

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20240000090

APPLICANT REQUESTS: removal of the general officer memorandum of reprimand (GOMOR) dated 27 June 2022, with auxiliary documents from the performance folder of his Army Military Human Resource Record (AMHRR).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Secretary of Defense Memorandum (Rescission of August 24, 2021, and November 30, 2021, Coronavirus Disease 2019 (COVID-19) Vaccination Requirements for Members of the Armed Forces), 10 January 2023

FACTS:

1. The applicant states he received a GOMOR based on his declination to receive the COVID-19 vaccine. The Secretary of Defense rescinded the mandate for vaccinating members of the Armed Forces against COVID-19 on 10 January 2023.
2. He enlisted in the U.S. Army Reserve on 20 November 2014 beginning in the rank/grade of private/E-1. He was promoted to the rank/grade of sergeant/E-5 effective 1 April 2019.
3. The DA Form 4856 (Developmental Counseling Form), 13 March 2022, shows he was counseled by his company commander regarding the 24 August 2021 Secretary of Defense directive for all service members to be vaccinated against COVID-19. On 13 March 2022, he declined to receive the vaccination. The counseling addressed the rationale for being vaccinated and ramifications of not receiving the vaccination. He agreed with the counseling on 9 June 2022.
4. The Forward Support Company, 983d Engineer Battalion, memorandum from his company commander (Request for GOMOR for COVID-19 Vaccination Refusal), 24 May 2022, requested initiation of a GOMOR for the applicant due to his declination to receive the COVID-19 vaccine.

5. The Headquarters and Headquarters Company, 983d Engineer Battalion, memorandum for record from the physician assistant (Request for Mandatory Vaccination Declination – (Applicant)), 3 June 2022, states:

[Applicant] has requested a mandatory vaccination declination from immunizations. In accordance with AR [Army Regulation] 600-20 [Army Command Policy], chapter [paragraph] 5-6, [Applicant] must be counseled by a military physician.

I personally counseled [Applicant] in clinic on 01 June 2022. We discussed vaccine specific vaccine information, including indications, benefits, and potential risks of infection incurred by unimmunized individuals. I discussed the potential impacts of this course of action.

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

6. He did not provide and his military records do not contain a memorandum from The Surgeon General approving or disapproving an exemption for immunization accommodation request.

7. He was reprimanded in writing by Major General M____ V. B_____, Commanding General, 416th Theater Engineer Command, on 27 June 2022 wherein he stated:

You are reprimanded for disobeying a lawful order by refusing to become fully vaccinated against Coronavirus Disease 2019 (COVID-19). In response to direction by the Secretary of Defense, on 14 September 2021, the Secretary of the Army directed that Army Soldiers receive a COVID-19 vaccination. In response to this direction, you were counseled on your requirement to receive the vaccine, given an opportunity to view an educational video about the vaccine, and provided an opportunity to consult with a medical professional to discuss the vaccine and any concerns you had about being vaccinated. Subsequently, your unit commander lawfully ordered you to receive a COVID-19 vaccination and you unjustifiably disobeyed that order. Your actions are unacceptable, and adversely impact the health and readiness of the force.

This is an administrative reprimand imposed under the provisions of Army Regulation (AR) 600-37 [Unfavorable Information] and not as punishment under Article 15, Uniform Code of Military Justice. You are advised that in accordance with AR 600-37, paragraph 3-5b, I am considering whether to direct this reprimand be filed permanently in your Army Military Human Resource Record (AMHRR). 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 30 days, using the format prescribed in AR 600-37, paragraph 3-7.

8. He acknowledged receipt of the GOMOR on 16 July 2022 and elected not to submit rebuttal matters.

9. After carefully considering the circumstances of the misconduct and the recommendations of his command, the commanding general directed filing the GOMOR in his AMHRR on 30 September 2022.

10. A review of his AMHRR revealed the GOMOR with associated documents is filed in the performance folder.

11. He provided the 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, which states, in part:

...Section 525 of the NDAA [National Defense Authorization Act] for FY [Fiscal Year] 2023 requires me to rescind the mandate that members of the Armed Forces be vaccinated against COVID-19, issued in my 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.

Other standing Departmental policies, procedures, and processes regarding immunizations remain in effect. These include the ability of commanders to consider, as appropriate, the individual immunization status of personnel in making deployment, assignment, and other operational decisions, including when vaccination is required for travel to, or entry into, a foreign nation.

12. Department of the Army Orders 0006141907, 29 September 2023, honorably discharged him from the U.S. Army Reserve by reason of expiration term of service effective 19 November 2022.

13. His DA Form 5016 (Retirement Accounting Statement), 30 September 2023, shows he completed 6 years of qualifying service for retirement.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicants petition and military records, the Board majority determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the general officer memorandum of reprimand issued on 27 June 2022 is substantially incorrect and supports removal. The Board majority determined the applicant violated a direct order at the time of the refusal and therefore the reprimand was appropriate. The Board minority determined based on the rescission of the requirement for the vaccination, the order is no longer in place and the reprimand has served its purpose. Based on a preponderance of the evidence, the Board denied relief.

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. Headquarters, Department of the Army, Fragmentary Order 5 to Headquarters, Department of the Army, Execute Order 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 Department of Defense (DOD) service members. 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, states, in part:

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 me to rescind the mandate that members of the Armed Forces be vaccinated against COVID-19, issued in my 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.

Other standing Departmental policies, procedures, and processes regarding immunizations remain in effect. These include the ability of commanders to consider, as appropriate, the individual immunization status of personnel in

making deployment, assignment, and other operational decisions, including when vaccination is required for travel to, or entry into, a foreign nation.

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 the Soldier understands the purpose of the vaccine;
- b. ensure 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 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, 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 Uniform Code of Military Justice and/or administrative action for failure to obey a lawful order (Article 92, Uniform Code of Military Justice) as deemed appropriate by the commander.

b. Paragraph 5-6 (Accommodating Religious Practices) states the Army places a high value on the rights of its Soldiers to observe tenets of their respective religions or to observe no religion at all; while protecting the civil liberties of its personnel to the greatest extent possible, consistent with its military requirements. The types of requests for religious accommodation generally fall into five major areas: worship practices, dietary practices, medical care (including immunizations), wear and appearance of the uniform, and personal appearance and grooming practices. Procedures and approval authorities vary depending on the type of accommodation. See appendix P for additional processing information for each category of request.

c. 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).

d. 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 Official Military Personnel File (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), 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//