



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

██████████
Docket No. 2330-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
USN, XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552
(b) MILPERSMAN 1610-015, Documentation on Fitness Reports and Performance Evaluations for Failure to Maintain Deployability or Individual Medical Readiness, 1 October 2018
(c) BUPERSINST 1610.10E, Navy Performance Evaluation System, 6 December 2019
(d) SECNAVINST 1920.6D, Administrative Separation of Officers, 24 July 2019
(e) 10 U.S.C. § 1556
(f) MILPERSMAN 1611-010, Officer Performance and Separations for Cause, 30 October 2019
(g) USD (P&R) Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 with attachments
(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 Navy Mandatory COVID-19 Vaccination Policy, dtg 302126Z AUG 21
(4) NAVADMIN 190/21, subj: 2021-2022 Navy Mandatory COVID-19 Vaccination and Reporting Policy, dtg 311913Z AUG 21
(5) NAVPERS 1070/613, Administrative Remarks, 9 September 2021
(6) Petitioner's Memo, subj: COVID-19 Vaccination Administrative Counseling/Warning, 11 September 2021
(7) NAVADMIN 225/21, subj: COVID-19 Consolidated Disposition Authority (CCDA), dtg 132050Z OCT 21
(8) NAVADMIN 256/21, subj: CCDA Guidance to Commanders, dtg 152239Z NOV 21
(9) NAVPERS 1610/2, Fitness Report & Counseling Record (W2-O6) (20211101 – 20211128)
(10) NAVADMIN 283/21, subj: CCDA Execution Guidance to Commanders, dtg 151203Z DEC 21
(11) Petitioner's Memo, subj: Adverse Performance Fitness Report Statement, 16 December 2021
(12) ██████████ CO Memo 1611 Ser N02L/002, subj: Report of Misconduct in case of [Petitioner], 7 January 2022
(13) Petitioner's Statement regarding Report of Misconduct Ser N02L/002 07 Jan 2022, undated

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- (14) [REDACTED] CO Memo 1611 Ser N02L/009, Final Endorsement on Enclosure (12), subj: Report of Misconduct ICO [Petitioner], 24 January 2022
- (15) Navy Personnel Command CO Memo 1920 Ser 834/069, subj: Notification of Administrative Show Cause Proceedings, 10 February 2022
- (16) Petitioner's Memo, subj: Qualified Resignation from Naval Service for an Honorable (HON) Discharge, 10 February 2022
- (17) [REDACTED] CO Memo 1920 Ser N02L/033, First Endorsement on Enclosure (16), subj: Qualified Resignation from Naval Service for an Honorable (HON) Discharge, 11 February 2022
- (18) [REDACTED] CO Memo, Second Endorsement on Enclosure (16), subj: Qualified Resignation from Naval Service for an Honorable (HON) Discharge, 15 February 2022
- (19) Deputy Chief of Naval Personnel Memo 1920 BUPERS-00B/114, subj: Administrative Separation ICO [Petitioner], 28 February 2022
- (20) Petitioner's E-mail, subj: RE: [URL Verdict: Neutral][Non-DoD Source] Separation Orders and Request for Clarification, sent Friday, April 29, 2022 @ 1:44AM (and following e-mail trail)
- (21) NAVPERS 1610/2, Fitness Report & Counseling Record (W2-O6) (20211129 – 20220521)
- (22) DD Form 214
- (23) 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
- (24) NAVADMIN 005/23, subj: Removal of COVID-19 Vaccination Mandate, dtg 112139Z JAN 23
- (25) ALNAV 009/23, subj: Rescission of COVID-19 Vaccination Requirement for Members of the Armed Forces, dtg 201839Z JAN 23
- (26) NAVADMIN 065/23, subj: Follow On COVID-19 Vaccine Rescission Actions, dtg 061627Z MAR 23
- (27) ASN (M&RA) Memo, subj: Correction of Naval Records for Former Members of the Department of the Navy Following Rescission of the August 24, 2021, and November 30, 2021, Coronavirus Disease 2019 Vaccination Requirements for Former Members of the Armed Forces, 6 September 2023
- (28) BCNR E-mail to Petitioner, subj: BCNR DOCKET NO. 2330-23, sent Tuesday, September 19, 2023 @ 11:31 AM (and following e-mail train)
- (29) Petitioner's Statement, re: Timeline Navy Debt, 29 September 2023 (with enclosures)

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 Board, requesting the following relief:

a. Removal from her naval record of the "unlawful and false" fitness report(s) (FITREP), and the administrative documentation associated with her refusal of the COVID-19 vaccination;

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b. Acknowledgement that “the order of submitting to an untested and unapproved experimental injection was unlawful” and “the actions taken against [her] for refusing this unlawful order were retaliatory”;¹

c. Reinstatement in the Navy as an 1830 Lieutenant Commander (LCDR), backdated to her discharge on 25 May 2022;

d. Correction of the separation code and narrative reason for separation on her DD Form 214; and

e. Complete expungement of wage garnishment and refund of the difference between “her recent payment to discharge the interest-laden debt and the original balance of \$1104.55.”²

2. The Board reviewed Petitioner’s allegations of error or injustice on 3 November 2023 and, pursuant to its regulations, determined that corrective action indicated below should be taken on Petitioner’s naval record in the interests of justice. Documentary material considered by the Board included of the enclosures; relevant portions of Petitioner’s naval record; 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. Except as her request pertains to expungement of her wage garnishment, as discussed further below, Petitioner has exhausted all administrative remedies available under existing law and regulations within the 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 (DOD) authority be fully vaccinated against the COVID-19 virus with a vaccine receiving full licensure from the Food and Drug Administration (FDA).³ 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 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:

¹ The Board notes that this requested relief is beyond the Board’s authority to grant. In accordance with reference (a), the Board acts on behalf of the Secretary of the Navy (SECNAV) to correct errors in and remove injustices from naval records. It is not, however, empowered to speak on behalf of the Department of the Navy (DON) to provide this desired relief.

² Petitioner did not make this request in her original request to the Board. Rather, she raised it for the first time in her response to the ASN (M&RA)’s guidance of 6 September 2023. Petitioner was apparently overpaid \$1,104.55 on her final accounting of pay due to her discharge date of 25 May 2022 rather than 31 May 2022, and the Defense Finance and Accounting Service (DFAS) had since initiated wage garnishment proceedings to recoup this debt. See enclosure (29). The Board notes that Petitioner has not exhausted her administrative remedies in this regard.

³ 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.

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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).

d. On 31 August 2021, the Chief of Naval Operations (CNO) published NAVADMIN 190/21 to implement the COVID-19 vaccination mandates referenced in paragraphs 3b and 3c above. Specifically, NAVADMIN 190/21 directed all Navy service members to be fully vaccinated against COVID-19, unless medically or administratively exempt. All non-exempt Active Duty Navy Service members were to achieve full vaccination no later than 28 November 2021,⁴ while all non-exempt Ready Reserve Navy service members were to achieve full vaccination no later than 28 December 2021.⁵ NAVADMIN 190/21 further specified that this mandate “constitutes a lawful order” and “[r]efusal to be fully vaccinated against COVID-19, absent an approved exemption, will constitute a failure to obey a lawful order and is punishable under the [UCMJ] and/or may result in administrative action.” The NAVADMIN further provided that ultimate disposition will be determined by the designated COVID Consolidated Disposition Authority (CCDA) who will serve as the “central authority for adjudication,” and directed commanding officers to provide counseling to members regarding refusal to take the COVID-19 vaccine and to “issue a uniform NAVPERS 1070/613 (Page 13) ordering initiation of the COVID-19 vaccine series.” See enclosure (4).

e. On 2 September 2021, the [REDACTED], directed all non-exempt military personnel under his command to initiate vaccination against COVID-19 no later than 10 September 2021, and to complete full vaccination by 28 November 2021, in accordance with NAVADMIN 190/21 as discussed in paragraph 3d above. See enclosure (5).

f. On 9 September 2021, Petitioner was administratively counseled in writing regarding the COVID-19 vaccination mandates referenced in paragraphs 3b – 3e above. She was specifically ordered to initiate vaccination no later than 10 September 2021, and was informed that this constituted a lawful order the violation of which was punishable under Article 92, UCMJ. Petitioner acknowledged this order with her initials, and indicated her intent to submit a statement in response. See enclosure (5).

g. By memorandum dated 11 September 2021, Petitioner provided a statement in response to the administrative counseling referenced in paragraph 3f above. In this response, Petitioner stated that “[t]he decision to mandate an experimental medical procedure utilizing a substance that has allegedly been ‘approved by the FDA’ within a small fraction of the time usually required to determine the short and long-term side-effects of such a thing, with numerous alternative and effective treatment options available yet disparaged, while mandating the use of ineffective and harmful face-coverings, under the guise of ‘health and safety of the force’

⁴ This date was 90 days from issuance of ALNAV 062/21 (see paragraph 3c above).

⁵ This date was 120 days from issuance of ALNAV 062/21 (see paragraph 3c above).

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regarding a disease less infectious and less deadly to the US Navy age demographic than a seasonable flu, is an appalling and unlawful abuse of power.” She further asserted that the creation of a CCDA to take the disposition decisions out of the hands of commanding officers, “speaks to the unlawful nature of this order.” Finally, Petitioner offered commentary regarding the “censorship and demonization of anyone speaking skeptically about the experimental COVID ‘vaccine’ by major social media platforms and accredited news agencies, the active editing and changing of medical definitions by the World Health Organization, and the announcement of mandatory ‘quarantine camps’ for healthy person in [other countries] being met with heedless approval and enthusiasm.” She concluded that she could not “follow an order that [she knew] to be scientifically, historically, morally, and constitutionally abhorrent,” and suggested that doing so would be contrary to her oath of office. See enclosure (6).

h. On 13 October 2021, the CNO published NAVADMIN 225/21 to supplement the guidance of NAVADMIN 190/21 referenced in paragraph 3d above. The message announced assignment of the Chief of Naval Personnel (CNP) as the CCDA and further delineated the CCDA as the officer show cause authority (SCA). This message provided further guidance that “Navy service members refusing the COVID-19 vaccination, absent a pending or approved exemption, shall be processed for administrative separation,”⁶ and clarified that “[a]dministrative actions per this NAVADMIN may begin as soon as a Navy service member meets the definition of refusing this vaccine.” Finally, this message directed that the cognizant commander “shall submit a report of misconduct to Commander, Navy Personnel Command (PERS-834) per [reference (f)]” in the case of any officer who is refusing the vaccine; “identify those refusing the vaccine and verify that the members have an initial counseling NAVPERS 1070/13 per [reference (b)] in their local file”;⁷ and issue a special FITREP per references (b) and (c) within 30 days to any member refusing the vaccine. See enclosure (7).

i. On 15 November 2021, the CNO published NAVADMIN 256/21 to provide specific guidance to commanders regarding Navy service members who failed to obey a lawful order by refusing the COVID-19 vaccine. The message dictated that the least favorable characterization of service for Navy service members refusing the vaccine, without extenuating circumstances, would be general (under honorable conditions). The message also provided detailed guidance for officer separations and documentation in FITREPs. Specifically, it directed that Reporting Seniors (RS) issue an adverse special FITREP within 30 days of an officer refusing the vaccine in accordance with references (b) and (c).⁸ See enclosure (8).

j. On 30 November 2021, Petitioner’s RS issued her the adverse special FITREP directed by NAVADMIN 256/21 for the reporting period of 1 November 2021 to 28 November 2021.

⁶ A Navy service member refusing the vaccine was defined as “one who has: (1) received a lawful order to be fully vaccinated against COVID-19; (2) is not or will not be fully vaccinated on the date required by the order; and (3) does not have a pending or approved exemption.”

⁷ NAVADMIN 225/21 also specified that the NAVPERS 1070/13 counseling and warning ordering vaccination per NAVADMIN 190/21 may serve as the subsequent formal counseling required in reference (b).

⁸ NAVADMIN 256/21 further specified that the “to” date in block 15 of this special adverse FITREP would be 28 November 2021 for officers who did not request an exemption or religious accommodation. It further specified that the adverse special FITREP would contain a rating no higher than 2.0 (Developing) in blocks 35 (Military Bearing/Character) and 38 (Leadership); that block 42 (Promotion Recommendation) would be marked as “Significant Problems”; and that the following sentence must be the opening statement in block 41 (Comments on Performance): “*Member failed to failing deployability or individual readiness standards by refusing the order to receive the COVID-19 vaccine*.”

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Specifically, she received ratings of 2.0 (Developing) in blocks 35 (Military Bearing/Character) and 38 (Leadership); "Significant Problems" in block 42 (Promotion Recommendation); and the statement "Member failed to maintain deployability or individual readiness standards by refusing the order to receive the COVID-19 vaccine" in block 31 (Comments on Performance). Petitioner signed this FITREP on 3 December 2021, indicating her intent to submit a statement in response. See enclosure (9).

k. On 15 December 2021, the CNO published NAVADMIN 283/21, providing execution guidance to commanders regarding the separation of Navy service members refusing the COVID-19 vaccination. NAVADMIN 283/21 directed commanders to process for separation based upon misconduct with a general (under honorable conditions) characterization of service those non-probationary officers refusing the vaccination mandate who were not retirement or resignation eligible before 1 June 2022, but specified that requests for an honorable characterization of service in exchange for waiver of a Board of Inquiry (BOI) would generally be favorably endorsed. The CCDA directed show cause processing for all officers refusing the vaccine in accordance with reference (d) based upon misconduct and substandard performance of duty. See enclosure (10).

l. By memorandum dated 16 December 2021, Petitioner provided a statement in response to the adverse special FITREP referenced in paragraph 3j above. Specifically, she stated her belief that the COVID-19 vaccination mandate was unconstitutional, and reiterated her argument from enclosure (6) above that compliance with this order would be a violation of her oath to support and defend the Constitution. See enclosure (11).

m. By memorandum dated 7 January 2022, Petitioner's commander prepared a report of misconduct (ROM) recording Petitioner's refusal of the COVID-19 vaccination mandate in accordance with NAVADMINs 225/21. He specifically did not request Petitioner's detachment for cause (DFC), but recommended that Petitioner be required to show cause for retention in the naval service. See enclosure (12).

n. Petitioner subsequently provided a written statement in response to the ROM referenced in paragraph 3m above. This statement reiterated her oath of office, and her argument that she could not obey the COVID-19 vaccination mandate consistently with that oath. Specifically, she stated that she had "observed first-hand the inconsistent promises and declarations of the corrupt and ignorant push this country away from the founding principles of this nation, and prove detrimental to the readiness and effective of the United States Navy," and that she "dutifully ignored the turmoil of politics and popular culture to continue serving [her] country throughout this tumult" as an officer, but that she would do what her oath demands by "stand[ing] firm in [her] convictions to this country and the providential wisdom of its founders." See enclosure (13).

o. By memorandum dated 24 January 2022, Petitioner's commander forwarded the ROM referenced in paragraph 3m above, along with her response thereto referenced in paragraph 3n above, to the CCDA, recommending that Petitioner be required to show cause for retention in the naval service and not be DFC. See enclosure (14).

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p. By memorandum dated 10 February 2022, the CCDA notified Petitioner that she was required to show cause for retention in the naval service based upon misconduct⁹ and substandard performance of duty.¹⁰ See enclosure (15).

q. By memorandum dated 10 February 2022, Petitioner submitted a qualified resignation from the naval service, conditioned upon her receipt of an honorable characterization of service. This qualified resignation request included the following statement:

I assert, as I have always asserted, that the order to be injected with the experimental COVID-19 treatments is unlawful. I take fully responsibility for my declination of these experimental medical treatments. The Navy has decided to separate me due to my declination of the injections and my solemnly held beliefs that the COVID-19 military orders of masking and injections are devastating to medical readiness, good order and discipline, personal character, and the morale of the service. I acknowledge the Navy's decision to separate me, and I have faith that this miscarriage of the Navy's core values will be recognized in the due course of human history.

See enclosure (16).

r. By memorandum dated 11 February 2022, Petitioner's commander forwarded Petitioner's qualified resignation request through the chain of command to the SECNAV, recommending approval of the request with an honorable characterization of service. See enclosure (17).

s. By memorandum dated 15 February 2022, the [REDACTED] forwarded Petitioner's qualified resignation request through the chain of command to the SECNAV, also recommending approval with an honorable characterization of service. See enclosure (18).

t. By memorandum dated 28 February 2022, the Deputy CNP recommended to the Assistant SECNAV for Manpower and Reserve Affairs (ASN (M&RA)), acting on behalf of the SECNAV, that Petitioner's qualified resignation request be approved and that she be separated from the Navy with an honorable characterization of service and a separation code of BNC (Unacceptable Conduct). See enclosure (19).

u. On 30 March 2022, the Acting ASN (M&RA) approved the recommendation of the Deputy CNP referenced in paragraph 3t above, approving Petitioner's qualified resignation request and directing her separation from the Navy with an honorable characterization of service under separation code BNC (Unacceptable Conduct). See enclosure (19).

v. By e-mail dated 25 April 2022, Petitioner requested clarification from her command's Executive Officer and Judge Advocate for the BNC separation code referenced in her separation orders. She requested that her separation code and narrative reason for separation "reflect more

⁹ The misconduct specified was commission of a military or civilian offense which, if prosecuted under the UCMJ, could be punished by confinement of six months or more, and any other misconduct which would require specific intent for conviction, specifically, her alleged violation of Article 92, UCMJ, for failing to obey the order to receive the COVID-19 vaccination.

¹⁰ The substandard performance of duty specified was Petitioner's "[i]nability to maintain adequate levels of performance as evidenced by [her] failure to conform to prescribed standards of military department."

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accurately [her] situation,” and included codes referencing “Anthrax Refusal” as an example. The command’s Judge Advocate subsequently informed Petitioner that the BNC code was directed by the ASN (M&RA), as her involuntary separation was based upon misconduct and substandard performance of duty. In response to this clarification, Petitioner requested that the command “send official correspondence to clarify to ASN (M&RA) that there is zero misconduct, moral, or professional dereliction and substandard performance in [her] record aside from the Page 13 for COVID Injection Declination, and the subsequent mandated Adverse FITREP for the COVID Injection Declination Induced Page 13, in the hopes that they will amend the orders to properly reflect the nature of [her] service and subsequent reason for separation being solely that of COVID Injection Declination.” On 28 April 2022, the command’s Judge Advocate clarified for Petitioner that the ASN (M&RA)’s decision to direct use of the BNC separation code was based upon her documented violation of a lawful general order, as documented by the administrative counseling statement referenced in paragraph 3f above, the ROM reference in paragraph 3m above, and the adverse special FITREP referenced in paragraph 3j above. She offered to bring Petitioner’s concerns to the commander, but noted that his opinion on the matter would be immaterial since he was neither the SCA nor the separation authority in Petitioner’s case. By e-mail dated 29 April 2022 in response to the Judge Advocate’s clarification immediately above, Petitioner claimed that she had “made it abundantly clear that [she] was not ‘resigning’ to which [the command’s Judge Advocate] assured [her] that a ‘qualified resignation’ was not actually resigning,” and that she including the statement referenced in paragraph 3q above “in order to assuage [her] fears of a misunderstanding.” See enclosure (20).

w. On 3 May 2022, Petitioner’s RS signed an adverse detachment of individual FITREP for the reporting period 29 November 2021 to 21 May 2022. Blocks 35 (Military Bearing/Character), 38 (Leadership), and 42 (Promotion Recommendation) were marked the same as the corresponding blocks in the adverse special FITREP referenced in paragraph 3j above, and block 41 included the following statement: “Fitness Report submitted upon member’s administrative separation from the naval service due to misconduct (COVID-19 vaccine refusal).” Petitioner signed this FITREP on 10 May 2022, indicating her intent to submit a statement in response.¹¹ See enclosure (21).

x. On 25 May 2022, Petitioner was discharged from the Navy with an honorable characterization of service by reason of unacceptable conduct.¹² See enclosure (22).

y. 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 (23).

z. By memorandum dated 10 January 2023, the SECDEF rescinded the vaccination 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,

¹¹ Although Petitioner indicated her intent to submit a statement, there is no evidence of such a statement in her record.

¹² Petitioner’s separation code was BNC.

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including letters of reprimand.” No such directive was included for those individuals who did not seek an accommodation or exemption to the vaccination mandate on religious, administrative, or medical grounds. See enclosure (23).

aa. On 11 January 2023, the CNO published NAVADMIN 005/23 canceling NAVADMIN 190/21 and directing all commands to immediately discontinue administrative separation processing of Navy service members solely for refusing the COVID-19 vaccine, including those with approved separation letters. See enclosure (24).

bb. On 20 January 2023, the SECNAV published ALNAV 009/23, cancelling ALNAV 062/21. See enclosure (25).

cc. On 6 March 2023, the CNO published NAVADMIN 065/23 to provide further guidance regarding the rescission of the former vaccination mandate. This message stated that the records of currently serving Navy Service members who requested religious accommodation from COVID-19 vaccination “are being centrally reviewed to identify and remove any adverse information related to vaccine refusal, should it exist” but directed “other current and former Navy service members” to petition the Board regarding COVID-19 vaccination related matters. See enclosure (26).

dd. The Board received Petitioner’s application for relief on 17 March 2023. She asserted that relief was warranted because “[t]he Navy has now removed COVID-19 injection requirements for sailors and are amending the records of those who refused the injection, admitting through these actions that the previous allegations of readiness and health connected to the injection requirement were false.” She further asserted that documented health complications resulting from the COVID-19 vaccines prove “the mandate of this experimental drug has been catastrophically [sic] detrimental to the readiness of the fleet,” and insisted that “[t]hose who retaliated against officers who upheld their oath to defend the Constitution of the United States against ALL enemies, foreign AND domestic, must be held accountable and those who were discharged must be reinstated.” Included among the matters submitted by Petitioner in support of her application was a four-page narrative, detailing the timeline of her case and her perceived mistreatment resulting from her vaccine refusal and objection to the mask mandate. See enclosure (1).

ee. On 6 September 2023, the ASN (M&RA) issued supplemental policy guidance to the Board to “help facilitate consistency” when considering applications for correction of records of former members of the DON who were involuntarily separated for refusal to receive the COVID-19 vaccination. Specifically, the ASN (M&RA) provided guidance stating the Board should generally grant a discharge upgrade request from a former Service member when:

- The member was involuntarily separated;
- The entry within the naval record would prevent the member from rejoining the military without a waiver should the member desire to do so; and
- The following three conditions are met:

(1) The involuntary separation was based solely on a refusal to receive the COVID-19 vaccination;

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- (2) The Service member formally sought an exemption or accommodation on administrative, religious, or medical grounds in accordance with service regulation or policies prior to or contemporaneous with the official initiation of the action; and
- (3) There are no aggravating factors in the member's record, such as misconduct.

Specifically, the ASN (M&RA) stated that the Board should normally grant requests to recharacterize the discharge to an honorable service characterization, change the narrative reason for separation (i.e., to "Secretarial Authority"), and change the reentry code to an immediately-eligible-to-reenter category, when these criteria were satisfied. With regard to members who were discharged for failing to abide by the vaccination mandate but who did not formally seek an accommodation or exemption from the COVID-19 vaccination requirement on administrative, religious, or medical grounds, the ASN (M&RA) stated that "failure to comply with lawful military requirements is contrary to good order and discipline and undermines military readiness." He further stated that, while the Board is independent and has latitude in determining what constitutes an error or injustice, "broad, retroactive correction of records for applicants who received administrative action, including involuntary separation, as a result of a refusal to comply with the requirement to receive the COVID-19 vaccination are generally not warranted. Accordingly, despite the change in policy, remedies such as correcting a record to reflect continued service with no discharge would normally not be appropriate." See enclosure (27).

ff. Because the ASN (M&RA)'s guidance referenced in paragraph 3cc above constituted a communication to the Board from a person outside the Board pertaining directly to her case, Petitioner was provided a copy of this guidance by e-mail dated 19 September 2023 and offered the opportunity to provide further comment or additional documentation in accordance with reference (e). See enclosure (28).

gg. By e-mail dated 28 September 2023, Petitioner submitted additional matters for the Board's consideration in response to the notice of the ASN (M&RA)'s guidance of 6 September 2023 referenced in paragraphs 3ee and 3ff above. These matters did not address the guidance itself. Rather, Petitioner submitted a detailed timeline of the DFAS efforts to garnish her wages, along with a copy of an e-mail received from the DON notifying her of the policy change represented by NAVADMIN 065/23 and of the potential opportunity resume her service. See enclosures (28) and (29).

hh. Petitioner has not yet exhausted her administrative remedies with regard to her indebtedness to the U.S. Government for payments erroneously made after her discharge from the Navy. Accordingly, the Board did not address that portion of Petitioner's request for relief.

MAJORITY CONCLUSION:

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

The Majority found no error in the issuance and filing of the administrative counseling statement pertaining to her refusal to abide by the COVID-19 vaccination mandate. Petitioner's insistence to the contrary, the COVID-19 vaccination mandate was a lawful order, and her refusal of it constituted a violation of Article 92, UCMJ. Petitioner offered no evidence to the contrary. The Majority was not persuaded by Petitioner's contention that to comply with the mandate would be

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a violation of her oath of office. Her disagreement with the validity of the vaccination mandate did not render it unlawful. Also contrary to her contention, the subsequent rescission of the mandate did not validate her beliefs regarding the legality of the order. The order was rescinded because the SECDEF was directed to do so by the FY 2023 NDAA, and not because the order itself was illegal at the time that it was issued. The administrative counseling that Petitioner received on 9 September 2021 was required by reference (b),¹³ and was necessary and appropriate to document Petitioner's notification of the vaccination requirement and affirmative decision to refuse the order. Petitioner was afforded, and availed herself, of the opportunity to submit a statement in response to the administrative counseling statement, so she was afforded all process due to her in this regard.

The Majority also found no error in the issuance or filing of the ROM detailing Petitioner's misconduct. As noted above, the COVID-19 vaccination mandate was a lawful order, so her refusal of the order constituted a violation of Article 92, UCMJ. A violation of Article 92, UCMJ, constitutes the commission of a serious military offense in accordance with reference (d), as it carries a potential punishment exceeding six months of confinement. Such a violation also constitutes substandard performance of duty, as it evidences Petitioner's failure to conform to prescribed standards of military department. NAVADMIN 225/21 designated the CNP as the CCDA and SCA for Navy officers refusing the COVID-19 vaccine. In NAVADMIN 283/21, the CCDA, acting as the SCA, directed mandatory show cause processing for all officers refusing the vaccine on the bases of misconduct and substandard performance of duty. Based upon Petitioner's misconduct/substandard performance of duty, and the SCA's directive for show cause processing of all officers refusing the vaccine without an approved or pending accommodation/exemption request, Petitioner's command was obligated by reference (f) to report Petitioner's misconduct/substandard performance of duty in the format used in enclosure (12).¹⁴ Petitioner was afforded, and availed herself of, the opportunity to provide a statement in response to the ROM, so she was provided all process due to her in this regard.

The Majority found no error in the issuance and filing of either of the adverse FITREPs referencing Petitioner's refusal of the COVID-19 vaccination mandate. As noted above, the COVID-19 vaccination mandate was a lawful order, so her refusal of the order constituted a violation of Article 92, UCMJ. Per reference (c), "a Special report may be submitted if the [RS] believes that facts [related to misconduct] should be placed on the record before the next occasion for a report," and/or when a member was willfully negligent in maintaining deployability or individual medical readiness standards following formal counseling as specified by reference (b).¹⁵ Having received the directive of NAVADMIN 256/21, as referenced in paragraph 3i above, Petitioner's RS had good reason to believe that Petitioner's COVID-19 vaccination refusal should be placed on the record immediately. Further, reference (b) provides that an officer who fails to immediately comply with a previously issued formal counseling with regard to their failure to maintain individual medical readiness and deployability, will be issued

¹³ See paragraph 3b of reference (b).

¹⁴ Paragraph 4a of reference (f) provides that "[c]ommanders must notify PERS-834 and their delegated SCA immediately upon all incidents relating to adverse or reportable officer misconduct or substandard performance." The notification must include at least the offending officer's name, rank, and designator; a command point of contact; a brief description of the incident; and any other important administrative details. The events requiring notification to PERS-834 include, among others, substandard performance leading to administrative separation requests and other non-adjudicated misconduct.

¹⁵ See paragraph 3-9 of enclosure (2) to reference (c).

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an adverse FITREP with a rating of no greater than 2.0 in block 35 (Military Bearing/Character) and the following comment in Block 41: "Member failed to maintain deployability or individual readiness standards."¹⁶ Accordingly, there was no error in the special adverse FITREP issued to Petitioner for the reporting period 1 November 2021 to 28 November 2021 in accordance with NAVADMIN 256/21. Reference (c) also requires a detachment FITREP to be submitted when an officer resigns.¹⁷ Given Petitioner's misconduct, the adverse ratings on this FITREP were warranted, and they were justified in block 41 in accordance with reference (c).¹⁸ Accordingly, there was no error in the adverse detachment FITREP form the reporting period 29 November 2021 to 22 May 2022 issued just prior to Petitioner's discharge pursuant to her voluntary resignation. Petitioner was afforded the opportunity to provide statements in response to both of these adverse FITREPs, so she was provided all process due to her in this regard.

Finally, the Majority found no error in Petitioner's separation from the Navy with a BNC separation code for "unacceptable conduct." As noted above, the CCDA was designated as the SCA for officers refusing the COVID-19 vaccination in NAVADMIN 225/21, and directed the initiation of show cause proceedings against such officers without an approved or pending accommodation or exemption request in NAVADMIN 283/21. Petitioner was properly notified of her requirement to show cause for retention in the Navy due to misconduct and substandard performance of duty in enclosure (15). Rather than exercise her right to a BOI, Petitioner elected to tender her qualified resignation from the Navy. Per reference (d), a qualified resignation is "[a] resignation whereby the tendering officer acknowledges upon submission that the characterization of service is subject to the discretion of the Secretary."¹⁹ In this regard, Petitioner received significant favorable consideration in receiving an honorable characterization of service despite her misconduct and substandard performance of duty – an honorable characterization of service is not the norm for resignations approved under such situations.²⁰ Given that Petitioner's voluntary resignation request was only submitted upon the initiation of show cause proceedings for misconduct and substandard performance of duty, it was entirely appropriate and accurate to describe the reason for her separation as "Unacceptable Conduct" and to code her separation accordingly.

Despite finding no error in the issuance and filing of any of the adverse materials pertaining to Petitioner's refusal of the former COVID-19 vaccination mandate at the time, the Majority found an injustice in the continuing presence of these matters in her naval record under the circumstances. Reference (g) provides that the Board must consider "changes in policy, whereby a Service member under the same circumstances today would reasonably be expected to receive a more favorable outcome than the applicant received" in determining whether to grant relief on the basis of an injustice.²¹ It also directs the Board to consider uniformity and unfair disparities in punishment as a basis for relief. Given the change in the law, Petitioner would not reasonably

¹⁶ See paragraph 3(c)(3) of reference (b).

¹⁷ See paragraph 3-6(c) of enclosure (2) to reference (c).

¹⁸ See paragraph 13-4 of enclosure (2) to reference (c).

¹⁹ See paragraph 26 of enclosure (2) to reference (d).

²⁰ Although it is not the norm for an officer who submits a qualified resignation subject to a show cause notification for misconduct/substandard performance of duty to have her service characterized as honorable, the Majority acknowledges that such characterizations were freely given for COVID-19 vaccination refusal cases within the Navy to encourage and/or avoid waivers of BOIs and/or enlisted administrative separation boards in accordance with NAVADMIN 283/21.

²¹ Although reference (g) applies primarily in the context of discharge upgrade cases, it specifically states that its guidance "applies to any other corrections ... which may be warranted on equity or relief from injustice grounds."

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expect to receive adverse FITREPs or to have show cause proceedings initiated under similar circumstances today. The COVID-19 vaccination mandates incorporated into ALNAV 062/21 and NAVADMIN 190/21 were revoked in the wake of the FY 2023 NDAA. Additionally, the Majority found a disparity in treatment for Petitioner relative to other Navy service members who also refused the vaccine mandate but sought an accommodation or exemption. The latter category of members would expect adverse information pertaining to a vaccine refusal to be automatically removed from their record if still serving, regardless of the validity of their accommodation or exemption request, in accordance with NAVADMIN 065/23. The Majority found that this disparity in treatment was worthy of favorable consideration. Finally, the Majority found no evidence of any misconduct or substandard performance of duty in Petitioner's record other than that related to her refusal to comply with the COVID-19 vaccination mandate. Accordingly, the Majority believed that the interests of justice, and the best interests of the Navy, warranted clearing Petitioner's record of this adverse information in the event that she ever seeks reappointment in the Navy.

The Majority did not, however, find that the appropriate relief for the injustice identified above to extend to Petitioner's requested reinstatement in the Navy. As discussed above, there was no error in the initiation of Petitioner's show cause proceedings under the circumstances, and Petitioner's resignation was voluntarily submitted. The Majority noted the ASN (M&RA)'s guidance in enclosure (27) that reinstatement under the circumstances of this case is not normally an appropriate remedy, and agreed with its rationale. In this regard, the Majority noted that the disparate treatment described above with regard to adverse information within the naval records of similarly situated service members does not exist with regard to members who were discharged, and certainly not with regard to those whose voluntary resignations were accepted, based upon the ASN (M&RA)'s guidance. Upon correction of her naval record to remove the negative inferences pertaining to her refusal of the former COVID-19 vaccination mandate pursuant to the Majority's recommendation herein, Petitioner is free to seek reappointment in the Navy through a Navy recruiter in accordance with the e-mail guidance that she received on 28 September 2023 if she remains otherwise qualified, but she is not entitled to reinstatement and constructive service credit for time not served.

MAJORITY RECOMMENDATION:

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

That the adverse special FITREP for the reporting period 1 November 2021 to 28 November 2021, and the adverse detachment of individual FITREP for the reporting period 29 November 2021 to 21 May 2022, be removed from Petitioner's naval record, and replaced with appropriate and neutral continuity memoranda.

That the NAVPERS 1070/613, dated 9 September 2021, recording Petitioner's acknowledgment and refusal of the COVID-19 vaccination mandate, and her statement in response to that administrative counseling, be removed from Petitioner's naval record.

That the ROM, dated 7 January 2022, along with Petitioner's response thereto and the subsequent endorsement, be removed from Petitioner's naval record.

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That all documents pertaining to the initiation of show cause proceedings, and Petitioner's subsequent qualified resignation request, be removed from Petitioner's naval record. This includes, but is not necessarily limited to, the 10 February 2022 memorandum notifying Petitioner of her show cause proceedings; Petitioner's qualified resignation request of 10 February 2022 and all subsequent endorsements thereto; and the Deputy CNP's memorandum of 28 February 2022 to the ASN (M&RA) recommending that Petitioner's qualified resignation be approved, which includes the Acting ASN (M&RA)'s action on that recommendation.

That Petitioner be issued a new DD Form 214 for her service ending on 25 May 2022 with the following corrections:

- Block 18 (Remarks): Delete the phrase "CONTINUED FROM BLK 28, COVID-19 INJECTION REFUSAL;"
- Block 23 (Type of Separation): Change "Discharged" to "Resigned"
- Block 26 (Separation Code): Change "BNC" to the code most appropriate for the change to the narrative reason for separation stated below.
- Block 28 (Narrative Reason for Separation): Change "Unacceptable Conduct" to "Secretarial Authority"

That Petitioner's naval record be scrubbed for any other material or entries referencing her refusal to abide by 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.

That no further corrective action be taken on Petitioner's naval record.

MINORITY CONCLUSION:

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

The Minority concurred with the Majority conclusion that there was no error in any of the adverse materials in her record resulting from in all regards except as it pertained to the removal of the adverse materials from Petitioner's naval record.

The Minority did not, however, agree with the Majority conclusion that removal from Petitioner's naval record of the adverse material pertaining to her refusal of the COVID-19 vaccination mandate is warranted in the interests of justice. A conscious decision to violate a lawful order is a violation of the UCMJ, and such violations have consequences in the Navy. It is also contrary to good order and discipline, which necessitates appropriate action to maintain unit effectiveness and to deter future such breaches. This is especially true of an officer of Petitioner's advanced grade and responsibility. The Minority found the adverse FITREPs, ROM, and administrative counseling at issue in this case to be a reasonable, appropriate, and proportionate disposition for this type of misconduct. While acknowledging that reference (g) directs the Board to consider changes in policy when determining whether to grant relief on the basis of an injustice, the Minority did not analyze this factor in the same way as did the Majority. Specifically, while the Majority focused on the act of refusing the COVID-19 vaccination mandate in particular, the Minority considered the actual UCMJ violation at issue. A service

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member refusing to be vaccinated for COVID-19 today would expect a more favorable outcome today only because the vaccine mandate is no longer in effect. However, a service member who violates a lawful order today would expect to receive the same, if not worse, consequences as did Petitioner, depending upon the circumstances of the violation. As such, the Minority did not find the change in the law to be a legitimate basis for removal of the adverse documentation. The Minority also did not agree with the Majority's disparate treatment analysis, as those service members who refused the COVID-19 vaccination but requested religious accommodation or exemption on medical or administrative grounds are not similarly situated to those who did not. Per NAVADMIN 225/21, a Navy service member has not "refused the vaccine" if they have a pending or approved exemption request, so the latter group whose accommodation or exemption requests were not finalized did not violate a lawful order. There is a distinct difference between seeking approval of an accommodation or exemption to a lawful order, and the outright refusal of the order. Based upon these considerations, the Minority found no injustice in the presence of the adverse matters in Petitioner's naval record pertaining to her refusal of the COVID-19 vaccination mandate.

Despite finding no error or injustice in the adverse materials pertaining to Petitioner's refusal of the COVID-19 vaccination mandate filed in her naval record, the Minority nonetheless believed that limited equitable relief was warranted with regard to her DD Form 214. Specifically, while there was no error in her assigned narrative reason for separation and corresponding separation code under the circumstances, it appears from the record that Petitioner was not aware and/or did not anticipate that her qualified resignation request could result in the adverse narrative reason for separation/separation code assigned. Given her otherwise honorable record of service, and the fact that that service ended because of her refusal to comply with a policy which is no longer in effect, the Minority believed that limited equitable relief is warranted to enhance Petitioner's future employment opportunities and reduce the stigma associated with her voluntary resignation. Specifically, the Minority found the relief recommended by the Majority only with regard to Petitioner's DD Form 214 to be appropriate under the circumstances.

MINORITY RECOMMENDATION

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

That Petitioner be issued a new DD Form 214 for her service ending on 25 May 2022 with the following corrections:

- Block 18 (Remarks): Delete the phrase "CONTINUED FROM BLK 28, COVID-19 INJECTION REFUSAL;"
- Block 23 (Type of Separation): Change "Discharged" to "Resigned"
- Block 26 (Separation Code): Change "BNC" to the code most appropriate for the change to the narrative reason for separation stated below.
- Block 28 (Narrative Reason for Separation): Change "Unacceptable Conduct" to "Secretarial Authority"

That no further corrective action be taken on Petitioner's naval record.

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ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)
DECISION:

[REDACTED] MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)

— MINORITY Recommendation Approved (Partial Relief – I concur with the Minority conclusion and therefore direct the relief recommended by the Minority above.)

— Board Recommendation Disapproved (Deny Relief – I generally concur with the Minority conclusion, but disagree with the recommendation to change Petitioner's narrative reason for separation and separation code. Specifically, I find the Minority's analysis with regard to the adverse information in Petitioner's naval record to be equally applicable to the adverse entries reflected on her DD Form 214. Accordingly, I direct that no corrective action be taken on Petitioner's naval record.)