



Work-Product

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2025-02887

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 9 Feb 22 to 29 Mar 22.
- 3) Remove any reference of misconduct related to the COVID-19 vaccination mandate.
- 4) Remove any record of his COVID-19 vaccination status per Office of Personnel Management (OPM) for federal employees.
- 5) His religious accommodation be properly granted as of date it was originally submitted.

APPLICANT'S CONTENTIONS

The applicant's counsel contends that he should receive 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:

AFBCMR Docket Number BC-2025-02887

Work-Product

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a) “Declaration of [applicant] in Support of Plaintiff’s Complaint and Response, Case No. [Work-Product]” explaining that the applicant was serving on full-time Title 32 Active Duty Operational Support (ADOS) from 21 May 21 to 29 Mar 22; however, unvaccinated pilots were subject to withdrawal of Title 32 orders and potential reassignment to the Individual Ready Reserve (IRR) if they did not receive the COVID vaccine. While, the applicant submitted a Religious Accommodation Request (RAR), he received no response. Subsequently, higher headquarters restricted unvaccinated pilots from flying outside their local training area, resulting in the curtailment of his orders 54 days early on 3 Feb 22. He further explains that although removed from full-time orders, he was permitted to continue drilling with his unit.

b) “Plaintiffs’ Motion for Judgment on the Administrative Record or, In the Alternative, Motion for Summary Judgement, Case No. [Work-Product]” which explains the violations committed against the applicant and indicates the specific injustices that occurred. Specifically, it reiterates that the applicant was serving on Full Time National Guard (FTNGD) ADOS orders from 21 May 21 through 29 Mar 22 which were curtailed and he further did not receive any new orders until after the rescission of the COVID vaccine mandate in 2023. Moreover, the applicant’s commander approved his RAR because he found “no compelling interest” to deny the request, but federal officials outside of his State chain of command ignored the commander’s professional judgement.

c) A copy of Order Number [Work-Product], dated 8 Feb 22 showing the applicant was on FTNGD orders from 21 May 21 – 3 Feb 22.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard (ANG) lieutenant colonel (O-5).

On 13 May 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 21 May 21 – 31 Aug 21.

On 7 Jul 21, Order Number [Work-Product] was modified to reflect an itinerary of 21 May 21 – 30 Sep 21.

On 30 Sep 21, Order Number [Work-Product] was modified to reflect an itinerary of 21 May 21 – 29 Mar 22.

On 8 Feb 22, Order Number [Work-Product] was modified to reflect an itinerary of 21 May 21 – 3 Feb 22.

On 3 Feb 22, according to DD Form 214, *Certificate of Uniformed Service*, the applicant received a “Honorable” discharge in the grade of major (O-4) after completing a period of active duty service from 21 May 21 through 3 Feb 22. The applicant was credited with 8 months and 13 days of net active service for the period. The remarks state that the applicant served in support of Mission Support IAW 32 USC 502(f)(1)(b) while assigned to [Work-Product]. The narrative reason for separation reflects “Completion of Required Active Service.”

On 31 May 23, according to DD Form 214, the applicant received a “Honorable” discharge in the grade of major (O-4) after completing a period of active duty service from 31 May 23 through 30 Sep 23. The applicant was credited with 4 months of net active service for the period. The remarks state that the applicant served in support of Mission Support IAW 32 USC 502(f)(1)(b) while

assigned to [Work-Product]. The narrative reason for separation reflects “Completion of Required Active Service.”

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), Extension Course Institute (ECI), and retirement points:

| R/R Year | AD | IDT | MBR | ECI | Retirement | Satisfactory Service (Year) |
|----------------------|-----|-----|-----|-----|------------|-----------------------------|
| 1 May 20 - 30 Apr 21 | 347 | 22 | 15 | 37 | 365 | 010000 |
| 1 May 21 - 30 Apr 22 | 276 | 29 | 15 | 0 | 320 | 010000 |
| 1 May 22 - 30 Apr 23 | 22 | 106 | 15 | 0 | 143 | 010000 |
| 1 May 23 - 30 Apr 24 | 336 | 14 | 15 | 0 | 365 | 010000 |
| 1 May 24 - 30 Apr 25 | 118 | 95 | 15 | 0 | 228 | 010000 |

According to the Air National Guard Reserve Order Writing System (AROWS), during the period of 4 Feb 22 through 29 Mar 22, the applicant completed Rescheduled Drills and Additional Flying and Flight Training Periods (AFTP) on the following dates: 8 Feb 22 – 10 Feb 22; 14 Feb 22 – 16 Feb 22; 1 Mar 22; 3 Mar 22; 7 Mar 22; 9 Mar 22 - 10 Mar 22; 22 Mar 22 – 24 Mar 22.

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 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. Moreover, the applicant's request to have his RAR request to be approved is now moot, given that the vaccine mandate has since been rescinded and correcting the record to show that he had an approved request would be contrary to the request to have his records remove any mention of his COVID-19 vaccination status.

With respect to the applicant's request for constructive service, back pay, and associated entitlements for the period 9 Feb 22 to 30 Mar 22, the Board notes that his orders were in fact curtailed from 30 Mar 22 to end on 3 Feb 22, but no evidence was provided by the applicant or was available in his military human resource record showing the reason for the curtailed orders was due to his vaccine status. In this regard, the applicant bears the burden of providing evidence to substantiate his claim. Nevertheless, should the applicant provide corroborating evidence/documentation (i.e. letter from commander, military personnel flight, etc.) showing the curtailment of his orders was due to the COVID vaccine, the Board would be willing to reconsider this portion of the applicant's request.

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 his orders were curtailed due to his COVID-19 vaccination status. Should the applicant or his counsel 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-2025-02887 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

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