



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
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██████████
Docket No. 2513-23
Ref: Signature Date

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

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

- Ref:
- (a) 10 U.S.C. § 1552
 - (b) SECNAVINST 1730.8B, Change 1, Accommodation of Religious Practices, 28 March 2012
 - (c) MCO 1730.9, Accommodation of Religious Practices in the Marine Corps, 12 July 2021
 - (d) SECNAVINST 1920.6D, Administrative Separation of Officers, 24 July 2019
 - (e) MCO 5800.16 (Ch. 7), subj: Legal Support and Administration Manual (Short Title: LSAM), Volume 15 (Officer Misconduct and Substandard Performance of Duty), 8 August 2018
 - (f) ASN (M&RA) Memo, "Use of Pfizer-BioNTech Vaccinate for Mandatory Vaccination," 8 September 2021
 - (g) ASD (HA) Memo, "Mandatory Vaccination of Service Members using the Pfizer-BioNTech COVID-19 and Cominaty COVID-19 Vaccines," 14 September 2021
 - (h) MCO 1900.16 (Ch. 2), subj: Separation and Retirement Manual (Short Title: MARCORSEPMAN), 15 February 2019
 - (i) 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) MARADMIN 462/21, subj: Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, dtg 011400Z SEP 21
 - (5) NAVMC 10274, Administrative Action (5216), 1 September 2021
 - (6) ██████████ Memo ██████████, subj: Religious Accommodation Memorandum for [Petitioner] ██████████
 - (7) MARADMIN 533/21, subj: Supplemental Guidance to Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, dtg 061806Z OCT 21
 - (8) ██████████ Memo ██████████ CO, Second Endorsement on Enclosure (5), subj: Request for Religious Exemption in the case of [Petitioner], ██████████
 - (9) ██████████ Memo ██████████ CO, Third Endorsement on Enclosure (5), subj: Request for Religious Exemption in the case of [Petitioner], ██████████
 - (10) MARADMIN 612/21, subj: Supplemental Guidance (2) to Mandatory COVID-19

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Vaccination of Marine Corps Active and Reserve Components,
dtg 222100Z OCT 21

- (11) [REDACTED] Memo [REDACTED], subj: Request for Immunization Exemption, 26 October 2021
- (12) Petitioner's Memo 1730 NAM, subj: Appeal of Religious Accommodation Denial for [Petitioner], [REDACTED]
- (13) [REDACTED] CO, First Endorsement on Enclosure (12), subj: Appeal of Religious Accommodation Denial for [Petitioner], [REDACTED]
- (14) [REDACTED] Memo [REDACTED], Second Endorsement on Enclosure (12), subj: Appeal of Religious Accommodation Denial in the case of [Petitioner], 17 November 2021
- (15) [REDACTED] Memo [REDACTED], subj: Appeal from Denial of Religious Accommodation Request in the case of [Petitioner], 15 February 2022
- (16) [REDACTED] XO E-mail, to Petitioner, subj: RE: Order to Receive COVID-19 Vaccine Inoculation Within 72 Hours, sent Wednesday, 2 March 2022 @ 8:35AM (and following e-mail trail)
- (17) Petitioner's Memo 1107A NAM, subj: Response to Order to Receive COVID-19 Vaccine Inoculation Within 72 Hours, 3 March 2022
- (18) [REDACTED] Memo [REDACTED], subj: Notification of Recommendation for Administrative Separation in the case of [Petitioner], 8 March 2022
- (19) [REDACTED] Memo [REDACTED], subj: Report of Misconduct in the case of [Petitioner], 8 March 2022
- (20) Petitioner's Memo 1920 NAM, subj: Response to Report of Misconduct in the case of [Petitioner], 18 March 2022
- (21) [REDACTED] Memo [REDACTED], subj: Recommendation for Administrative Separation in the case of [Petitioner], 22 March 2022
- (22) [REDACTED] Memo [REDACTED], First Endorsement on Enclosure (21), subj: Recommendation for Administrative Separation in the case of [Petitioner], 25 March 2022
- (23) [REDACTED] Memo [REDACTED], Second Endorsement on Enclosure (21), subj: Recommendation for Administrative Separation and Report of Misconduct in the case of [Petitioner], 4 May 2022
- (24) DD Form 214
- (25) MARADMIN 464/22, subj: Interim Guidance Regarding Marines Requesting Religious Accommodation from COVID-19 Vaccination Requirements, dtg 132100Z SEP 22
- (26) 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
- (27) MARADMIN 025/23, subj: Rescission of COVID-19 Vaccination Requirement, dtg 181130Z JAN 23
- (28) ALNAV 009/23, subj: Rescission of COVID-19 Vaccination Requirement for Members of the Armed Forces, dtg 201839Z JAN 23
- (29) MARADMIN 109/23, subj: Update to Mandatory COVID-19 Vaccination Requirement of Marine Corps Active and Reserve Components, dtg 272000Z FEB 23
- (30) 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

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November 30, 2021, Coronavirus Disease 2019 Vaccination Requirements for Former Members of the Armed Forces, 6 September 2023

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 removal from his naval record of adverse information pertaining to his refusal to comply with the former COVID-19 vaccination mandate; and changes to his DD Form 214, to include upgrade of his characterization of service to honorable and a change to his narrative reason for separation.

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 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. 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).¹ 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.

¹ 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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See enclosure (3).

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 2021,² while all non-exempt Reserve Component Marines were to achieve full vaccination no later than 28 December 2021.³ 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 1 September 2021, Petitioner formally requested religious accommodation from the COVID-19 vaccination mandate in accordance with references (b) and (c).⁴ See enclosure (5).

f. Petitioner was subsequently interviewed by his unit Chaplain to assess the credibility and sincerity of his religious accommodation request in accordance with reference (c). By memorandum dated 1 September 2021, the Chaplain opined that Petitioner was sincere in his deeply held religious beliefs, and that it was reasonable to consider his request for religious accommodation. See enclosures (5) and (6).

g. 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 (7).

h. By memorandum dated 8 October 2021, the [REDACTED] commander forwarded Petitioner’s religious accommodation request to the Deputy Commandant

² This date was 90 days from issuance of ALNAV 062/21 (see paragraph 3c above).

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

⁴ Petitioner’s stated religious objection to the vaccination mandate pertained to the use of mRNA technology in the COVID-19 vaccinations, which caused him concern regarding the possible alteration of his God-given DNA. He also expressed his religious motivation to procreate, and cited the lack of long-term data regarding the potential effects of the COVID-19 vaccinations on the reproductive system. Petitioner offered several alternatives to mandated vaccination, to include routine testing, natural immunity, and restriction to ship in the event of a deployment to reduce risk of transmission.

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for Manpower and Reserve Affairs (DC M&RA), recommending disapproval. In making this recommendation, the [REDACTED] commander stated that the Marine Corps “has a compelling government interest in mission accomplishment at the individual, unit, and organization levels, including such necessary elements of mission accomplishment as military readiness, unit cohesion, good order and discipline, and health and safety,” and opined that granting Petitioner’s request would “erode” this interest and adversely impact unit force readiness and mission accomplishment. See enclosure (8).

i. By memorandum dated 13 October 2021, the [REDACTED] [REDACTED], forwarded Petitioner’s religious accommodation package to the DC M&RA, recommending disapproval without further comment. See enclosure (9).

j. 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 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 (10).

k. By memorandum dated 26 October 2021, the DC M&RA denied Petitioner’s request for religious accommodation from the COVID-19 vaccination mandate. See enclosure (11).

l. By memorandum dated 15 November 2021, Petitioner appealed the decision of the DC M&RA to deny his religious accommodation request to the Commandant of the Marine Corps (CMC).⁵ See enclosure (12).

m. By memorandum dated 16 November 2021, the [REDACTED] commander forwarded Petitioner’s appeal referenced in paragraph 3l above through the chain of command, recommending disapproval without further comment. See enclosure (13).

⁵ Petitioner’s appeal of the denial of his religious accommodation request reiterated his sincerely held religious beliefs, as discussed in footnote 4 above, and argued for the importance of “spiritual readiness” in the Marine Corps. In this regard, he also questioned the integrity of the religious accommodation process as it pertained to the COVID-19 vaccination mandate, as he highlighted the “cookie-cutter” responses that were being received by Marines of various faiths. Petitioner also argued that accommodation would not jeopardize mission accomplishment, as the same mitigation measures which were employed to ensure mission accomplishment in the Marine Corps prior to the availability of the vaccines were still available and effective, and not missed a single day of work due to COVID-19. Finally, Petitioner questioned the safety and efficacy of the COVID-19 vaccines. Petitioner closed his appeal by requesting proof that military readiness and the preservation of the health of the force would be jeopardized by granting his request, and that there was no less-restrictive way to accommodate his request.

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n. By memorandum dated 17 November 2021, the [REDACTED] forwarded Petitioner's appeal to the CMC, also recommending disapproval. In making this recommendation, he opined that "[g]ranteeing a religious exemption in this case would erode [the] compelling government interest by adversely impacting military readiness, unit cohesion, good order and discipline, and health and safety of [Petitioner] and the [Petitioner's] unit, which is an element of the Fleet Marine Force and a deployable unit." He also stated that Petitioner failed to articulate how the denial of his religious accommodation request was unjust. See enclosure (14).

o. By memorandum dated 15 February 2022, the Assistant CMC disapproved Petitioner's appeal in accordance with reference (c). In reaching this decision, the Assistant CMC stated that no COVID-19 vaccine alters the recipient's DNA, and there is no evidence that COVID-19 vaccines harm a person's reproductive system.⁶ He also noted that if Petitioner was concerned with the mRNA technology employed by COVID-19 vaccination, he could take the Johnson and Johnson vaccine which does not employ that technology. Accordingly, the vaccination mandate did not substantially burden the stated basis for his religious objection. The Assistant CMC also found that granting an exemption from the COVID-19 vaccination would pose a significant risk to military readiness, and the health and safety of the force, particularly in Petitioner's case since he worked primarily indoors, cannot pilot an F-35 remotely, and his duties required him to work in close proximity with others. See enclosure (15).

p. Following the denial of Petitioner's appeal, as referenced in paragraph 3o above, on 28 February 2022 the [REDACTED] Executive Officer (XO) ordered Petitioner to receive his first dose of a COVID-19 vaccine no later than 3 March 2022. See enclosure (16).

q. By memorandum dated 3 March 2022, Petitioner informed the [REDACTED] XO he had exercised "due diligence" in attempting to acquire a COVID-19 vaccine that has "full licensure" from the FDA, in accordance with MARADMIN 462/21 (and the XO's order of 28 February 2022 referenced in paragraph 3p above). Specifically, he reported that he confirmed with the Group Surgeon, the base clinic, and several local civilian pharmacies, that the only COVID-19 vaccinations available were those approved for Emergency Use Authorization (EUA). He further asserted that he could not be ordered to involuntarily receive a vaccination approved under the EUA absent a waiver signed by the President in accordance with 10 U.S.C. § 1107a, and that he did not consent to doing so. He emphasized that he was "not refusing to comply with [the] order," but rather exercising his statutory right to decline consent to an EUA product. See enclosure (17).

r. By memorandum dated 8 March 2022, Petitioner was notified by the [REDACTED] that he was being recommended for administrative separation with a general (under honorable conditions) characterization of service in accordance with references (d) and (e) for misconduct and substandard performance of duty.⁷ See enclosure (18).

s. By memorandum dated 8 March 2022, the [REDACTED] prepared a Report of Misconduct (ROM) in accordance with reference (e). Specifically, the ROM cited the three specifications

⁶ These statements were made in response to the stated bases for Petitioner's sincere religious belief referenced in footnote 4 above.

⁷ The specific factual bases cited for this action were three specifications of violations of Article 92, UCMJ, for violating MARADMIN 462/21, ALNAV 062/21, and [REDACTED] Letter of Instruction 5-21, dated 3 September 2021, which implemented the COVID-19 vaccination mandate locally.

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referenced in paragraph 3r above and described in footnote 7. The ROM also referenced the notification of administrative separation proceedings discussed in paragraph 3r above. See enclosure (19).

t. By memorandum dated 18 March 2022, Petitioner provided a written response to the ROM referenced in paragraph 3s above.

(1) In response to the alleged commission of a serious offense, Petitioner asserted that charging three separate offenses for his singular violation of the vaccination mandate was an "unreasonable manipulation of charges in attempt to establish a pattern of misconduct."⁸ In addition to reasserting his sincere religious objection to the COVID-19 vaccination, he reiterated the content of his statement of 3 March 2022, referenced in paragraph 3q above, asserting that a COVID-19 vaccination which was "licensed and approved" by the FDA was not available to him, and that it was therefore "impossible" for him to comply with the order, and asserted that the statement in the ROM that he "elected to once again to refuse to submit to receive a prescribed inoculation against COVID-19" was therefore incorrect.⁹

(2) In response to the allegation of substandard performance of duty, Petitioner asserted that the exercise of his constitutionally-protected rights is not a proper basis attack his character and performance over more than five years of service.¹⁰ In this regard, he denied acting only in his "self-interest," but rather was maintaining his morals in the best interests of the Marine Corps. Specifically, he asserted that he would no longer be "the officer Marines under [his] care deserve" if forced to defy his morals. He also reiterated that he has "not failed to ensure the safety and welfare of those for which [he was] responsible, nor [has he] violated the special trust and confidence imposed in [him]" by refusing the vaccine, labeling the claim that unvaccinated personnel pose a risk to vaccinated personnel as "blatantly false" and questioning the claimed effectiveness of the vaccines. Finally, Petitioner disputed the claim that his "decision and actions reflect insubordination to lawful order, thereby setting a poor example that undermines good order and discipline across the force." Specifically, he stated that his "moral and physical inability to comply with the [vaccination mandate] does not undermine good order and discipline," and accused the Department of Defense (DOD) of acting in an unlawful and unconstitutional manner with regard to the mandate. He also noted that the DOD had approved hundreds of medical exceptions to the vaccination mandate, but approved only three religious exemption requests from Marines who were already being processed for separation, suggesting religious discrimination.

(3) Petitioner cited to several federal lawsuits to support his argument that the DOD's execution of the vaccination mandate represented a violation of the Religious Freedom

⁸ The Board notes that a pattern of misconduct was not among the bases alleged for Petitioner's proposed administrative separation. Petitioner was placed on notice of administrative separation for commission of a serious offenses, and any one of the three charges would support that basis individually. Accordingly, there was no merit to this argument.

⁹ Petitioner expresses his disbelief that his statement at enclosure (17) could be so misunderstood. However, the Board found no such misunderstanding. The statement in question accurately described Petitioner's conduct. Petitioner's insistence that he was not violating the order was not credible.

¹⁰ Petitioner particularly objected to the allegation that "he choose to put his own self-interest and beliefs above that of his leadership, he fellow Marine [sic], and those he is charged to serve and protect demonstrating a mindset that is incompatible with continued military service."

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Restoration Act (RFRA), as it had failed to individually scrutinize requests for religious accommodation.

Based upon these arguments, Petitioner requested to be retained in the Marine Corps, or, alternatively, to be honorably discharged. See enclosure (20).

u. By memorandum dated 22 March 2022, the [REDACTED] forwarded the ROM and Petitioner's response thereto to the SECNAV, and recommended that he be administratively separated from the Marine Corps for misconduct and substandard performance of duty with a general (under honorable conditions) characterization of service. In making this recommendation, the [REDACTED] asserted that the lawfulness of the vaccination mandate was settled by references (f) and (g), both of which had been provided to Petitioner. He also deemed Petitioner's "decisions and actions in this regard to reflect a knowing and willful disregard for the lawful orders of those appointed over him and for his unit's and the naval service's force readiness and mission accomplishment." He also stated that Petitioner "put his own self-interests ahead of those he is charged to lead and protect, thereby reflecting poorly on his character and demonstrating an unwillingness on his part to sustain the traditional conceptions of honorable military service and special trust and confidence placed in commissioned officers." See enclosure (21).

v. By memorandum date 25 March 2022, the [REDACTED] CG concurred with the recommendation of the [REDACTED] CG referenced in paragraph 3u above, and further recommended that all adverse material be included in Petitioner's naval record. See enclosure (22).

w. By memorandum dated 4 March 2022, the DC M&RA recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) that Petitioner be administratively separated from the Marine Corps for misconduct with a general (under honorable conditions) characterization of service. See enclosure (23).

x. On 29 June 2022, the Acting ASN (M&RA) approved the recommendation of the DC M&RA referenced in paragraph 3w above, directing Petitioner's administrative separation from the Marine Corps for misconduct with a general (under honorable conditions) characterization of service. See enclosure (23).

y. On 5 August 2022, Petitioner was discharged from the Marine Corps for misconduct with a general (under honorable conditions) characterization of service. See enclosure (24).

z. On 18 August 2022, less than two weeks after Petitioner's discharge from the Marine Corps, the U.S. District Court for the [REDACTED] issued a preliminary injunction prohibiting the Marine Corps from taking certain actions against Marines whose requests for religious accommodation for the COVID-19 vaccination mandate were disapproved by the DC M&RA when that disapproval was unsuccessfully appealed to the Assistant CMC. In response to this injunction, on 13 September 2022 the Marine Corps published MARADMIN 464/22, amending the aforementioned guidance of MARADMINS 462/21, 533/21, 612/21, and 733/21 to prevent the enforcement of the COVID-19 vaccination mandate for Marines who met the criteria stated above. Specifically, MARADMIN 464/22 provided that the Marine Corps would not enforce any order to accept the COVID-19 vaccination, administratively separate, or retaliate

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against Marines who met this criteria for asserting statutory rights under the RFRA. Accordingly, the involuntary administrative separation of Marines who met this criteria for refusing the vaccination mandate was suspended. See enclosure (25).

aa. On 23 December 2022, the [REDACTED] 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 (26).

bb. 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 vaccination mandate on religious, administrative, or medical grounds "to remove any adverse actions solely associated with denials of such requests, including letters of reprimand." See enclosure (26).

cc. 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 (27).

dd. On 20 January 2023, the SECNAV published ALNAV 009/23, cancelling ALNAV 062/21. See enclosure (28).

ee. On 28 February 2023, the Marine Corps published MARADMIN 109/23 to provide further guidance regarding the rescission of the former vaccination mandate. Amongst the guidance provided was that the 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 3bb 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 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." See enclosure (29).

ff. 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:

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

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 reenry code to an immediately-eligible-to-reenter category, when these criteria were satisfied. See enclosure (30).

gg. Petitioner sought relief from the Board in accordance with the guidance of MARADMIN 109/23. He asserts that it was because of his sincere religious belief prohibiting him from receiving any COVID-19 vaccination that he was involuntarily separated. In support of his request, Petitioner provided 10 character references attesting to his character, integrity, and honorable service and performance. 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.

The Board found no error in the issuance and filing of Petitioner's ROM (and its associated adverse materials) in Petitioner's naval record. The COVID-19 vaccination mandate was a lawful order, so Petitioner's refusal to comply even after the denial of his religious accommodation request and exhaustion of his appeal rights constituted a violation of Article 92, UCMJ. His refusal of this order also constituted substandard performance of duty, which is defined by reference (d) as the "[i]nability of an officer to maintain adequate levels of performance or conduct" as evidenced by one or more of several stated reasons, to include the "[f]ailure to demonstrate acceptable qualities of leadership required of an officer in the member's grade." Having violated a lawful order, Petitioner failed to demonstrate acceptable qualities of leadership required of an officer of his grade. Petitioner's argument that it was impossible for him to comply with the order was without merit, as virtually the entire Marine Corps was able to comply and Petitioner was free to receive another vaccine to comply with the order at a location of his choosing. Additionally, Petitioner's claim that the Pfizer-BioNTech COVID-19 vaccine, which was presumably available to him, did not comply with the order was disingenuous, as it had the same formulation as the COMIRNATY vaccine that Petitioner suggested without credibility that he would be willing to accept if made available to him. Per reference (e), the first general court-martial convening authority (GCMCA) in Petitioner's chain of command was required to report misconduct and/or substandard performance of duty along with a recommendation regarding Petitioner's retention in the Marine Corps to the Show Cause Authority.¹¹ The [REDACTED] CG did this at enclosure (19). One of the stated purposes of the ROM is to provide "a complete record of the misconduct and its disposition for inclusion in the officer's OMPF," so the filing of this ROM in Petitioner's naval record was entirely appropriate.

¹¹ See paragraph 010603A of reference (e).

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Petitioner was afforded, and availed himself of, the opportunity to respond to the ROM, so he was provided all process due in that regard.

Despite finding no error in the issuance and filing of the ROM and other related adverse materials at the time, the Board found an injustice in the continuing presence of these materials in Petitioner's naval record. Specifically, MARADMIN 109/23 directed the automatic removal of all such information from the records of currently serving members who requested religious accommodation to the COVID-19 vaccination mandate, and encouraged discharged Marines to petition the Board for the same relief. Petitioner did, in fact, request religious accommodation from the COVID-19 vaccination mandate in accordance with reference (b). As such, the Board found it to be inherently unfair that the records of similarly situated Marines are to be automatically cleared of such adverse information, while such information remains in Petitioner's record solely based upon the timing of his discharge. This is especially true in Petitioner's case, as he was discharged less than two weeks prior to the injunction referenced in paragraph 3z above which would have suspended his administrative separation proceedings and retained him in the Marine Corps. Reference (i) directs the Board to consider uniformity and unfair disparities in punishments as a basis for relief due to an injustice. As such, the Board found the continuing presence of this adverse information in Petitioner's naval record to be an injustice warranting relief.

The Board also found no error in Petitioner's involuntary discharge for misconduct.¹² Per reference (d), "[o]fficers who do not maintain required standards of performance of duty, or professional or personal conduct may be processed for separation for cause," and "[p]erformance or personal or professional conduct ... which is unbecoming an officer" may be evidenced by "[c]ommission of a military or civilian offense which could be punished by confinement of six months or more, or any other misconduct which would require specific intent for conviction." As discussed above, Petitioner's refusal of the COVID-19 vaccination mandate constituted a violation of Article 92, UCMJ, and such a violation could be punished by confinement of six months or more. As Petitioner had less than six years of active commissioned service, he was a probationary officer. As such, he was not entitled to a Board of Inquiry since the Show Cause Authority did not deem an other than honorable discharge characterization to be appropriate. Petitioner was properly notified of the basis for his proposed separation, and was informed and availed himself of the opportunity to provide a statement in response. Accordingly, Petitioner was afforded all process due to him in this regard.

Despite finding no error in Petitioner's involuntary discharge for misconduct with a general (under honorable conditions), the Board found that Petitioner's case generally met the criteria discussed in the ASN (M&RA)'s guidance to the Board at enclosure (30). Specifically, the ASN (M&RA) advised the Board that it should normally grant requests to upgrade the characterization of service to honorable, change the narrative reason for separation, and change the reentry code to an immediately-eligible-to-reenter category when the criteria referenced in paragraph 3ff above are met. Petitioner satisfied all of these criteria. Accordingly, the Board determined that such equitable relief is warranted under the circumstances.

RECOMMENDATION:

¹² The Board also found no error in Petitioner's involuntary separation for substandard performance of duty, but did not address this basis further because it was not the primary basis for Petitioner's discharge as stated in the narrative reason for separation on his DD Form 214.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED] USMC

In view of the above, the Board recommends 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 his service ending on 5 August 2022 with the following corrections:

- Block 18 (Remarks): Delete the final sentence stating "COVID vaccine refusal discharge pursuant to paragraph 6210.6 (Misconduct: Commission of a Serious Offense) and paragraph 6203.7E (Convenience of the Government: Refusing Inoculations)."
- Block 23 (Type of Separation): Change "Discharged" to "Resigned"
- Block 24 (Characterization of Service): Change "General (under honorable conditions)" to "Honorable"
- Block 25 (Separation Authority): Change "MARCORSEPMAN 6210" to "MARCORSEPMAN 4104"
- Block 26 (Separation Code): Change "JKM1" to "FFF1"
- Block 28 (Narrative Reason for Separation): Change "Misconduct (Other)" to "Secretarial Authority"

That all adverse material pertaining to, and references to, Petitioner's COVID-19 vaccination refusal be removed from his naval record, to include all documents associated with Petitioner's request for religious accommodation, the ROM and all resulting enclosures, and all documents pertaining to his administrative separation proceedings.

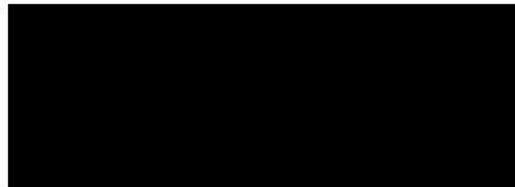
That Petitioner's naval record be scrubbed for any other material or entries referencing his refusal to abide by the former COVID-19 vaccination mandate, and that any such materials or entries be removed. This includes, but is not limited to, all information systems or database entries that may reference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

That Petitioner be issued an Honorable Discharge Certificate.

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.

1/5/2024



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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED] USMC

[REDACTED] Board Recommendation Approved (Grant Relief – I concur with the Board’s conclusions and therefore direct the relief recommended above.)

— Board Recommendation Disapproved (Partial Relief – I concur with the Board’s conclusion it pertains to Petitioner’s discharge and applicability of my guidance of 6 September 2023, but do not concur as it pertains to the adverse information in Petitioner’s record regarding his violation of the COVID-19 vaccination mandate. Specifically, I find no injustice in the fact that Petitioner’s violation of this order was documented in his record. It was a lawful order, and violations of such orders have consequences in the Marine Corps. The adverse consequence of such documentation in the record of a discharged Marine is negligible. If Petitioner is reappointed in the Marine Corps, he will fall under the guidance of MARADMIN 109/23 to have such information automatically removed. Until such time, however, I find no error or injustice in the presence of this adverse information in a naval record which is not otherwise accessible by the general public. Accordingly, I direct the relief recommended by the Board above as it pertains to corrections to Petitioner’s DD Form 214 and issuance of an Honorable Discharge Certificate, but direct that no further corrections be made to Petitioner’s naval record.

[REDACTED]