

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 July 2024

DOCKET NUMBER: AR20230014817

APPLICANT REQUESTS: removal of the general officer memorandum of reprimand (GOMOR), censure, admonition with auxiliary documents from the performance folder of his Army Military Human Resource Record (AMHRR).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: Online DD Form 149 (Application for Correction of Military Record).

FACTS:

1. The applicant states he declined an order directly from his Commander, to get the COVID-19 vaccination. He believed it to be an unlawful order as it is his constitutional right to choose the medical care that he receives. He did not submit for any of the three exemptions as they would have been bogus and not becoming of an American Soldier to submit falsely. He fought all enemies both foreign and domestic, and he is the one stuck with a GOMOR whilst other submitted bogus exemptions with no validity and had their GOMOR removed. He has had a wonderful career since this event, he has been the Vice President of Better Opportunity for Single Soldiers on his Installation White Sands Missile Range. He has served as the driver to the prior Installation Commander, Brigadier General (BG) E.D.L. He has served the current Commander of the Installation as well as two different Command Sergeants Major. BG EDL wrote a memorandum to Lieutenant General (LTG) W.M.B., the issuer, and vouched for him to have it redacted based off performance. He will continue to serve honorably but will be getting out if he cannot progress his career in a meaningful way.
2. The applicant enlisted in the Regular Army on 16 June 2020. He served in Korea from 24 February 2021 to 9 April 2022.
3. On 28 September 2021, the applicant was reprimanded in writing by LTG W.M.B. Commanding General, Headquarters, Eighth Army, Korea. The GOMOR stated:

On 22 September 2021, you were provided a final opportunity to obey a lawful order to receive the COVID 19 [Corona Virus Disease 2019] vaccine. You failed to follow this order.

Your disobedience raises serious questions about your fitness for continued service in the U.S. Army. Good order and discipline require all Soldiers, regardless of rank or position, to obey any and all lawful orders. The order to receive the vaccination is for the purpose of protecting the health and readiness of the force. By receiving the vaccine, you protect not only yourself, but your fellow Soldiers and other members of the community. Your decision to disobey this order represents a departure of the selfless service and professionalism expected of all Soldiers in our formations.

This is an administrative reprimand imposed under the provisions of AR 600-37 and not as punishment under Article 15, Uniform Code of Military Justice. You are advised that in accordance with Army Regulation 600-37 (Unfavorable Information), Paragraph 3-5b, I intend to direct this reprimand be filed permanently in your Army Military Human Resource Record. Prior to making my filing decision, I will consider any matters you submit in extenuation, mitigation, or rebuttal. You will be provided, by separate cover, a copy of the evidence which forms the basis for this reprimand. You will immediately acknowledge receipt of this reprimand in writing. You will forward any matters you wish me to consider through your chain of command within seven calendar days, using the format prescribed in Army Regulation 600-37, paragraph 3-7.

4. The applicant acknowledged receipt of the GOMOR and elected not to submit any matters.
5. After carefully consideration of the reprimand, the circumstances of the misconduct, and all matters submitted by the Soldier in defense, extenuation or mitigation, if any, along with recommendations of subordinate commanders, LTG W.M.B. directed permanently filing the GOMOR in the applicant's AMHRR.
6. The applicant acknowledged the filing determination of his reprimand into his AMHRR.
7. On 22 September 2021, he was counseled by his immediate commander related to enlisted soldiers declining immunization. On 24 August 2021, the Secretary of Defense directed the Secretary of the Army to begin full vaccination of the U.S. Army against COVID-19 disease. On 10 September 2021, the applicant declined to receive the COVID-19 vaccine. The counseling indicated the rationale and ramifications of not receiving the vaccination. He agreed with the counseling on the same date. He agreed with the counseling on the same day.
8. On 23 September 2021, he was counseled by the office in charge of the Battalion Aid Station of 35th Air Defense Artillery (ADA) Brigade, Korea.

[Applicant] refused mandatory COVID-19 vaccination and was directed by unit Commander for medical evaluation and counseling after Commander counseling and mandatory CDC COVID-19 Video observation. In accordance with AR 600-20, chapter 5-6, he must be counseled by a military physician or equivalent prior to further administrative action.

I personally counseled him at 6-52nd ADA Battalion Aid Station either face to face or virtually on 23 September 2021. I discussed Department of Defense directed COVID-19 mandatory vaccination program, purpose, benefit, risk, safety, and efficacy of COVID-19 vaccines, potential risks and danger of infection to self, unit, and community incurred by unimmunized individuals, and recently approved license of Pfizer and Comirnaty by FDA I also discussed his personal concern for COVID-19 vaccines including brand new COVID-19 vaccines without no long-term study, side effect and complication, breakthrough infection, etc. Lastly, I discussed the potential impacts of COVID-19 vaccine refusal and following course of action.

Unless granted a waiver through the Office of the Surgeon General, the patient would be non-deployable.

9. During the processing of this case the Staff Judge Advocate (SJA) emailed the Deputy Staff Judge Advocate (SJA), Headquarters, 8th Army Korea stating:

10. White Sands Missile Range Commanding General (CG) recommended the 8th Army CG support to transfer the GOMOR of the applicant to his restricted AMHRR.

11. In response the Deputy SJA stated: After careful consideration and a thorough review of the documents submitted as part of the applicant's request, LTG B. does not believe there are sufficiently compelling reasons at this time for supporting the transfer of the GOMOR.

12. The applicant continues to serve with an expiration term of service of 18 January 2025.

13. By regulation, Army Regulation 600-8-104 (Army Military Human Resource Records Management), effective 7 May 2014, prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant received a GOMOR for failing to obey a lawful

order to receive the COVID-19 vaccine. He was provided an opportunity to submit matters in his defense, but he elected not to do so. He was also counseled and informed about medical exemptions but did not request any. The imposing general officer ordered the GOMOR filed in his AMHRR. The Board found no error or injustice in the administration of the GOMOR and/or its filing. After the applicant's departure from Korea, and after careful consideration and a thorough review of the documents submitted as part of the applicant's request, the former command did not find sufficiently compelling reasons supporting the transfer or removal of the GOMOR. Since the Board found no error or injustice related to this GOMOR, and since the applicant does not provide evidence of an error or injustice, the Board determined relief is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. HQDA FRAGO 5 to HQDA EXORD 225-21 COVID-19 Steady State Operations, 14 September 2021, states this order addresses the 24 August 2021 Secretary of the Army implementation of mandatory COVID-19 vaccinations of DOD service members. It further states, in part, effective immediately, commanders will vaccinate all Soldiers who are not otherwise exempt. Orders to receive the mandatory vaccine are lawful. Commanders will ensure sufficient doses of DOD-approved vaccines are on hand and available for their unit. Soldiers may at any time still voluntarily receive any other vaccine approved for emergency use. Soldiers requesting an exemption are not required to receive the vaccine pending the final decision on their exemption request. Only those adverse administrative actions identified for phase 1 are authorized during phase 1 for Soldiers refusing the vaccine; any other adverse action based solely on vaccine refusal is withheld during this phase.

2. Secretary of Defense memorandum (Rescission of August 24, 2021, and November 30, 2021, COVID-19 Vaccination Requirements for Members of the Armed Forces), 10 January 2023, noted in paragraphs 3 and 4:

On December 23, 2022, the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 was enacted. Section 525 of the NDAA for FY 2023 requires to rescind the mandate that members of the Armed Forces be vaccinated against COVID-19, issued on August 24, 2021, memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members." I hereby rescind that memorandum. I also hereby rescind my November 30, 2021, memorandum, "Coronavirus Disease 2019 Vaccination for Members of the National Guard and the Ready Reserve."

No individuals currently serving in the Armed Forces shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds. 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. The Secretaries of the Military Departments will further cease any ongoing reviews of current Service member religious, administrative, or medical accommodation requests solely for exemption from the COVID-19 vaccine or appeals of denials of such requests.

3. Army Regulation 600-20 (Army Command Policy) prescribes the policies and responsibilities of command, which include the Army Ready and Resilient Campaign Plan, military discipline and conduct, the Army Military Equal Opportunity Program, the Army Harassment Prevention and Response Program, and the Army Sexual Harassment/Assault Response and Prevention Program.

a. Paragraph 5-4 (Command Aspects of Medical Readiness and Medical Care) states the proponent for prevention against disease and injury is the Office of the Surgeon General.

(1) Immunizations. Commanders will ensure that Soldiers are continually educated concerning the intent and rationale behind both routine and theater-specific or threat-specific military immunization requirements. Immunizations required by Army Regulation 40-562 (Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases] or other legal directive may be given involuntarily (except as prescribed in paragraph 5-6 or paragraph P-3b regarding religious accommodation). The intent of this authorization is to protect the health and overall effectiveness of the command, as well as the health and medical readiness of the individual Soldier. In cases where involuntary immunization is being considered, the following procedures and limitations apply:

(2) Under normal circumstances, actions will not be taken to involuntarily immunize Soldiers. If a Soldier declines to be immunized the commander will:

(a) ensure that the Soldier understands the purpose of the vaccine;

(b) ensure that the Soldier has been advised of the possibility that the disease may be naturally present in a possible area of operation or may be used as a biological weapon against the United States and its allies;

(c) ensure that the Soldier is educated about the vaccine and has been able to discuss any objections with medical authorities; and

(d) counsel the Soldier, in writing, that he or she is legally required to be immunized; that if the Soldier continues to refuse to be immunized that he or she will be legally ordered to do so, and that failure to obey the order may result in UCMJ and/or administrative action for failure to obey a lawful order (Article 92, UCMJ) as deemed appropriate by the commander.

b. Appendix P (Religious Accommodation), paragraph P-2a (Processing Requests Related to Medical Care), states a Soldier may request to have medical treatment withheld for non-emergency or nonlife-threatening illnesses and injuries. Accommodations for medical care are fact specific. Blanket requests covering unspecified future medical care will not be approved. Unit commanders may consult with medical treatment facility personnel about medical treatment options, including temporarily deferring medical treatment to accommodate a Soldier's religious practices while a request is pending. Commanders will follow Defense Health Agency or DOD policies and procedures. If Defense Health Agency or DOD procedures are not prescribed, a medical treatment facility commander will engage in the following

procedures (see Memorandum of Agreement between Defense Health Agency and the Army Office of the Surgeon General and the U.S. Army Medical Command for the Direct Support to the Defense Health Agency for Medical Treatment Facility Administration and Management, 19 September 2019).

c. Appendix P, paragraph P-2b (Immunizations). Immunization requirements for Soldiers are described in Army Regulation 40-562. Soldiers whose religious practices conflict with immunization requirements may request an exemption through command channels, from company, or immediate commander through battalion, brigade, division, and general court-martial convening authority commanders to The Surgeon General. The Surgeon General is the only approval or disapproval authority for immunization accommodation requests.

4. Army Regulation 600-37 (Unfavorable Information), sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR.

a. An administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. A memorandum of reprimand may be filed in a Soldier's OMPF only upon the order of a general officer-level authority and is to be filed in the performance folder. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the OMPF, the recipient's submissions are to be attached. Once filed in the OMPF, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 (Appeals).

c. Paragraph 7-2 (Policies and Standards) states that once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.

d. Paragraph 7-3c states an officer who directed filing of an administrative memorandum of reprimand, admonition, or censure in the AMHRR may request its revision, alteration, or removal, if evidence or information indicates the basis for the

adverse action was untrue or unjust, in whole or in part. An officer who directed such a filing must provide the Department of the Army Suitability Evaluation Board a copy of the new evidence or information to justify the request.

5. Army Regulation 600-8-104 (Army Military Human Resource Records Management), effective 7 May 2014, prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army. Paragraph 3-6 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the Army Board for Correction of Military Records or other authorized agency.

//NOTHING FOLLOWS//