



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 1103-23
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █
XXX XX █ USMC

Ref: (a) 10 U.S.C. § 1552
(b) MCO P1070.12K (with Change 1), subj: Marine Corps Individual Records
Administration Manual (Short Title: IRAM), 14 July 2000

Encl: (1) DD Form 149
(2) SECDEF Memo, subj: Mandatory Coronavirus Disease 2019 Vaccination of
Department of Defense Service Members, 24 August 2021
(3) ALNAV 062/21, subj: 2021-2022 Department of the Navy Mandatory COVID-19
Vaccination Policy, dtg 302126Z AUG 21
(4) MARADMIN 462/21, subj: Mandatory COVID-19 Vaccination of Marine Corps
Active and Reserve Components, dtg 011400Z SEP 21
(5) NAVMC 118(11), Administrative Remarks, 7 October 2021
(6) MARADMIN 533/21, subj: Supplemental Guidance to Mandatory COVID-19
Vaccination of Marine Corps Active and Reserve Components, dtg 061806Z OCT 21
(7) MARADMIN 612/21, subj: Supplemental Guidance (2) to Mandatory COVID-19
Vaccination of Marine Corps Active and Reserve Components, dtg 222100Z OCT 21
(8) NAVMC 118(11), Administrative Remarks, 26 October 2021
(9) SECDEF Memo, subj: Rescission of August 24, 2021 and November 30, 2021
Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed
Forces, 10 January 2023
(10) MARADMIN 025/23, subj: Rescission of COVID-19 Vaccination Requirement,
dtg 181130Z JAN 23
(11) ALNAV 009/23, subj: Rescission of COVID-19 Vaccination Requirement for
Members of the Armed Forces, dtg 201839Z JAN 23
(12) MARADMIN 109/23, subj: Update to Mandatory COVID-19 Vaccination
Requirement of Marine Corps Active and Reserve Components,
dtg 272000Z FEB 23

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the

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Board, requesting removal of the administrative remarks from his naval record that are “no longer applicable and do not reflect [his] current military status.”¹

2. The Board reviewed Petitioner’s allegations of error or injustice on 3 November 2023 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner’s naval record in the interests of justice. Documentary material considered by the Board included the enclosures, relevant portions of Petitioner’s naval records, and applicable statutes, regulations, and policies.

3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy (DON).

b. By memorandum dated 24 August 2021, the Secretary of Defense (SECDEF) mandated that all members of the Armed Forces under Department of Defense authority be fully vaccinated against the COVID-19 virus with a vaccine receiving full licensure from the Food and Drug Administration (FDA).² Accordingly, he directed the Service Secretaries to immediately begin full vaccination of all Service members of their respective services. See enclosure (2).

c. On 30 August 2021, the Secretary of the Navy (SECNAV) implemented the SECDEF’s directive referenced in paragraph 3b above in ALNAV 062/21, ordering all DON active duty Service Members who were not already vaccinated or exempted to be fully vaccinated within 90 days, and all Reserve Component Service Members to be fully vaccinated within 120 days with an FDA-approved COVID-19 vaccination. In issuing this directive, SECNAV made the following statement:

The order to obtain full vaccination is a lawful order, and failure to comply is punishable as a violation of a lawful order under Article 92, Uniform Code of Military Justice [(UCMJ)], and may result in punitive or adverse administrative action or both. The Chief of Naval Operations and Commandant of the Marine Corps have authority to exercise the full range of administrative and disciplinary actions to hold non-exempt Service Members appropriately accountable. This may include, but is not limited to, removal of qualification for advancement, promotions, reenlistment, or continuation, consistent with existing regulations, or otherwise considering vaccination status in personnel actions as appropriate.

See enclosure (3).

¹ Petitioner specifically requested the removal from his record of duplicate counseling statements, dated 26 October 2021, documenting his request to resign his commission in the Marine Corps, and his administrative counseling of 7 October 2021, formally notifying him of the COVID-19 vaccination mandate. As discussed below, it appears that the latter document has already been removed from Petitioner’s naval record.

² A Service member was considered to be fully vaccinated two weeks after completing the second dose of a two-dose COVID-19 vaccine, or two weeks after receiving a single dose of a one-dose vaccine.

d. On 1 September 2021, the Marine Corps published MARADMIN 462/21 to implement the COVID-19 vaccination mandates referenced in paragraphs 3b and 3c above. Specifically, MARADMIN 462/21 directed all Marine Corps Active and Reserve Component Service Members to be fully vaccinated against COVID-19, unless medically or administratively exempt. All non-exempt Active Component Marines were to achieve full vaccination no later than 28 November 2021,³ while all non-exempt Reserve Component Marines were to achieve full vaccination no later than 28 December 2021.⁴ MARADMIN 462/21 further specified that this mandate “constitutes a lawful general order and any violations of these provisions is punishable as a violation of Article 92 of [the UCMJ].” It further provided that initial disposition authority for cases arising from refusal of this order is withheld to the general court-martial convening authority level, “except that administrative counseling pursuant to paragraph 6105 of [reference (b)] may be used at the special court-martial convening authority level.” See enclosure (4).

e. On 7 October 2021, Petitioner was administratively counseled in writing regarding the requirements outlined in MARADMIN 462/21.⁵ Specifically, he was formally notified of the requirement for all Active Component Marines to be fully vaccinated against COVID-19 by 28 November 2021, unless medically or administratively exempt, and that MARADMIN 462/21 constituted a lawful general order the violation of which was punishable as a violation of Article 92, UCMJ. By his signature, Petitioner acknowledged he had read and understood ALNAV 062/21 and MARADMIN 462/21. See enclosure (5).

f. On 7 October 2021, the Marine Corps published MARADMIN 533/21 to supplement the guidance of MARADMIN 462/21 referenced in paragraph 3d above. This message specified that “[i]n order to meet Commandant-directed deadlines as stated in [MARADMIN 462/21], all Active Component Service Members must receive their first dose of Pfizer-BioNTech/COMIRNATY vaccine no later than 24 October 2021 and all Reserve Component Service Members must receive their first dose no later than 24 November 2021.” It further specified that all Active Component Marines must receive their second dose no later than 14 November 2021, while all Reserve Component Marines must receive their second dose no later than 14 December 2021. The message also provided guidance for recording vaccine refusals in the Medical Readiness Reporting System, and advised that adverse administrative or judicial proceedings may be initiated in accordance with the authorities delineated in MARADMIN 462/21 when a Marine has refused to take the vaccine, and that “[t]here is no requirement to delay action until the deadlines established in [MARADMIN 462/21].” See enclosure (6).

g. On 23 October 2021, the Marine Corps published MARADMIN 612/21 to further supplement the guidance of MARADMIN 462/21 referenced in paragraph 3d above. This message provided guidance that “Marines refusing the COVID-19 vaccination, absent an approved administrative or medical exemption, religious accommodation, or pending appeal shall be processed for administrative separation.” It further clarified that, in most cases, Marines will be ordered to begin the vaccination process before the deadlines established in MARADMIN 462/21, and that a Marine is considered to have “refused the vaccine” when they

³ This date was 90 days from issuance of ALNAV 062/21 (see paragraph 3c above).

⁴ This date was 120 days from issuance of ALNAV 062/21 (see paragraph 3c above).

⁵ Petitioner specifically requested the removal of this document from his record, but it appears to have already been administratively removed. This record was provided to the Board by Petitioner with his other matters.

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do not have an approved administrative or medical exemption, religious accommodation, or pending appeal, and they (1) received and willfully disobeyed a lawful order from a superior commissioned officer to be vaccinated against COVID-19; or (2) they are not or will not be fully vaccinated by the deadline established in MARADMIN 462/21. Finally, this message established restrictions upon the assignments available to, ability to reenlist or execute assignment for, authority to promote, and separation benefits available to Marines who have refused the vaccine, and authorized the temporary reassignment of such unvaccinated Marines based upon operational readiness or mission requirements. See enclosure (7).

h. On 26 October 2021, Petitioner requested to resign his commission in the Marine Corps, effective 30 June 2022.⁶ See enclosure (8).

i. On 23 December 2022, the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 was enacted. Section 525 of the FY 2023 NDAA directed the SECDEF to rescind the vaccination mandate referenced in paragraph 3b above. See enclosure (9).

j. By memorandum dated 10 January 2023, the SECDEF rescinded the vaccine mandate referenced in paragraph 3b above in accordance with the FY 2023 NDAA. He also directed the military departments to update the records of individuals currently serving in the Armed Forces who sought an accommodation to the vaccine mandate on religious, administrative, or medical grounds “to remove any adverse actions solely associated with denials of such requests, including letters of reprimand.” No such directive was included for those Service Members who did not seek an accommodation to the vaccine mandate on religious, administrative, or medical grounds. See enclosure (9).

k. On 18 January 2023, the Marine Corps published MARADMIN 025/23, rescinding MARADMINs 462/21, 533/21, 612/12, and other MARADMINs related to the former vaccination mandate, and directing the immediate suspension of any new adverse administrative actions associated with refusal of the COVID-19 vaccine. See enclosure (10).

l. On 20 January 2023, the SECNAV published ALNAV 009/23, cancelling ALNAV 062/21. See enclosure (11).

m. On 28 February 2023, the Marine Corps published MARADMIN 109/23 to provide further guidance regarding the rescission of the former vaccine mandate. Amongst the guidance provided was that the Deputy Commandant for Manpower and Reserve Affairs (DC M&RA) would “direct an audit to search for adverse information in the [official military personnel files (OMPF)] of all currently serving members *who requested religious accommodations to the COVID-19 vaccine mandate (emphasis added)*,” and that such adverse matters would be removed as necessary in accordance with the SECDEF’s guidance referenced in paragraph 3k above. MARADMIN 109/23 also provided that “Marines who submitted requests for a medical or administrative exemption may submit written requests to the DC M&RA, through their chain

⁶ Although not specifically stated, the Board presumes based upon the timing of the request and the context of his application that Petitioner’s resignation request was influenced by the imposition of the COVID-19 vaccination mandate.

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of command, requesting removal of adverse material from their OMPF,” and that “[s]eparated Marines may petition the [Board] to request removal of adverse matters.” No provisions were discussed, however, for adverse matters pertaining to refusal of the COVID-19 vaccine mandate in the records of currently serving Marines who did not request a religious accommodation or an exemption for medical or administrative reasons. See enclosure (12).

n. At some point subsequent to his request of 7 October 2021, Petitioner’s resignation request was rescinded.

o. Petitioner asserts that relief is warranted because his request to resign his commission was rescinded and the relevant documents are no longer administratively necessary and do not accurately reflect his current status. See enclosure (1).

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board determined equitable relief is warranted in the interests of justice.

There was no error in the filing of the subject material in Petitioner’s naval record. Per reference (b), an entry in the officer’s official military personnel file including the language found in enclosure (8) is required when an officer requests resignation.⁷ Accordingly, the filing of this document was required by Marine Corps regulations. Additionally, the content of enclosure (5) is not adverse in any way, but rather records the fact that Petitioner was notified of the existence of an order which applied equally to all Marines. Accordingly, there was no error or injustice in the issuance of this counseling statement.⁸

Although the Board found no error in the filing of these documents in Petitioner’s naval record, it did find the existence of an injustice warranting their removal. Specifically, the Board presumes that Petitioner’s resignation was motivated by his objection to the COVID-19 vaccination mandate, and that mandate no longer exists. Additionally, Petitioner’s resignation request was never acted upon, so its continuing presence in Petitioner’s naval record serves no apparent purpose other than to document that Petitioner objected to that mandate at one time. As this information could theoretically be used to discriminate against Petitioner and currently serves no purpose since it was never acted upon, the Board believed that the evidence of Petitioner’s previous request for resignation should be removed from his record in the interests of justice.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner’s naval record in the interests of justice:

⁷ See paragraph 3005.3.f. of reference (b).

⁸ The Board notes that there is no evidence that this document remains in Petitioner’s naval record.

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That the NAVMC 118(11), Administrative Remarks, dated 26 October 2021, documenting Petitioner's previously unexecuted resignation, be removed from his naval record.

That Petitioner's naval record be scrubbed for any other material or entries referencing the former COVID-19 vaccination mandate, and that any such materials or entries be removed. This includes, but is not limited to, all information systems or database entries that may reference or indicate Petitioner's refusal to abide by the vaccination mandate.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.

5. The foregoing action of the Board is submitted for your review and action.

12/18/2023

[REDACTED]

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

X Board Recommendation Approved (Full Relief – I concur with the Board's conclusion, and therefore direct the relief recommended by the Board above.)

— Board Recommendation Disapproved (Deny Relief – I do not concur with the Board's conclusion. Specifically, I find no injustice in the presence of Petitioner's previous resignation request. Petitioner's resignation request makes no reference to his objection to the former COVID-19 vaccination mandate, so there is no reason to believe that it may ever be used to discriminate against Petitioner for this reason. Additionally, as this document is no filed in the performance section of Petitioner's naval record, it is unlikely to ever be considered for any reason. Further, such a document would be present in the naval record of any other similarly situated Marine Corps officer regardless of the reason for their resignation. Petitioner should not be afforded special treatment in this regard based upon his motivation to resign. Accordingly, I direct that no corrective action be taken on Petitioner's naval record.)

[REDACTED]