



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

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Docket No. 7883-23  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █  
█ USMCR

Ref: (a) 10 U.S.C. § 1552  
(b) MCO 1900.16, Separation and Retirement Manual (Short Title: MARCORSEPMAN), 15 February 2019  
(c) Rule for Courts-Martial 306  
(d) 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 w/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 the Navy Mandatory COVID-19 Vaccination Policy, dtg 302126Z AUG 21  
(4) MARADMIN 462/21, subj: Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, dtg 011400Z SEP 21  
(5) MARADMIN 533/21, subj: Supplemental Guidance to Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, dtg 061806Z OCT 21  
(6) MARADMIN 612/21, subj: Supplemental Guidance (2) to Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, dtg 222100Z OCT 21  
(7) NAVMC 118(11), 6105 Administrative Remarks, 4 December 2021  
(8) NAVMC 118(11), Promotion Restriction Administrative Remarks, 18 January 2022  
(9) CO, █ 1900 ADJ Memo, subj: Notification of Separation Proceedings (No Board Case), 18 January 2022  
(10) CO, █ 1900 CO MFR, subj: Notification of Separation Proceedings (No Board Case), 19 May 2022  
(11) CO, █ 1900 ADJ Memo, subj: Recommendation for Administrative Discharge of [Petitioner], 13 July 2022  
(12) SJA, █ █ 1900 SJA MFR, subj: Recommendation for Administrative Discharge of [Petitioner], 19 July 2022  
(13) CG, █ 1900 Memo, subj: Recommendation for Administrative Discharge of [Petitioner], 1 August 2022  
(14) Individual Separation Information  
(15) MARADMIN 464/22, subj: Interim Guidance Regarding Marines Requesting Religious Accommodation from COVID-19 Vaccination Requirements, dtg 132100Z SEP 22  
(16) SECDEF Memo, subj: Rescission of August 24, 2021 and November 30, 2021

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Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces, 10 January 2023

(17) MARADMIN 025/23, subj: Rescission of COVID-19 Vaccination Requirement, dtg 181130Z JAN 23

(18) ALNAV 009/23, subj: Rescission of COVID-19 Vaccination Requirement for Members of the Armed Forces, dtg 201839Z JAN 23

(19) MARADMIN 109/23, subj: Update to Mandatory COVID-19 Vaccination Requirement of Marine Corps Active and Reserve Components, dtg 272000Z FEB 23

(20) 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

(21) Administrative Separation Character Statements for [Petitioner], 9 January 2022

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 reinstatement as a lance corporal in the Marine Corps Reserves with his previous unit at [REDACTED]. Additionally, he requested his religious exemption be approved and honored towards future vaccinations<sup>1</sup>.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 March 2024 and pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

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

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

b. By memorandum dated 24 August 2021, the Secretary of Defense (SECDEF) mandated that all members of the Armed Forces under Department of Defense authority be fully vaccinated against the COVID-19 virus with a vaccine receiving full licensure from the Food and Drug Administration (FDA).<sup>2</sup> 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

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<sup>1</sup> Petitioner's requested relief regarding religious exemption does not fall within the purview of the Board.

<sup>2</sup> 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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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, 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 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,<sup>3</sup> while all non-exempt Reserve Component Marines were to achieve full vaccination no later than 28 December 2021.<sup>4</sup> MARADMIN 462/21 further specified that this mandate “constitutes a lawful general order and any violations of these provisions is punishable as a violation of Article 92 of [the UCMJ].” It further provided that initial disposition authority for cases arising from refusal of this order is withheld to the general court-martial convening authority level, “except that administrative counseling pursuant to paragraph 6105 of [reference (b)] may be used at the special court-martial convening authority level.” See enclosure (4).

e. On 7 October 2021, 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 (5).

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

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

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f. 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 (6).

g. On 4 December 2021, Petitioner was administratively counseled in writing for failing to obey a lawful general order to achieve full COVID-19 vaccination on or before 28 December 2021. Petitioner did not make an election regarding the opportunity to submit a written rebuttal. See enclosure (7).

h. An administrative remarks entry in Petitioner’s record indicates that, on 18 January 2022, he was counseled after being placed on promotion restriction for 12 months due to pending administrative separation for failing to obey a lawful general order to receive the COVID-19 vaccination by 28 December 2021. The entry indicates “SNM NOT AVAILABLE FOR SIGNATURE.” See enclosure (8).

i. On 18 January 2022, Commanding Officer (CO), [REDACTED] ([REDACTED]), notified Petitioner of his intention to recommend Petitioner be discharged from the Marine Corps Reserve by reason of misconduct (other) with a general, under honorable conditions, characterization of service. Petitioner acknowledged via his personal cell phone he had received the package but refused to sign. On 21 March 2022, the notification was mailed again but unclaimed. See enclosures (9) and (10).

j. On 13 July 2022, [REDACTED], recommended Commanding General (CG), [REDACTED] ([REDACTED]) separate Petitioner from the U.S. Marine Corps Reserve (USMCR) with an Honorable characterization of service by reason of misconduct due to commission of a serious offense. See enclosure (11).

k. By Memorandum of Review dated 19 July 2022, Staff Judge Advocate (SJA), [REDACTED], determined the proceedings were sufficient in law and in fact and recommended CG, [REDACTED], separate Petitioner by reason of misconduct (other) with a general, under honorable conditions, characterization of service. The SJA noted Petitioner’s refusal to sign the Acknowledgement of Rights form and further noted Petitioner notified his chain of command via telephone on 16 February 2022 of receipt of the package and his refusal to sign the documents. The SJA

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determined Petitioner waived his right to an Administrative Discharge Board (ADB) hearing. See enclosure (12).

l. By memorandum of 1 August 2022, CG, [REDACTED], directed Petitioner's separation<sup>5</sup> from the USMCR by reason of misconduct (other) with an honorable characterization of service and issuance of a RE-3P reenlistment code. See enclosure (13).

m. On 18 August 2022, a U.S. Federal District Court issued a preliminary injunction prohibiting the Marine Corps from "taking certain actions against Marines." In response, on 14 September 2022, the Marine Corps published MARADMIN 464/22 amending the actions for unvaccinated Marines on active duty or in the Ready Reserve who had requested a religious accommodation, which had been disapproved by the DC (M&RA), then appealed the disapproval to the ACMC in a timely manner. If the ACMC had neither denied the appeal nor taken action on the appeal, commanders were directed, among other things, to pause all administrative actions related to the involuntary separation, regardless of the current status of separation process. See enclosure (15).

n. 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 (16).

o. By memorandum dated 10 January 2023, the SECDEF rescinded the vaccine mandate referenced in paragraph 3b above in accordance with the FY 2023 NDAA. He also directed the military departments to update the records of individuals currently serving in the Armed Forces who sought an accommodation to the vaccine mandate on religious, administrative, or medical grounds "to remove any adverse actions solely associated with denials of such requests, including letters of reprimand." No such directive was included for those Service Members who did not seek an accommodation to the vaccine mandate on religious, administrative, or medical grounds. See enclosure (16).

p. 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 (17).

q. On 20 January 2023, the SECNAV published ALNAV 009/23, cancelling ALNAV 062/21. See enclosure (18).

r. On 28 February 2023, the Marine Corps published MARADMIN 109/23 to provide

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<sup>5</sup> Petitioner's Official Military Personnel File does not contain an Administrative Remarks (Page 11) entry noting his assignment of a RE-3P reenlistment code nor his separation from the USMCR on 5 August 2022. However, Petitioner's Individual Separation Information as of 2 December 2022 indicates he was discharged on 5 August 2022 with a "JKM1" separation code and assigned a RE-3P reenlistment code. See enclosure (14).

further guidance regarding the rescission of the former vaccine mandate. Amongst the guidance provided was that the Deputy Commandant for Manpower and Reserve Affairs (DC M&RA) would “direct an audit to search for adverse information in the [official military personnel files (OMPF)] of all currently serving members *who requested religious accommodations to the COVID-19 vaccine mandate (emphasis added)*,” and that such adverse matters would be removed as necessary in accordance with the SECDEF’s guidance referenced in paragraph 3k above. MARADMIN 109/23 also provided that “Marines who submitted requests for a medical or administrative exemption may submit written requests to the DC M&RA, through their chain of command, requesting removal of adverse material from their OMPF,” and that “[s]eparated Marines may petition the [Board] to request removal of adverse matters.” No provisions were discussed, however, for adverse matters pertaining to refusal of the COVID-19 vaccine mandate in the records of currently serving Marines who did not request a religious accommodation or an exemption for medical or administrative reasons. See enclosure (19).

s. 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, ASN (M&RA) provided guidance stating Boards should generally grant a discharge upgrade request from a former service member when:

- The member was involuntarily separated;
- The entry within the military 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;
  - (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 Boards 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 are satisfied.

The policy guidance also addressed “reinstatement,” providing guidance that applied only to former service members who did not formally seek an exemption. Although given independence and latitude in making a determination, the guidance commented that “remedies such as correcting a record to reflect continued service with no discharge would normally not be appropriate.” See enclosure (20).

t. Petitioner asserts that relief is warranted because he was unfairly discharged due to his refusal to be vaccinated against COVID-19. Further, he contends he was denied the right to

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exercise his religious rights and freedom and his religious exemption was denied, leaving him with no accommodation<sup>6</sup>. Petitioner contends repeal of the COVID-19 vaccination mandate requires relief because the mandate has been rescinded. Asking the Board to reference MARADMIN 109/23, Petitioner closes by stating reinstatement, without any detriment to his career, would provide a fair, equitable, and honorable response to being unjustly separated from the USMCR. 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 the Administrative Remarks (Page 11) at issue in this case. The COVID-19 vaccination mandate was a lawful order, so the refusal to comply constituted a violation of Article 92, Uniform Code of Military Justice (UCMJ). Per reference (c), administrative counseling is an appropriate disposition for such misconduct. The Board noted the counseling statement was issued by a special court-martial convening authority, as required by MARADMIN 462/21. There does not appear to be any controversy regarding whether Petitioner actually violated the order, as he does not claim to have complied and did not make an election when offered the opportunity to make a written rebuttal to be filed in his service record. Further, character statements submitted at enclosure (20) indicate he sought accommodation or an exemption on religious, medical, or administrative grounds.

Despite finding no error in the issuance of the Page 11, the Board found an injustice in the continuing presence of the adverse material 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. 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. Reference (d) 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 the 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. 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. Petitioner refused to sign the Acknowledgement of Rights form but notified his chain of command, via phone on 16 February 2022, of receipt of the package and his refusal to sign the documents. Therefore, Petitioner waived the right to an ADB hearing. Accordingly, Petitioner was afforded all process due to him in this regard.

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<sup>6</sup> Per Administrative Separation Character Statements (see enclosure (21), Petitioner refused to comply with the vaccination order due to his religious beliefs. Although his record does not contain the request for religious accommodation, the character statements memorializes the fact his request was denied. Additionally, the record does not indicate, nor does the Petitioner note, that he appealed the denial to the Assistant CMC.

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Despite finding no error in Petitioner's involuntary discharge for misconduct with an Honorable service characterization, the Board found that Petitioner's case generally met the criteria discussed in the ASN (M&RA)'s guidance to the Board at enclosure (20). Specifically, the ASN (M&RA) advised the Board that it should normally grant requests to change the narrative reason for separation and change the reentry code to an immediately-eligible-to-reenter category when the criteria referenced in paragraph 3s above are met. Petitioner satisfied all of these criteria. Accordingly, the Board determined that such equitable relief is warranted under the circumstances.

The Board further noted the ASN (M&RA)'s guidance at enclosure (20) that reinstatement under the circumstances of this case is not normally an appropriate remedy and agreed with its rationale. In this regard, the Board noted the disparate treatment described above with regard to adverse information within the naval records of similarly situated service members does not exist with regards to members who were discharged, based upon the ASN (M&RA)'s guidance. Upon correction of his naval record to remove the negative inferences pertaining to his refusal of the former COVID-19 vaccination mandate pursuant to the Board's recommendation herein, Petitioner is free to seek reenlistment in the Marine Corps through a prior service recruiter, but he is not entitled to reinstatement and constructive service credit for time not served.

Lastly, the Board determined that Petitioner's requested relief regarding religious exemption does not fall within the purview of the Board.

#### RECOMMENDATION

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 an Administrative Remarks entry indicating he was discharged on 5 August 2022 with an Honorable characterization of service by reason of "Secretarial Authority", with a "JFF1" separation code, and assigned a reentry code of RE-1A.

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 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.

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 entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and



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having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

7/30/2024

