complaint and Response, Case No. 23-174C" explaining the reasons why the applicant refused the COVID-19 vaccine and the injustice that arose from his refusal. Of note, the applicant explains he was given an LOR on 4 Dec 21, and

states that in May 2022, he was placed in a No Points-No Pay (NPNP) status and was told that he could not drill because he was unvaccinated.

b) “Plaintiffs’ Motion for Judgment on the Administrative Record or, In the Alternative, Motion for Summary Judgement, Case No. 23-211C,” which explains the violations committed against the applicant and indicates the specific injustices that occurred. Specifically, it referenced that the applicant received a LOR for being unvaccinated; and the applicant was serving on Full Time National Guard (FTNGD) Active Duty Operational Support (ADOS) orders from 30 Jun 20, to be renewed through 30 Sep 22, to complete F-16 Instructor Qualification; however, because he was unvaccinated, his orders were cancelled and he was placed in inactive NPNP status; and his flight status was revoked.

c) A copy of Order Number [Work-Product] dated 29 Sep 20 showing the applicant was on [Work-Product] orders from 1 Jun 20 – 30 Sep 21.

d) An unsigned letter from the commander of the South Carolina Air National Guard (SCANG) directing that all COVID vaccinations would begin at October Drill and were required to be fully vaccinated by the 2 Dec 21 deadline.

e) A copy of the LOR issued on 3 Dec 21, for failing to receive the COVID-19 vaccine and a copy of his response, provided by the applicant on 19 Jan 22.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) major (O-4).

On 3 Jun 20, the applicant was issued Order Number [Work-Product] authorizing Full Time National Guard Duty – Other than Training 32 USC 502 (F) (1) (b) from 1 Jun 20 – 30 Sep 20.

On 16 Jul 21, Order Number [Work-Product] was modified to reflect an itinerary of 1 Jun 20 – 20 Jul 21.

On 19 Jul 21, the applicant was issued Order Number [Work-Product] authorizing Full Time National Guard Duty – Other than Training 32 USC 502 (F) (1) (b) from 3 Aug 21 – 30 Sep 21.

On 3 Dec 21, according to a memorandum provided by the applicant’s counsel, the applicant’s commander issued him an LOR for failing to become vaccinated against the COVID-19 virus.

On 19 Jan 22, the applicant submitted a response to the LOR; however, the LOR does not show the final decision of the applicant’s commander to sustain the LOR or the disposition of the action.

Effective 30 Jul 22, according to Aeronautical Order Number [Work-Pr...] the applicant’s Aviation Career Incentive Pay (ACIP) was terminated. According to the remarks, the applicant failed to maintain medical certification and indicates that the applicant was disqualified from aviation service per DD Form 2992, *Medical Recommendation for Flying or Special Operational Duty*, dated 1 May 21, when his physical expired on 29 Jul 22. Furthermore, the time while disqualified does not count towards advanced ratings or badges.

Effective 16 Mar 23, according to Aeronautical Order Number [Work-Pr...] the applicant's ACIP was authorized. According to the remarks, the applicant accomplished medical certification and states aviation service re-instated effective the date of the DD Form 2992, dated 16 Mar 23.

On 16 Apr 24, according to NGB Form 22, *National Guard Report of Separation and Record of Service*, the applicant separated from the [REDACTED] National Guard and was credited with 10 years, 8 months and 23 days of net service. It further lists his Character of Service as Honorable and the reason for his separation was for appointment into the [REDACTED] ANG.

On 1 Mar 25, according to Special Order [Work-Product] dated 16 May 25, the applicant was honorably discharged from the [REDACTED] ANG and as a member of the Reserve of the Air Force.

According to the Military Personnel Database System (MilPDS), the applicant's Point Credit Summary Report (PCARS) from 2020 to 2024, 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)
20 Aug 20 - 19 Aug 21	361	0	0	365	010000
20 Aug 21 - 19 Aug 22	0	25	15	40	010000
20 Aug 23 - 19 Aug 24	0	3	15	18	010000

On 15 Jul 25, a remand order was filed with the United States District Court of Federal Claims to address a class action complaint from five current and former members of the Army National Guard and Air National Guard, who alleged that they suffered adverse personnel action due to their failure to comply with the COVID-19 vaccine mandate. The Court held a hearing on the motion on 11 July 25 and the parties stated that they were generally in agreement with the remand instructions adopted in *Bassen, et al. v. United States*, No. 23-211 (Fed Cl. June 16, 2025). Accordingly, the Court granted the government's motion for a voluntary remand to the Air Force Board for Correction of Military Records (AFBCMR). Specifically, the Court directed that the AFBCMR consider how Executive Order 14184 and subsequent DoD guidance affects the validity of the actions by the Army, Air Force, and Marine Corps at issue in this case.

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

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 Records 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 has not met the burden of proving, by a preponderance of the evidence, that he was the victim of an error or injustice warranting correction of his records.

While the Board acknowledges the 7 May 25 OUSD(P&R) supplemental guidance validates that the COVID 19 vaccine mandate, absent adequate due process for accommodation requests, constituted an injustice in certain cases, the evidence in this matter does not establish that the adverse actions or career impacts alleged were attributable to the mandate. The Board further notes, that portions of the request from the applicant's counsel are unclear or outside of the Board's authority, but reviewed each request based on its own individual merit.

The applicant's first request—for the same apology letter from the Secretary of Defense currently being provided to other veterans—falls outside the statutory authority of the Secretary of the Air Force and cannot be granted. Similarly, the applicant's request to remove any record of his COVID 19 vaccination status pertains to federal civilian personnel recordkeeping under OPM policy and is outside the Board's statutory authority. However, a review of the applicant's official military personnel record reveals no entry reflecting his vaccination status or referencing noncompliance with the COVID 19 vaccine mandate.

Regarding the removal of a Letter of Reprimand (LOR), the applicant provided a copy of an LOR dated 3 December 21 for failure to receive the COVID 19 vaccine; however, the record does not contain evidence of the final disposition of that action or confirmation that it remains filed in his official personnel record. Absent such evidence, the Board cannot conclude that adverse information currently exists in his record that requires removal under the supplemental guidance.

With respect to the applicant's request for constructive service, back pay, and associated entitlements for the period 30 Jul 22 to 30 Sep 22, it is unclear if this is a request for constructive service as a Drill Status Guardsman completing monthly Inactive Duty for Training or on full time active duty orders. Regardless, the Board finds no evidence that the applicant was on a full-time active duty order that was curtailed due to his vaccine status or that he was denied full-time orders or normal drill duty from 30 Jul 22 to 30 Sep 22 because he had not received the COVID-19 vaccine. While the Board notes that on 30 Jul 22, Aeronautical Order Number [Work-Pr...] terminated the applicant's Aviation Career Incentive Pay (ACIP) due to the expiration of his medical certification, these are not orders for a specific duty status. While it is possible that the reasons for the applicant's medical disqualification were due to his unvaccinated status, no evidence has been provided to confirm this to be the case. Nevertheless, should the applicant provide clarification on his request along with documentation showing the type of duty status he was precluded from performing from 30 Jul 22 to 30 Sep 22 and supporting evidence it was due to the COVID vaccine, the Board would be willing to reconsider this portion of the applicant's request.

Work-Product

The Court directed that the AFBCMR consider how Executive Order 14184 and subsequent DoD guidance affects the validity of the actions by the Air Force at issue in this case. While the Board recognizes that the COVID-19 vaccination is to be considered an unlawful order and is willing to correct records of Service members, the specific correction must be related to the COVID-19 vaccination mandate and must be supported by a preponderance of the evidence standard. In this case either the records already appear to be corrected or there was no documentation provided by the applicant or his counsel that specifically shows that he was placed in a No-Pay, No-Points status due to COVID-19 vaccine or was denied orders due to his vaccination status. Should the applicant or his counsel provide more clarity in their request and provide documentation that correlates his unvaccinated status with the alleged errors and injustices, the Board would be willing to reconsider his request. Accordingly, the Board concludes the applicant's case may meet the intent of Executive Order 14184 and the criteria outlined in subsequent guidance for corrective action; however, absent additional evidence, the Board is unable to provide the requested relief. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2025-02886 in Executive Session on 3 Oct 25:

- Work-Product Panel Chair
- Work-Product Panel Member
- Work-Product Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 14 Aug 25.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Applicable Authority for COVID-19 Reinstatement.
- Exhibit D: CoFC Remand Order, w/atchs, dated 15 Jul 22.

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.

10/8/2025
Work-Product