



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

██████████  
Docket No. 8462-24  
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) MCO 1900.16, Separation and Retirement Manual (Short Title: MARCORSEPMAN), 15 February 2019  
(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 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) dated 21 November 2021  
(8) SJA, ██████████ 1900 SJA Memo, subj: Recommendation for Administrative Discharge of [Petitioner], 14 February 2022  
(9) CG, ██████████ 1900 Memo, subj: Recommendation for Administrative Discharge of [Petitioner], 5 May 2022  
(10) DD Form 256, Honorable Discharge Certificate, 5 May 2022  
(11) 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  
(12) MARADMIN 025/23, subj: Rescission of COVID-19 Vaccination Requirement, dtg 181130Z JAN 23  
(13) ALNAV 009/23, subj: Rescission of COVID-19 Vaccination Requirement for Members of the Armed Forces, dtg 201839Z JAN 23  
(14) MARADMIN 109/23, subj: Update to Mandatory COVID-19 Vaccination Requirement of Marine Corps Active and Reserve Components, dtg 272000Z FEB 23  
(15) 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

(16) MMPB Memo 1400/3 MMPB-11, subj: Advisory Opinion ICO [Petitioner], 26 August 2024

(17) Examiner Email, subj: CUI – BCNR Docket NR 20240008462 – CUI, 30 August 2024, 10:30:00 AM

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 his records be updated to reflect his promotion to corporal/E-4. If relief granted, Petitioner also requested an updated DD Form 256 reflecting his new rank.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 24 October 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>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, 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-

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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.

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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 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 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).

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

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

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

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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 21 November 2021, Petitioner was administratively counseled in writing for failing to obey a lawful general order by wrongfully failing to achieve full COVID-19 vaccination. Although he indicated his intention to submit a written statement in rebuttal, Petitioner's record does not contain a rebuttal statement. See enclosure (7).

h. Petitioner was properly served via personal delivery with Commanding General's (CG's), [REDACTED] notification of separation proceedings. He returned his signed acknowledgment of rights form on 21 January 2022, electing to waive his right to an administrative discharge board (ADB) hearing. See enclosure (8).

i. By memorandum of 14 February 2022, Staff Judge Advocate (SJA), [REDACTED], after review of the proceedings, determined Petitioner violated a lawful general order by wrongfully refusing authorized immunization against disease. The SJA deemed the separation proceedings sufficient in law and in fact and recommended Petitioner's separation by reason of misconduct (other) with an Honorable characterization of service. See enclosure (8).

j. By memorandum of 5 May 2022, CG, [REDACTED], directed Petitioner's administrative discharge from the U.S. Marine Corps Reserve (USMCR) with an Honorable characterization of service by reason of misconduct. Additionally, the CG assigned Petitioner a RE-3P reentry code. See enclosure (9).

k. On 5 May 2022, Petitioner was discharged from the USMCR by reason of misconduct (other) with an Honorable characterization of service. At the time of discharge, his DD Form 256 indicates he was a lance corporal. See enclosure (10).

l. 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 (11).

m. 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 (11).

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n. 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 (12).

o. On 20 January 2023, the SECNAV published ALNAV 009/23, cancelling ALNAV 062/21. See enclosure (13).

p. 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.” 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 (14).

q. On 6 September 2023, the ASN (M&RA) issued supplemental policy guidance<sup>4</sup> 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;
  - (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

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<sup>4</sup> The supplemental policy guidance was provided, via email, for Petitioner’s review and comment on 30 August 2024 but a response was not received.

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(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 (15).

r. Petitioner contends his record should reflect his promotion to corporal "because he was at the top of the promotion board and was told [he] was getting promoted." Later, he contends he was told<sup>5</sup> that since he had refused the COVID-19 vaccine, "they marked [him] ineligible to be promoted despite being at the top of the promotion board" although MARADMIN 109/23 "did not mention refusing to comply would result in being barred from promotion." Additionally, he contends he has now been diagnosed<sup>6</sup> with depression and anxiety "due to this." Lastly, in his statement, he informs the Board he was "recently able to get [his] discharge upgraded to honorable, due to [his] clean record while in the military, no negative paperwork, non-judicial punishments, or Page 11 reports." Further, Petitioner explains that his hard work – six months in physical therapy rehabbing his back and hamstrings so he could run the Combat Fitness Test (CFT) – should result in the promotion he "worked very hard for" being reflected in his record. See enclosure (1).

s. By memorandum of 26 August 2024, Headquarters Marine Corps, Manpower Management Performance Branch (MMPB-11) provided an Advisory Opinion<sup>7</sup> (AO) for the

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<sup>5</sup> Petitioner submitted a screenshot of an undated text between presumably him and "Sergeant" in support of his contention that he was initially told he would be promoted and later informed that he was "no longer being promoted this weekend since [he had] not provided proof of COVID vaccination."

<sup>6</sup> In support of this contention, Petitioner submitted attachment B of enclosure (1), a medical document that appears to be from CVS which reflects a 23 August 2023 virtual appointment with a Nurse Practitioner. The document lists the reason for the visit as depression and the diagnosis as "[d]epressed mood; Major depressive disorder, single episode, moderate; GAD (Generalized Anxiety Disorder)." Additionally, Petitioner submitted attachments (c) and (e) of enclosure (1), the first page of two letters provided by the Department of Veterans Affairs, reflecting he's being paid a monthly award for service-connected disabilities, to include "acquired psychiatric disorder, including major depressive disorder (MDD) and generalized anxiety disorder (GAD)."

<sup>7</sup> The MMPB-11 AO was provided, via email, for Petitioner's review and comment on 30 August 2024 but a response was not received. See enclosure (17).

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Board's consideration. After reviewing Petitioner's record, the AO determined he was not recommended for promotion from 14 December 2020 to 24 February 2021 due to lack of maturity and from 19 February 2022 to 4 May 2022 due to lack of leadership. Additionally, Petitioner had failed a Physical Fitness Test (PFT) on 27 July 2021 and was still in a restriction status because he had not yet passed a PFT/CFT. The AO also explained that Petitioner reached his time in service and time in grade requirements for promotion on 1 April 2021 but, from 1 April 2021 to 1 April 2022, he did not meet or exceed the cutoff score for promotion before his separation on 5 May 2022. The AO recommended his record remain unchanged because "there was not a promotion month where he met or exceeded the cutoff score." See enclosure (16)<sup>8</sup>.

## CONCLUSION

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

The Board carefully considered Petitioner's request for his record to be corrected to reflect his promotion to corporal but, substantially concurring with the MMPB-11 AO, determined that since there was not a promotion month where he met or exceeded the cutoff score, he was not eligible for promotion. The Board considered the undated texts and Petitioner's contention COVID-19 vaccination refusal caused the command to improperly mark him ineligible, but determined there is insufficient evidence to support his contention that he was otherwise eligible and recommended for promotion to corporal.

The Board found no error in the issuance and filing of the Administrative Remarks (Page 11) at issue in this case or Petitioner's involuntary discharge for misconduct. 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. The Board noted the counseling statement was issued by a special court-martial convening authority, as required by MARADMIN 462/21. Further, Petitioner was afforded all his due process rights and chose to waive his right to an administrative discharge board hearing. 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 submit a written rebuttal to be filed in his service record.

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.<sup>9</sup> 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 Marine would not receive the

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<sup>8</sup> Although Petitioner provided a copy of the AO and offered an opportunity to submit rebuttal evidence, he chose not to do so.

<sup>9</sup> 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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same type of adverse information in his record for refusing to take the COVID-19 vaccine today that Petitioner received in 2021. Additionally, the Board found a disparity in treatment for Petitioner relative to other 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. Accordingly, the Board believed that the interests of justice warranted granting Petitioner a "clean slate" by removing the adverse Page 11 entry and all adverse materials related to his involuntary separation; changing his discharge reason, authority, and code to reflect "Secretarial Authority;" and changing his reentry code to "RE-1J."

### 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 (Page 11) entry indicating he was discharged on 5 May 2022 with an Honorable characterization of service by reason of "Secretarial Authority," a "JFF1" separation code, and a reentry code of "RE-1J."

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 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.

11/27/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]