



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

█
Docket No. 1717-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C.
(b) Rule for Courts-Martial 306
(c) 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
(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) NAVADMIN 190/21, subj: 2021-2022 Navy Mandatory COVID-19 Vaccination and Reporting Policy, dtg 311913Z AUG 21
(5) NAVPERS 1070/613 Administrative Remarks, 3 Sep 21
(6) NAVADMIN 225/21, subj: COVID-19 Consolidated Disposition Authority (CCDA), dtg 132050Z OCT 21
(7) NAVADMIN 256/21, subj: CCDA Guidance to Commanders, dtg 152239Z NOV 21
(8) Evaluation Report & Counseling Record (E1-E6), 16 Nov 21 to 28 Nov 21
(9) NAVADMIN 283/21, subj: CCDA Execution Guidance to Commanders, dtg 151203Z DEC 21
(10) NAVPERS 1910/31 Administrative Separation Processing Notice, 23 Dec 21
(11) NAVADMIN 1070/613 Administrative Remarks, 10 Jan 22
(12) CO, █ 1910 Ser 192 Memo, subj: [Petitioner] Recommendation of Administrative Separation, 3 Feb 22
(13) Evaluation Report & Counseling Record (E1-E6), 29 Nov 21 to 12 Apr 22
(14) Certificate of Release or Discharge from Active Duty (DD Form 214)
(15) 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
(16) NAVADMIN 005/23, subj: Removal of COVID-19 Vaccination Mandate, dtg 112139Z JAN 23
(17) ALNAV 009/23, subj: Rescission of COVID-19 Vaccination Requirement for Members of the Armed Forces, dtg 201839Z JAN 23
(18) NAVADMIN 065/23, subj: Follow On COVID-19 Vaccine Rescission Actions, dtg 061627Z MAR 23
(19) ASN (M&RA) Memo, subj: Correction of Naval Records for Former Members of

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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 Sep 23

1. Pursuant to the provisions of reference (a) section 1552, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting medical retirement in accordance with section 1201 of reference (a). Additionally, by noting his narrative reason for separation was “the equivalent of a rapist, murderer, or other capital offender,” he also impliedly requested reevaluation of his record and narrative reason for discharge, including his Certificate of Release or Discharge from Active Duty (DD Form 214), to remove any adverse information regarding his decision to opt out of receiving the COVID-19 vaccine.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner’s allegations of error and injustice on 25 July 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. The Board, having reviewed all the facts of record pertaining to Petitioner’s allegations of error and injustice, made the following findings:

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, 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,

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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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 Navy published NAVADMIN 190/21 to implement the COVID-19 vaccination mandates referenced in paragraphs 3b and 3c above. Specifically, NAVADMIN 190/21 directed all Active Duty Navy service members, service members in the Selected Reserve, and Individual Ready Reserve 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 2021,² while all non-exempt Ready Reserve Navy service members were to achieve full vaccination no later than 28 December 2021.³ 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 Uniform Code of Military Justice and/or may result in administrative action.” It 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.” See enclosure (4).

e. On 3 September 2021, Petitioner was administratively counseled in writing for failing to comply with the order to receive a COVID-19 vaccination and was ordered to initiate vaccination no later than 14 September 2021. He was informed that failure to take corrective action may be punishable under Article 92, UCMJ and/or administrative action. Petitioner submitted a statement on 9 September 2021 in rebuttal to this administrative counseling, detailing reasons⁴ he should not be required to be vaccinated. See enclosure (5).

f. On 13 October 2021, the Navy published NAVADMIN 225/21 to supplement the guidance of NAVADMIN 190/21 referenced in paragraph 3d above. The message announced the Chief of Naval Personnel (CNP) assignment as CCDA and further delineated the CCDA as the officer show cause authority and enlisted separation authority while the Vice Chief of Naval Operations retained the authority for nonjudicial punishment (NJP) and courts-martial. The message further delineated the CCDA as the authority for administrative processes regarding removal of warfare qualifications, additional qualification designations (AQD), Navy Enlisted Classifications (NEC), or sub-specialties except in cases where removal authority is otherwise authorized by law of Executive Order. This message provided guidance that “Navy service members refusing the COVID-19 vaccination, absent a pending or approved exemption, shall be processed for administrative separation.” The message defined a Navy service member refusing the vaccine as “one who has: (1) received a lawful order to be full 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.” The message further clarified that “[a]dministrative actions per this NAVADMIN may begin as soon as a Navy service member meets the definition of

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 In his statement, Petitioner noted he was “one year recovered from COVID-19” and “definitively still had antibodies to the virus.” He extensively discussed that natural immunity to COVID-19 is potent and resilient.

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refusing this vaccine.” Additionally, this message directs senior leaders who do not comply with the lawful order to be relieved from their leadership position and the initiation of detachment for cause (DFC) procedures. Finally, this message established guidance for officer and enlisted administrative separations, officer promotion delay and enlisted advancement withholds, counseling, and documentation in fitness reports and enlisted evaluations. See enclosure (6).

g. On 15 November 2021, the Navy published NAVADMIN 256/21 to provide specific guidance to Commanders regarding Navy service members who fail 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) which could, at the discretion of the Department of Veterans Affairs (VA), result in the loss of eligibility for some VA benefits. Additionally, the message specified detailed guidance for officer and enlisted administrative separations, officer promotion delay and enlisted advancement withholds, counseling, education, documentation in fitness reports and enlisted evaluations, bonuses, special pays, and incentive pays. For E-1 to E-5 evaluations, the message directed the issuance of an adverse special evaluation containing no greater than a 2.0 on block 36 (Military Bearing/Character) and block 39 (Leadership). Further, block 45 (Promotion Recommendation) required “Not Recommended” and block 43 was required to contain the opening statement “Member failed to maintain deployability or individual readiness standards by refusing the order to receive the COVID-19 vaccine.” Finally, the message made Navy service members who refused the vaccine ineligible to continue Navy education opportunities and, for those who failed to complete an incurred service obligation, required reimbursement of the cost of the education received, prorated for the obligated time served. See enclosure (7).

h. On 28 November 2021, Petitioner’s Reporting Senior (RS) issued him the adverse SPECIAL Evaluation Report (EVAL) directed by NAVADMIN 256/21 for the reporting period 16 November 2021 to 28 November 2021 noting his failure “to maintain deployability or individual readiness standards by refusing the order to receive the COVID-19 vaccine.” He received a “Significant Problems” promotion recommendation in block 45 and was “not recommended” for retention in block 47. Petitioner signed his EVAL on 29 November 2021, indicating he did not intend to submit a statement. See enclosure (8).

i. On 15 December 2021, the Navy issued NAVADMIN 283/21 directing Commanders to conduct separation processing of Navy service members refusing the COVID-19 vaccine. The message differentiated between those members eligible or approved to separate or retire on or before 1 June 2022 and those not eligible before 1 June 2022. For those eligible, the message permitted separation or retirement “as soon as practicable via expedited processes, in lieu of administrative separation processing” and for those ineligible, the message stated, “process for administrative separation as soon as practicable based on misconduct.” For officers, the CCDA, as the show cause authority, directed mandatory show cause processing for all officers who refused the vaccine on the bases of Misconduct, Moral or Professional Dereliction, and Substandard Performance. Further, the message provided detailed guidance regarding retirement-eligible officers, officers who had not met time in grade requirements, officers with prior enlisted service, officers eligible to resign, and non-probationary/probationary officers. For enlisted members, the CCDA directed Commanders to initiate administrative separation

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processing by reason of misconduct due to commission of a serious offense, plus any additional basis known at the time of processing. Finally, the message provided specific Navy Reserve guidance including policies disallowing Navy service members separated from the Active Component to affiliate with or be assigned in any status within the Reserve Component and processing of Navy Reserve service members for vaccine refusal. See enclosure (9).

j. On 23 December 2021, Commanding Officer (CO), ██████████, notified Petitioner he was being processed for administrative separation by reason of misconduct due to commission of a serious offense as evidenced by failing to obey a lawful order to become fully vaccinated against COVID-19. After waiving his right to consult with qualified counsel, Petitioner elected to submit a written statement to be considered by the separation authority and obtain copies of documents that would be forwarded to the separation authority supporting the basis for separation. In lieu of electing an administrative board – for which he was entitled – Petitioner requested an Honorable discharge and, if granted, stated he would waive his right to any administrative board action. See enclosure (10).

k. On 10 January 2022, Petitioner was administratively counseled in writing for being a “persistent vaccine refuser and hav[ing] disobeyed a lawful order.” Additionally, he acknowledged he was subject to administrative separation processing, not authorized to execute orders unless approved by higher authority, would be required to repay the owed portion of any monetary obligation, and not eligible for a Time in Grade (TIG) waiver if he allowed to retire but had not completed all TIG requirements. Petitioner elected not to submit a statement in rebuttal to this administrative counseling. See enclosure (11).

l. By memorandum of 3 February 2022, CO, ██████████, recommended Petitioner be separated with an Honorable characterization of service by reason of misconduct due to commission of a serious offense due to his refusal of the COVID-19 vaccine. In his recommendation, the CO also noted Petitioner was not currently enrolled in the Disability Evaluation System (DES). See enclosure (12).

m. On 12 April 2022, Petitioner was issued a Detachment of Individual EVAL for the reporting period 29 November 2021 to 12 April 2022 noting his failure “to maintain deployability or individual readiness standards by refusing the order to receive the COVID-19 vaccine.” He received a “Significant Problems” promotion recommendation in block 45 and was “not recommended” for retention in block 47. Petitioner signed his EVAL on 12 April 2022, indicating he did not intend to submit a statement. See enclosure (13).

n. On 12 April 2022, Petitioner was discharged⁵ from the Navy with an Honorable characterization of service by reason of misconduct⁶ due to commission of a serious offense. See enclosure (14).

o. 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

⁵ Petitioner’s record does not contain the separation authority approval documentation.

⁶ Petitioner’s separation code was HKQ and reentry code was RE-4.

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the SECDEF to rescind the vaccination mandate referenced in paragraph 3b above. See enclosure (15).

p. 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 accommodate to the vaccine mandate on religious, administrative, or medical grounds. See enclosure (15).

q. On 11 January 2023, the Navy 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 (16).

r. On 20 January 2023, the SECNAV published ALNAV 009/23, cancelling ALNAV 062/21. See enclosure (17).

s. On 6 March 2023, the Navy published NAVADMIN 065/23 to provide further guidance regarding the rescission of the former vaccine mandate. The 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. No provisions were discussed, however, for adverse matters pertaining to refusal of the COVID-19 vaccine mandate in the records of currently serving members who did not request a religious accommodation or an exemption for medical or administrative reasons. See enclosure (18).

t. On 6 September 2023, the ASN (M&RA) issued supplemental policy guidance to the Board to “help facilitate consistency” when considering applications for corrections 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 in 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 (19).

u. Petitioner asserts relief is warranted because his discharge should have been a medical retirement. Specifically, he contends he "requested a Medical Evaluation Board due to [his] diagnosed medical issues and was refused that option by [his] command structure." Further, Petitioner contends that in his 12-year career, he had never received nonjudicial punishment nor received a promotion recommendation of less than "Must Promote" on any EVAL. In support of his arguments for medical retirement, Petitioner submitted a January 2024 letter from the Department of Veterans Affairs (VA) which notes he has one or more service-connected disabilities with a 100% combined service-connection and is considered to be totally and permanently disabled due to his service-connected disabilities. Additionally, in support of his contention he did not warrant separation by reason of misconduct due to commission of a serious offense, Petitioner submitted EVALs spanning from 2010 to 2021 and award narratives from 2011 to 2020. See enclosure (1).

v. On 11 June 2024, the ASN(M&RA) policy guidance at enclosure (19) was provided to Petitioner, allowing him an opportunity to submit further statements and/or additional documentary material. Petitioner did not provide any additional documentation or statement.

CONCLUSION:

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

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The Board found no error in the issuance of the Administrative Remarks (Page 13s), the adverse EVALs, or Petitioner's separation by reason of misconduct due to the commission of a serious offense. 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 (b), administrative counseling is an appropriate disposition for such misconduct. Further, NAVADMINs 225/21 and 256/21 directed the adverse nature of Petitioner's SPECIAL EVAL, and NAVADMIN 283/21 directed commanders to conduct separation processing. 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 contend otherwise in his request for relief. Further, there is no indication in Petitioner's record or in his request for relief that he sought accommodation on religious grounds.

Petitioner's contention he should have been medically retired is not supported by the record. The Board noted that his statement that he "requested a Medical Evaluation Board [MEB]" inaccurately describes the process because a MEB is not "requested" for the member, rather a qualified medical provider must recommend further review by a MEB of a diagnosed medical issue that is preventing a member's performance of duties. Further, the process requires a non-medical assessment by the CO. In Petitioner's situation, not only is there an absence of any documentation supporting his contentions but also the CO specifically noted in his administrative separation recommendation that Petitioner was not currently enrolled in the DES. The Board determined there was insufficient evidence Petitioner's discharge should be changed to a medical retirement because he has not demonstrated he had an inability to do his duties while on active duty and therefore did not meet criteria to even be referred for a disability consideration. Further, the Board noted the VA's disability determination is separate and distinct and Petitioner's 100% disability rating has no bearing on his ability to perform his active duty service duties.

Despite finding no error in the issuance of the adverse matters at issue and Petitioner's administrative separation, the Board found that equitable relief is warranted in the interests of justice. Reference (c) 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.⁷ It also directs the Board to consider uniformity and unfair disparities in punishment as a basis for relief. Given the change in the law, a Navy service member would not receive the same type of adverse information in his record for refusing to take the COVID-19 vaccine today that Petitioner received in 2021 and 2022. Additionally, the Board 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 individuals can expect any adverse information resulting from their refusal of the COVID-19 vaccine to be removed from their record, regardless of the validity of their accommodation or exemption request. The Board found that this disparity in treatment was worthy of favorable consideration. Finally, and most importantly, the Board found no evidence of any misconduct in Petitioner's record other than that related to his refusal to comply with the COVID-19 vaccination mandate.

⁷ Although reference (c) 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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Accordingly, the Board believed that the interests of justice warranted granting Petitioner a "clean slate" by removing the adverse Page 13 entries and EVALs and changing his discharge reason, authority, and codes to reflect "Secretarial Authority."

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 the SPECIAL EVAL for the reporting period 16 November 2021 to 28 November 2021 be removed from Petitioner's naval record.

That the Detachment of Individual EVAL for the reporting period 29 November 2021 to 12 April 2022 be removed from Petitioner's naval record.

That the Page 13 entries of 3 September 2021, to include the corresponding rebuttal statement, and 10 January 2022 be removed from Petitioner's naval record.

That all administrative separation documentation be removed from Petitioner's naval record.

That Petitioner be issued a new DD Form 214, for the period ending 12 April 2022, indicating his narrative reason for separation as "Secretarial Authority," separation code as "JFF," separation authority as "MILPERSMAN 1910-164," and reentry code as "RE-1J."

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 no further changes be made to Petitioner's naval record.

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 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.

8/13/2024

