RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02947

 XXXXXXX COUNSEL: NONE

 HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

Her records be corrected to reflect that she was retained on active duty for medical hold from 14 May 09 through 7 Feb 10.

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APPLICANT CONTENDS THAT:

She injured her back while on active duty and had to have surgery. She was subsequently placed on active duty for the period 26 May 09 through 30 Sep 09 to recover from her back surgery. She should not have been released on 30 Sep 09, but should have been retained on active duty until her second surgery on 8 Feb 10.

In support of her request, the applicant provides an expanded statement and copies of her AFRC IMT 348, *Informal Line of Duty Determination,* active duty and medical continuation orders, AF Forms 469, *Duty Limiting Report,* and civilian doctor/surgeon notes.

The applicant’s complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

According to information extracted from the Military Personnel Data System (MilPDS), the applicant is currently serving in the Air Force Reserve in the grade of technical sergeant (E-6), effective and with a date of rank of 1 Jul 93.

According to information provided by the applicant, she was voluntarily ordered to active duty for operational support (ADOS) on 12 May 08 for a period of 142 days.

On 19 Sep 08, a Line of Duty (LOD) Determination was initiated to evaluate the applicant’s back injury for service connection.

On 30 Sep 08, the applicant was released from her ADOS tour at the expiration of her active duty orders.

On 21 Nov 08, an AF From 469, *Duty Limiting Condition Report,* was initiated indicating the applicant was restricted from high impact aerobic activity with bilateral lower extremities, running greater than 100 yards, repetitive bending or twisting at the waist, lifting greater than ten pounds, and pushing/ pulling more than ten pounds. The expiration date of the restrictions was set at 20 Jan 09.

Title 10, United States Code (USC), Section 12301 (h) provides authority to order a member of the reserve forces to active duty to receive authorized medical care or to be medically evaluated for disability or other purposes. A member ordered to active duty under this authority may, with the member’s consent, be retained on active duty for medical treatment for a condition associated with the evaluation.

On 6 Dec 08, the applicant was ordered to active duty voluntarily for the period 6 Dec 08 through 20 Jan 09, the expiration of her duty limiting condition. On 12 Jan 09, another AF Form 469 was initiated updating her duty restrictions to preclude her from military duty for 12 weeks, with an expiration date of 13 May 09. On 20 Jan 09, her active duty orders were extended through 13 May 09, the expiration of her updated duty limiting condition.

On 5 May 09, another AF Form 469 was initiated lifting the restriction from performing military duty and updating the applicant’s duty restrictions to preclude her from high impact aerobic activity with bilateral lower extremities, running greater than 100 yards, repetitive bending or twisting at the waist, lifting/pushing/pulling no greater than 40 pounds, situps, and pushups. On 13 May 09, the applicant was released from active duty at the expiration of her active duty orders.

On 22 May 09, another AF Form 469 was initiated restricting the applicant from performing any military duty away from home station. The applicant was granted a waiver to perform military duty at home station and, on 26 May 09, she was ordered to active duty voluntarily and served until 30 Sep 09 at the expiration of her active duty orders.

On 25 Nov 09, another AF Form 469 was initiated restricting the applicant from performing any military duty away from home station. She was granted a waiver to perform military duty at home station with an expiration date of 31 Jan 10. Additionally, her restrictions were updated to indicate she was undergoing a medical evaluation board (MEB) to determine her continued fitness for worldwide duty and retention.

On 8 Feb 10, the applicant was ordered to active duty voluntarily and was released from active duty on 30 Sep 10 at the expiration of her active duty orders.

The remaining relevant facts pertaining to this application are described in the letter prepared by the Air Force office of primary responsibility (OPR) which is attached at Exhibit C.

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AIR FORCE EVALUATION:

AFRC/SGP recommends denial, indicating the applicant was not entitled to medical continuation orders for the requested period. She incurred an unspecified back injury while on an active duty tour during the period 12 May 08 – 30 Sep 08. An LOD determination was accomplished and was completed on 2 Apr 09 with a finding of EPTS – Service Aggravated. The applicant was placed on active duty medical continuation orders from 6 Dec 08 though 13 May 09. During this period, a Lumbar Fusion was performed. Upon completion of this tour, she was granted a participation waiver and entered into another tour of regular duty from 26 May 09 through 30 Sep 09. She was again placed on medical continuation orders from 8 Feb 10 through 30 Sep 10. A second surgery was performed during this period. During the period 14 May 09 through 7 Feb 10, the applicant was granted a participation waiver. In accordance with AF/RE Memorandum, *Change to AFMAN 36-8001, Reserve Personnel Participation and Training Procedure*, members granted such a waiver are deemed able to perform military duty and are therefore not entitled to medical continuation on active duty.

A complete copy of the AFRC/SGP evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 15 Oct 10 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

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THE BOARD CONCLUDES THAT:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was timely filed.

3.  Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

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THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered AFBCMR Docket Number BC-2010-02947 in Executive Session on 25 May 11, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

 Exhibit A.  DD Form 149, dated 3 Aug 10, w/atchs.

 Exhibit B.  Applicant's Master Personnel Records.

 Exhibit C.  Letter, AFRC/SGP, dated 29 Sep 10.

 Exhibit D.  Letter, SAF/MRBR, dated 15 Oct 10.