



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

█
Docket No. 7061-25
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) Petitioner's Official Military Personnel File
(c) Msg R 281243Z SEP 21, "FRAGO 11 - Mandatory COVID-19 Vaccination for DOD Service Members"
(d) SECDEF Memo, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members," of 24 August 2021
(e) Msg MARADMIN 462-21, "Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components," of 31 August 2021

Encl: (1) DD Form 149 w/attachments

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 (Board), requesting reconsideration of his prior denied request that his record be changed to reflect that he received orders placing him on a qualified duty status on 1 December 2021, when he received the COVID-19 vaccination. He also requested that the Board overturn his denied request for an in-Line of Duty (in-LOD) determination and that he be placed on the permanent disability retirement list with a combined disability rating of 100%. In the alternative, he requested that he be referred into the Disability Evaluation System (DES) so that he may be evaluated for a disability retirement for all conditions found in-LOD.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 19 February 2026 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted enclosure (1) and all material submitted by Petitioner, relevant portions of naval records, and applicable statutes, regulations and policies, to include all references. The Board also considered the entirety of the case file for Petitioner's prior application to this Board.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] XXX XX [REDACTED] USMCR

b. According to reference (b), Petitioner enlisted in the Marine Corps Reserve and completed an initial period of active duty training from 7 February 2011 to 16 December 2011, whereupon he continued his service in a reserve status.

c. According to Petitioner's reconsideration petition, enclosure (1), he provided as new matter an email, dated 12 October 2021, which was from his reserve unit's Company First Sergeant with the subject line, "FRAGO 11 - Mandatory COVID-19 Vaccination for DOD Service." According to the email:

If your Marines are not vaccinated and are going to get the Vaccine, provide them with the attached document 'Appropriate Duty NAVMC 799' document.¹ Have them fill out the document and date it for the day they go to get the Vaccine. Route the document to me for review and I will forward to the CO for signature. The Marine will receive 1 drill for getting the Vaccine (no pay, just retirement points.)

d. Petitioner stated that he had previously submitted a request for a religious exemption from receiving the vaccine, but felt pressured to obtain the vaccine. Thus, in accordance with the foregoing email from his unit's Company First Sergeant, he received the Johnson and Johnson COVID-19 vaccine on 1 December 2021. Petitioner asserted that he received it at a civilian facility and that he received it because he was instructed to receive it by the Marine Corps. Shortly after he received the vaccine, he contends he suffered injuries. Thereafter, Petitioner submitted a request for an in-LOD finding for those injuries.

e. On 31 October 2022, the Senior Medical Officer, Reserve Medical Entitlement Division (RMED) recommended that Petitioner's request for Line of Duty Benefits (LODB) be denied as follows:

I have carefully reviewed the medical information made available to me regarding the appeal to the denial of line of duty (LOD) benefits for [Petitioner]. [Petitioner] obtained the Johnson and Johnson COVID-19 vaccination while not on orders. Since that time he has developed medical symptoms that he believes are related to the vaccination. The LOD request was received . . . via the Marine Corps Medical Entitlements Data System (MCMEDS).

* * *

A review of pertinent documents revealed that [Petitioner] received the Johnson and Johnson COVID-19 vaccine on 01Dec2021. He was not in any active military status at that time. Since, he has seen a number of medical providers to discuss ongoing complaints that he believes stemmed from the vaccine.

In summary, [Petitioner] had every right not to obtain the COVID-19 vaccine but chose to do so during a time when he was not on reserve orders of any kind.

¹ The NAVMC 799 form is used by members of the Marine Corps Reserve to document Equivalent Instruction or other approved training performed outside normal drills so that the Marine can receive retirement points. This form is used for documenting flex drills or makeup drills.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] XXX XX [REDACTED] USMCR

Therefore, per reference (a), I recommend denial of LOO benefits for any conditions that may have arisen in relation to his vaccination.

Unless [Petitioner] has been found fit for duty by a military physician, the service member should be in a TNPQ status. As advised in references (b) and (c), it is recommended that the Inspector-Instructor submit a Medical Retention Review package for this service member.

f. RMED's letter recommending denial of Petitioner's request for an in-LOD finding did not address the fact that Petitioner was told by his Company First Sergeant that he could obtain the vaccine on his own time and put in for a flex drill using the NAVMC 799, which would place Petitioner in-LOD. Further, RMED's letter provided no explanation for its statement that, "[Petitioner] had every right not to obtain the COVID-19 vaccine but chose to do so during a time when he was not on reserve orders of any kind." Under reference (d), the secretaries of the military departments were to "immediately begin full vaccination of all members of the Armed Forces." Further, reference (e) was the Marine Corps' implementation of the Secretary of Defense's order requiring that all active and reserve Marines receive the vaccination. Thus, it appears the RMED made its recommendation based on an incorrect understanding of Petitioner's options at the relevant time.

g. On 1 December 2022, Petitioner appealed the denial of his in-LOD request, stating that he received the Johnson and Johnson COVID vaccine from a civilian provider, "as ordered by MarAdmin 462/21," reference (e),² and later that day he suffered injuries.

h. On 19 December 2022, Petitioner's unit recommended Petitioner's appeal be denied, as follows, in part:

a. Member was not in an approved duty status on 1 December 2021 when [he] received the COVID-19 vaccination.

b. Member was in-fact offered the COVID-19 vaccination while on drill status 5-6 November 2021 and refused to receive the COVID-19 vaccination at that time due requesting to submit a religious waiver.

c. There was no counseling for member to receive the COVID-19 vaccination due to member requesting to submit a religious waiver and because the Marines were informed that they would also have a secondary opportunity to receive the COVID-19 during next scheduled drill 3-5 December.

² On 1 September 2021, the Marine Corps published MARADMIN 462/21 to implement the COVID-19 vaccination mandates referenced in the SECDEF memorandum at reference (d). 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, while all non-exempt Reserve Component Marines were to achieve full vaccination no later than 28 December 2021. 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 (c)] may be used at the special court-martial convening authority level."

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] XXX XX [REDACTED] USMCR

* * *

h. Member failed to submit [his] LOD appeal letter within 60 days of receiving the medical/incapacitation pay benefits disapproval letter/ findings due to [his] own continued lack of effort and procrastination.

i. Petitioner thereafter submitted an appeal to the administrative law division of the Office of the Judge Advocate General (Code 13). On 16 January 2023, the Wounded Warrior Regiment (WWR) provided an endorsement to Petitioner's appeal, recommending to Code 13 that Petitioner's in-LOD appeal be denied. According to WWR, the Senior Medical Officer of RMED reviewed Petitioner's case and determined that Petitioner was not in any active military status at the time he received the vaccination. WWR reiterated the statement that Petitioner, "had every right not to obtain the COVID-19 vaccine." WWR then explained that Petitioner was required to use both monthly, scheduled, paid and non-paid Inactive Duty Training (IDTs) to receive the vaccination at civilian or military sites, and that Petitioner went on his own accord and received the COVID-19 vaccine at a civilian medical treatment facility.³ Ultimately, WWR concluded, "the RMED section recommends denial of LOD benefits on the primary basis the member was in direct violation of the specific COVID-19 policies and was not in a duty status at the time he voluntarily elected to receive the COVID-19 vaccination."

j. On 13 April 2023, Code 13 denied Petitioner's request for an in-LOD finding. In denying Petitioner's request, Code 13 did not rely upon the reasoning of RMED or WWR. Rather, Code 13 based its denial on the fact that Petitioner received the Johnson and Johnson vaccine, as follows:

The record shows that you received the Johnson & Johnson COVID-19 vaccine on December 1, 2021, which was not during a period of active duty. Additionally, at that time, only FDA Licensed vaccines could be mandated for DoD personnel; whereas FDA Emergency Use Authorization (EUA) COVID-19 vaccines could be received on a voluntary basis. The Johnson & Johnson COVID-19 vaccine was designated as an FDA EUA COVID-19 vaccine on December 1, 2021.

k. Based on the foregoing, Code 13 concluded that Petitioner's "medical record does not prove, by a preponderance of the evidence, that your knee pain, heart issues, breathing issues, muscle pain, fatigue, or headaches were incurred on or aggravated by active duty Reserve service. Accordingly, your claimed conditions are not eligible for LOD-HC benefits . . . and your appeal must be denied."

l. It is not clear what factors Code 13 relied upon in reaching its conclusion that Petitioner was not on a duty status on 1 December 2021 and it did not address whether Petitioner was on a flex drill as specifically authorized by his reserve unit. However, it appears to rely on the fact Petitioner received the Johnson & Johnson vaccine, which was designated as a FDA EUA

³ WWR did not explain the internal inconsistency in its letter when it stated that Petitioner was "required to use . . . paid and non-paid Inactive Duty Training (IDTs) to receive the vaccination at civilian . . . sites." Here, Petitioner did use non-paid IDT and did receive the vaccine at a civilian site.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] XXX XX [REDACTED] USMCR

COVID-19 vaccine and not eligible to be mandated for DoD personnel, to support its assertion that Petitioner's "medical record does not prove" that Petitioner's medical ailments were incurred or aggravated in a duty period. Code 13's rationale appears to be that because FDA EUA COVID-19 vaccines could not be mandated to military personnel, Petitioner's decision to receive the Johnson & Johnson vaccine was voluntary since it could not be directed by his unit or the Marine Corps.

m. Petitioner thereafter filed an application for relief with this Board. In order to assist it in reviewing Petitioner's application, the Board obtain an advisory opinion from WWR. On 2 October 2023, the Wounded Warrior Regiment provided its response to a request for an Advisory Opinion (AO), in which it explained that Code 13 denied Petitioner's request for in-LOD. It attached a copy of the denial to its response and explained that it reviewed the material that the Petitioner provided in appeal of his denial by Code 13 as follows:

The majority of the documents provided in the member's BCNR package were previously reviewed via the member's initial LOD benefits request and the member's appeal request for the denial of his initial LOD benefits request. The few new documents provided in the member's BCNR package include: A letter from the Office of United States Senator [REDACTED], Cardiology visit notes dated 28 April 2022, Cardiac Monitor note dated 24 February 2022, and [REDACTED] clinic neurology letter dated 27 June 2022. The documentation provided does not provide any new information that would change the BIAs [Benefit Issuing Authority] original disapproval decision.

n. This Board reviewed Petitioner's 2023 application on 9 November 2023 and informed Petitioner by letter, dated 24 November 2023, that it denied his request. In reaching its decision, the Board explained that it relied primarily on the AO from WWR, as well as the decision of Code 13.

o. In the meantime, Petitioner's unit placed him in Medical Readiness Review (MRR). In that process, he was ultimately reviewed by a Formal Physical Evaluation Board (FPEB). Because he did not have an in-LOD, the FPEB was limited to making a finding of Not Physically Qualified or Physically Qualified (NPQ/PQ). If Petitioner had an in-LOD finding, the FPEB would be able to make a finding of Unfit or Fit, which would provide the ability for Petitioner to consider to have a disability condition within the meaning of the service DES. In Petitioner's case, the FPEB found he was NPQ due to Chronic Migraines.

p. Petitioner filed a request for reconsideration of his prior petition on 27 June 2025. In his request, he asserted as new information that he was ordered to obtain the COVID-19 vaccination, and that he was to have his orders uploaded to the Marine Reserve Orders Writing System (MROWS) upon submission of his NAVMC 799 for his flex drill. He included the aforementioned email from his Company First Sergeant and asserted that he submitted the requested documentation but, because of operational tempo at his unit, his orders were never entered. He contended that the failure to upload the required orders upon submission of the NAVMC 799 was a clear error that has resulted in an error or injustice.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] XXX XX [REDACTED] USMCR

CONCLUSION:

In its review of the entirety of the available documentation, the Board determined that there was an injustice with Petitioner's naval records and determined relief was appropriate. In reaching its decision, the Board made the following findings:

(1) Petitioner was ordered to receive the COVID-19 vaccination by military authorities;

(2) Petitioner's reserve unit, through its Command Sergeant Major, informed Petitioner that flex drilling would be authorized for receiving the vaccine away from his HTC;

(3) Petitioner reasonably relied on the assurance of his command that he was in a duty status when he received the vaccine and that he should thereafter complete a NAVMC 799. However, for an unknown reason, Petitioner's submitted NAVMC 799 did not result in the issuance of his orders for 1 December 2021;

(4) Based on the administrative error, Petitioner was deemed not to be in-LOD when he received his COVID-19 vaccine.

(5) Petitioner should have been in a duty status when he received the vaccine and his injuries incurred by taking the COVID-19 vaccine would have been considered in-LOD;

(6) The status of the Johnson & Johnson COVID-19 vaccine as a FDA EUA COVID-19 would have had no bearing on Petitioner's in-LOD status if he had been properly issued orders for 1 December 2021; and

(7) The failure to issue Petitioner orders for 1 December 2021 based on his NAVMC 799 denied him due process, i.e. a PEB review for fitness, that he would have been entitled to as a member of the Marine Corps Reserve in a duty status.

RECOMMENDATION:

Consistent with the findings above, the Board directs the following corrective action:

That Petitioner's record reflect that he received his COVID-19 vaccine during a duty period.

That Petitioner's injuries related to his receiving the COVID-19 vaccine were in-LOD.

That the Board's findings are limited solely to those two issues and it makes no findings that fall under the purview of the PEB, such as to the extent or nature of Petitioner's injuries and his fitness for continued naval service.

That the PEB re-review Petitioner for medical readiness and make an unfit/fit finding within the context of the Disability Evaluation System in light of Petitioner having an in-LOD finding.

That a copy of this record be placed in Petitioner's OMPF.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] XXX XX [REDACTED] USMCR

And no other relief.

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.

3/18/2026

[REDACTED]

Executive Director

Signed by: [REDACTED]