



Docket No. 2983-26
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO
 XXX XX 3930/4402 USMCR

Ref: (a) Title 10 U.S.C. § 1552
(b) Title 10 U.S.C. § 628
(c) MARADMIN 462/21, Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, 1 September 2021
(d) MARADMIN 733/21, Change 1 To Supplemental Guidance (2) To Mandatory COVID-19 Vaccination of Marine Corps Active and Reserve Components, 22 December 2021
(e) Executive Order 14184, Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate, 27 January 2025
(f) Office of the Under Secretary of [War] memo, Updated Guidance on Correction of Military Records for Service Members Involuntarily Separated for Refusal to Comply with Coronavirus Disease 2019 Vaccination Requirements, 1 April 2025
(g) Secretary of [War], Providing Supplemental Remedies for Service Members and Veterans Negatively Impacted by the Department of Defense Defunct Coronavirus Disease 2019 Vaccination Mandate, 23 April 2025
(h) Office of the Under Secretary of [War] memo, Supplemental Guidance to the Military Department Discharge Review Boards and Boards for Correction of Military/ Naval Records Considering Requests from Service Members Adversely Impacted by Coronavirus Disease 2019 Vaccination Requirements, 7 May 2025
(i) Memorandum For Senior Pentagon Leadership, Commanders of the Combatant Commands, Defense Agency and DOW Field Activity Directors, 20 March 2026

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record

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 that his naval record be corrected to receive two qualifying years Reserve service of at least 50 points for 2022 and 2023, be reimbursed for out of pocket medical expenses and insurance premiums, be assigned to a Special Selection Board (SSB), be retroactively promoted to Colonel and receive back pay.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 April 2026 and pursuant to its regulations, determined

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

that 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 record, and applicable statutes, regulations, and policies.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

- a. On 7 February 2002, Petitioner enlisted in the U.S. Marine Corps Reserve for 8 years.
- b. Petitioner's United States Marine Corps Appointment Acceptance and Record (NAVMC 763) signed on 9 August 2002 listed the following: Block 6 (Grade Appointed) Second Lieutenant. Block 7 (MOS) 4401. Block 18 (Component) USMCR. Block 21 (Prior Service) Branch-Component/Highest Grade/Enlistment or Appointment/Discharge - USMCR(C)/PVT/7 February 2002/1 June 2002; USMCR(C)/OCAN/2 June 2002/8 June 2002.
- c. Petitioner was released from active duty with an honorable character of service and was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 6 February 2006 to 27 May 2013 due Intradepartmental Transfer.
- d. On 1 September 2019, Petitioner was appointed to Lieutenant Colonel/O-5.
- e. Petitioner's USMC Fitness Report (NAVMC 10835A) for the period of 1 July 2020 to 30 June 2021 listed the following: Block K (Reviewing Officer Comments) "[p]ossesses excellent teaching and research skills, and always eager to take on assignments and mentor junior officers. Continues to impress MOS proficiency, shouldering a large case load. One of the few reservists who stepped up to backfill the Regional Defense Counsel billet in [REDACTED] gapped, though cancelled due to COVID-19 restrictions, does not diminish his initiative to support the active duty community without hesitation, in a remote billet other than his own. Enthusiastically recommended for promotion. Unlimited potential, (late report for RO's sustained tech issues)."
- f. On 9 February 2022, Deputy Commandant for Manpower and Reserve Affairs notified Petitioner that "I have carefully considered your request for an immunization waiver. Your request is denied.

In making this determination, I considered your request dated 8 December 2021, the command endorsements, advice from the Director, Health Services, Headquarters, U.S. Marine Corps, and the recommendation of the Religious Accommodation Review Board. Additionally, I considered your right to observe the tenets of your sincerely held religious beliefs, and the government's compelling interests in mission accomplishment, including military readiness and the health and safety of the Total Force. I also considered whether an exception to the vaccination requirement is the least restrictive means of furthering the government's compelling interest. Finally, I consulted with legal counsel.

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

Per DoDI 1300.17, my decision must be consistent with mission accomplishment, including consideration of potential medical risks to other persons comprising the unit or organization. Immunizations are a critical component of individual and unit readiness. This compelling interest is not unique to the COVID-19 vaccination, and cannot be accomplished with the requested exception. I find that there is no less-restrictive way of accommodating your request that ensures military readiness and the preservation of the health of the force.

You have the right to appeal this decision to the Commandant of the Marine Corps. Should you decide to appeal this decision, your appeal should be in naval letter format, from you, addressed to the Commandant of the Marine Corps. Forward your appeal to the point of contact below, for delivery to the Commandant.”

g. On 14 February 2022, Commanding Officer, [REDACTED] notified Petitioner that, “...If you choose not to appeal, to give you a reasonable amount of time to get the vaccine, you have until 3 March 2022 to get the first dose of one of the vaccines. Those who refuse to receive the vaccine will be processed for administrative separation per MARADMIN 612/21. I know this puts you in a difficult position to choose between your strong moral convictions and your choice to serve our Nation. That is your decision to make, but I encourage you to get the vaccine. The Navy and Marine Corps team needs men and women of conviction like you, and I do not wish to see you leave the service in this manner.”

h. On 23 February 2022, [REDACTED], Acting Director, Appellate Defense Division notified Commandant of the Marine Corps that “I am the Acting Director of the Appellate Defense Division (Code 45), Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, United States Navy. [REDACTED] is a Marine Corps Individual Mobilization Augment (IMA) reservist who supports Code 45. He is the senior Marine Corps reserve appellate defense counsel. I am [REDACTED] second-level supervisor.

Code 45 relies on reservists to review and file more than 60% of our cases. [REDACTED] is one of two Marine reservists assigned to our office and one of the most experienced appellate attorneys in the Marine Corps. He served four years on active duty and four-and-a-half years as a reservist with us and has litigated appeals as a civilian. [REDACTED] is an indispensable and mission-critical member of Code 45. Due to his vast experience, I rely on him to handle cases that other reservists cannot. We rely on his experience, subject-matter expertise, and leadership in order to accomplish our mission.

As a reserve appellate defense counsel, [REDACTED] is authorized to perform all his Code 45 duties remotely just like the other reservists assigned to Code 45. Given the unique nature of Code 45’s mission, and limited office space and IT assets, remote work for Navy and Marine Corps appellate defense counsel assigned to Code 45 has been standard practice that long predates the Covid-19 pandemic. During the pandemic, [REDACTED] and all our other reservists have continued to perform Code 45 duties remotely.

Because remote work is the norm for our reservists, there was no degradation in [REDACTED] ability to carry out his duties by working remotely during the Covid-19 pandemic.

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

His vaccination status has had no impact on the Code 45 mission, its readiness, or the unit's cohesion. He has and continues to contribute to the mission with the highest degree of professionalism and competence, as one would expect of a Marine officer of his rank and billet.

I am aware that the Marine Corps denied [REDACTED] [REDACTED] religious accommodation request, and that he is appealing that decision. In my professional opinion, were the Marine Corps to ultimately deny his religious accommodation appeal and involuntarily separate him, Code 45, and by extension the U.S. Marine Corps, would suffer an immediate, direct, and palpable degradation in its ability to accomplish its mission. I respectfully request you take this into serious consideration as you act on his appeal."

i. Petitioner's USMC Fitness Report (NAVMC 10835A) for the period of 1 July 2021 to 30 April 2022 listed the following: Block K (Reviewing Officer Comments) "[t]remendous asset to the active duty [REDACTED] overall. Shouldered a large case load which eased pressure on active duty counsel. Outstanding research, writing, and oral advocacy skills provide positive results for his Marine clients. Teaching skills are first-rate; routinely asked to instruct on complex legal issues. Always eager to step up and backfill active duty billets worldwide. Enthusiastically recommended for promotion. Unlimited potential."

j. Petitioner's USMC Fitness Report (NAVMC 10835A) for the period of 1 May 2022 to 30 June 2022 listed the following: Block K (Reviewing Officer Comments) "[t]his is an extended report; my evaluation remains the same."

k. On 11 July 2022, Petitioner transferred to the Individual Ready Reserve (IRR).

l. On 3 May 2023, Petitioner joined [REDACTED] [REDACTED] SMCR-IMA (Selected Marine Corps Reserve - Individual Mobilization Augmentee).

m. Petitioner's USMC Fitness Report (NAVMC 10835A) for the period of 1 June 2023 to 12 May 2024 listed the following: Block K (Reviewing Officer Comments) "SNO is a consummate professional who nimbly manages outstanding MAGTF leadership qualities with the finest skill sets judge advocates can possess. Always willing to lend a hand to peers, subordinates, and seniors and his input vastly improves the quality of the project. An absolute must for TLS and promotion!"

n. Petitioner's Career Retirement Credit Report for the period of 7 February 2002 to present listed the following: Anniversary Year Inclusive Dates/Total Points Credit/Satisfactory Year; 7 February 2021 to 6 February 2022/67 points/Yes. 7 February 2022 to 6 February 2023/45 points/No. 7 February 2023 to 6 February 2024/44 points/No.

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

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of references (e), (f), (g), (h), and (i), the Board finds the existence of an injustice warranting the following corrective action. The Board determined that on 11 July 2022, Petitioner transferred to the IRR, due to refusing to comply with reference (c). On 3 May 2023, Petitioner joined [REDACTED] for SMCR-IMA. Petitioner's record does not show a break in service, however it currently shows he did not earn a satisfactory year for anniversary years ending on 6 February 2023 and 6 February 2024. In accordance with reference (e), the Secretary of [WAR], as appropriate, shall take all necessary action permitted by law to: make reinstatement available to all members of the military (active and reserve) who were discharged solely for refusal to receive the COVID-19 vaccine and who request to be reinstated; enable those service members reinstated under this section to revert to their former rank and receive full back pay, benefits, bonus payments, or compensation. The Board determined that Petitioner reentered the IMA Inactive Duty Training (IDT) prior to the release of reference (e), however the Board found sufficient evidence that he was transferred to the IRR solely for refusal to receive the COVID-19 vaccine. The Board found it would be unjust to treat Petitioner differently than those who are reinstated after its release, therefore relief is warranted. Even though this Board has no involvement with TRICARE, the Board agreed that Petitioner's transfer to the IRR effective 12 July 2022 should be removed and once effected, Petitioner can submit all necessary documentation to TRICARE for reimbursement of medical expenses. The Board agreed that if Petitioner was passed over for selection to Colonel, a SSB will be conducted and if selected, Petitioner should be promoted retroactively and receive backpay.

RECOMMENDATION

That Petitioner's naval record be corrected, where appropriate, to show that:

Petitioner's transfer to the Individual Ready Reserve (Component Code: K7) effective 12 July 2022 if null and void. Petitioner was in the Individual Mobilization Augmentee (IMA) Inactive Duty Training (IDT) (Component Code: KF) from 1 July 2019 through 30 March 2024.

Petitioner earned a satisfactory year after completing all training and administrative requirements to include 50 points for the anniversary year ending 6 February 2023. Note: To accomplish this, in addition to the 17 paid IDT points, 13 correspondence points, and 15 membership points Petitioner already earned, Petitioner was credited with 5 IDT points for the following periods: 6 to 7 August 2022 (4 points) and 3 September 2022 (1 points).

Petitioner earned a satisfactory year after completing all training and administrative requirements to include 50 points for the anniversary year ending 6 February 2024. Note: To accomplish this, in addition to the 18 paid IDT points, 11 correspondence points, and 15 membership points, Petitioner already earned, Petitioner was credited with 6 IDT points for the following periods: 4 to 5 March 2023 (4 points) and 1 April 2022 (2 points).

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

Headquarters, U.S. Marine Corps (HQMC) will determine when Petitioner was first eligible for the Colonel/O-6 selection board, and if eligible convene a Special Selection Board (SSB) for possible selection/appointment to Colonel/O-6.

Note: HQMC is directed to scrub Petitioner's record and remove any and all references to COVID-19, including but not necessarily limited the documents related to his involuntary transfer to the IRR for refusing the COVID-19 vaccine. Furthermore, that fitness report Admin Filler(s) are created for the period of service not observed. That any other corrections affected by the Board's recommendation be corrected.

A copy of this report of proceedings will be filed in 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 titled 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 Regulations, 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

5/6/2026

[REDACTED]
Deputy Director

Signed by: [REDACTED]