



**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. 981-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █  
█. XXX XX █/█ USMC (RET)

Ref: (a) 10 U.S.C. § 1552  
(b) 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 enclosures  
(2) SECDEF Memo, subj: Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members, 24 Aug 21  
(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) Petitioner's Retirement Preapplication Checklist, 1 Sep 21  
(6) Administrative Remarks (Page 11) entry of 23 Sep 21  
(7) MARADMIN 533/21, subj: Supplemental Guidance to Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, dtg 061806Z OCT 21  
(8) MARADMIN 612/21, subj: Supplemental Guidance (2) to Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, dtg 222100Z OCT 21  
(9) DD Form 214  
(10) SECDEF Memo, subj: Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces, 10 Jan 23  
(11) MARADMIN 025/23, subj: Rescission of COVID-19 Vaccination Requirement, dtg 181130Z JAN 23  
(12) ALNAV 009/23, subj: Rescission of COVID-19 Vaccination Requirement for Members of the Armed Forces, dtg 201839Z JAN 23  
(13) MARADMIN 109/23, subj: Update to Mandatory COVID-19 Vaccination Requirement of Marine Corps Active and Reserve Components, dtg 272000Z FEB 23

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting removal from his naval record of NAVMC 118 ("Page 11") entries related to refusal of the former COVID-19 vaccination mandate.

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2. The Board reviewed Petitioner's allegations of error or injustice on 29 February 2024 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record in the interests of justice. Documentary material considered by the Board included the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. Having reviewed all 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>1</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 days, and all Reserve Component Service Members to be fully vaccinated within 120 days with an FDA-approved COVID-19 vaccination. In issuing this directive, SECNAV made the following statement:

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

See enclosure (3).

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>2</sup> while all non-exempt Reserve Component Marines were to achieve full

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<sup>1</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.

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

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vaccination no later than 28 December 2021.<sup>3</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 or about 1 September 2021, Petitioner submitted a retirement application expressing his intent to retire effective 30 September 2022 in order to “conclude his service after 20 years.” See enclosure (5).

f. On 23 September 2021, Petitioner was counseled regarding the requirement of MARADMIN 462/21 for all Marines to be fully vaccinated against COVID-19 unless a medical or administrative waiver is granted. He was also informed that MARADMIN 462/21 constitutes a lawful general order and that any violations of its provisions are punishable as a violation of Article 92, UCMJ. This counseling was recorded on a NAVMC 118(11), and Petitioner acknowledged it by signature dated 29 September 2021. See enclosure (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. 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

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

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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 (8).

i. On 30 September 2022, Petitioner was honorably discharged from active duty with sufficient service for retirement and transferred to the Fleet Marine Corps Reserve.<sup>4</sup> See enclosure (9).

j. 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 (10).

k. 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 (10).

l. 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 (11).

m. On 20 January 2023, the SECNAV published ALNAV 009/23, cancelling ALNAV 062/21. See enclosure (12).

n. On 28 February 2023, the Marine Corps published MARADMIN 109/23 to provide further guidance regarding the rescission of the former vaccine mandate. Amongst the guidance provided was that the Deputy Commandant for Manpower and Reserve Affairs (DC M&RA) would “direct an audit to search for adverse information in the [official military personnel files (OMPF)] of all currently serving members *who requested religious accommodations to the COVID-19 vaccine mandate (emphasis added)*,” and that such adverse matters would be removed as necessary in accordance with the SECDEF’s guidance referenced in paragraph 3k above. MARADMIN 109/23 also provided that “Marines who submitted requests for a medical or administrative exemption may submit written requests to the DC M&RA, through their chain 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 (13).

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<sup>4</sup> Petitioner had 20 years and eight days of active service as of 30 September 2022.

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o. Petitioner contends that relief is warranted because MARADMIN 109/23 provides that “[a]dverse material related to the COVID-19 vaccine requirement shall not be included in the Marine’s official military personnel file (OMPF).” See enclosure (1).

#### CONCLUSION:

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

The Board found no error in the issuance and filing of the NAVMC 118(11) in Petitioner’s naval record. The only relevant NAVMC 118(11) entry in Petitioner’s naval record is not adverse; it merely informed Petitioner of the vaccination requirement and warned him of the consequences of noncompliance. The COVID-19 vaccination mandate was a lawful order and the refusal to comply constituted a violation of Article 92, UCMJ. Accordingly, there is no error in a NAVMC 118(11) entry which merely informed Petitioner of the requirement and the consequences of noncompliance. There also would be no error in recording an actual violation of the mandate in this manner if that were the intent of this entry.

Petitioner’s contention that MARADMIN 109/23 directed the removal of adverse material related to refusal of the COVID-19 vaccine mandate is without merit, because the NAVMC 118(11) in question was not adverse as discussed above and MARADMIN 109/23 only directed removal of such matters from the records of those Marines who had requested religious accommodation or sought and exemption from the vaccination mandate on medical or administrative grounds. There is no indication in the record that Petitioner was among the Marines who sought such an accommodation or exemption.

Despite finding no error in the issuance and filing of the NAVMC 118(11) at issue, the Board determined that it should be removed from Petitioner’s naval record in the interests of justice. Although the entry in question does not suggest that Petitioner actually refused the vaccination mandate, the Board found that its presence in Petitioner’s record reasonably implies that he did so and could therefore have a negative effect. Reference (b) 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.<sup>5</sup> Given the change in the law, a Marine would not reasonably expect to receive a similar type of entry in his record under similar circumstances today that Petitioner received in 2021. The Board found that this disparity in treatment was worthy of favorable consideration and believed that the interests of justice warranted the removal of this potentially stigmatizing entry from Petitioner’s naval record.

#### RECOMMENDATION

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

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<sup>5</sup> Although reference (b) 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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That Petitioner's naval record be corrected by removing the NAVMC 118(11) entry dated 23 September 2021.

That any material or entries inconsistent with or relating to the former COVID-19 vaccination mandate, to include references to Petitioner's compliance with that mandate, be removed and/or completely expunged from Petitioner's naval record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

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.

4/1/2024



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

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

\_\_\_\_ Board Recommendation Disapproved (Deny Relief – I do not concur with the Board's conclusion. First and foremost, there is nothing adverse about the NAVMC 118(11) entry in Petitioner's record. It merely informed Petitioner of the vaccination mandate and of the potential consequences of noncompliance. Its presence in Petitioner's naval record does not reasonably imply noncompliance by Petitioner. Further, even if Petitioner's refusal of the former vaccination mandate could be implied by the presence of this entry in his naval record, a conscious decision to violate a lawful order is a violation of the UCMJ and such violations have consequences in the Marine Corps. Such decisions are also contrary to good order and discipline in the Marine Corps, which necessitates appropriate action to maintain unit effectiveness and to deter future such breaches. As such, a counseling statement informing Petitioner of the mandate and his requirement to comply with it was reasonable and appropriate. I acknowledge that reference (b) requires the Board to consider changes in policy when determining whether to grant relief based on an injustice, but I analyzed this factor differently than did the Board. Specifically, while the Board focused on the act of refusing the vaccination order in particular, I considered the actual UCMJ violation at issue. A Marine refusing an order to be vaccinated for COVID-19 would expect a more favorable outcome today only because

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the vaccine mandate is no longer in effect. However, a Marine who violates a lawful order today would expect to receive at least an adverse NAVMC 118(11) entry, if not worse consequences depending upon the circumstances. As such, I did not find the change in the law to be a legitimate basis for relief. I also did not agree with the Board's disparate treatment analysis, as those Marines who refused the COVID-19 vaccination but requested accommodation or exemption on religious, medical, or administrative grounds are not similarly situated to those who did not. Per MARADMIN 612/21, "[a] Marine is not considered to have 'refused the vaccine' until final adjudication of any administrative or medical exemption, religious accommodation, or pending appeal," 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 an outright refusal of such an order. Finally, the NAVMC 118(11) entry in question is not accessible by the general public and Petitioner has already retired with more than 20 years of active service. Accordingly, the presence of this NAVMC 118(11) in Petitioner's naval record cannot realistically cause him any harm. Based upon these considerations, I simply found no injustice in the presence of this non-adverse NAVMC 118(11) entry in Petitioner's naval record. Accordingly, I direct that no corrective action be taken on Petitioner's naval record.

[REDACTED]