RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02838

 XXXXXXX COUNSEL: NONE

 HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His active duty for medical hold orders be corrected to begin on 1 Jul 10, rather than 19 Jul 10.

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APPLICANT CONTENDS THAT:

He sustained an injury in the line of duty (LOD) while on active duty during a deployment to Haiti. He can only perform light duty due to his injury and therefore has not been able to return to his civilian profession. He was present for duty during the period 1 – 18 Jul 10, while awaiting medical continuation orders to be approved. However, those orders could not be approved until his condition could be evaluated.

In support of his request, the applicant provides copies of two supporting statements, his DD Form 214, *Certificate of Release or Discharge from Active Duty,* AF Form 348, *Line of Duty Determination,* civilian and military leave and earnings statements, medical documentation, and his active duty orders.

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

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STATEMENT OF FACTS:

Information extracted from the Military Personnel Data System (MilPDS) indicates the applicant is currently serving with the Air National Guard (ANG) in the grade of master sergeant (E-7).

On 25 Jan 10, the applicant was ordered to active duty (voluntarily) for the period 25 Jan 10 through 26 Jun 10 in support of Operation UNIFIED RESPONSE. His orders were subsequently amended with a new expiration date of 11 Jun 10.

On 17 May 10, an LOD Determination was initiated to evaluate the applicant’s 25 Mar 10 right ankle sprain, right knee pain, and left shoulder cuff sprain for service connection. On 11 Jun 10, the applicant was released from active duty at the completion of his required active service. On 1 Jul 10, the applicant’s injury was determined to be in the LOD.

Title 10, United States Code, Section 12301 (h) (10 USC 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 19 Jul 10, the applicant was voluntarily ordered to active duty under the provisions of 10 USC 12301(h) for the purposes of medical continuation. On 16 Sep 10, he was released from active duty.

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AIR FORCE EVALUATION:

NGB/A1PS recommends denial, indicating there is no evidence of an error or injustice. Members who incur an illness, injury, or disease in the LOD while on active duty for more than 31 days may be continued on active duty until fit for duty or separated via the Disability Evaluation System (DES). In accordance with the SAF/AA Policy Memorandum, *Return to Active Duty of Air Reserve Component Members Unable to Perform Military Duties,* members who are released from active duty, but subsequently become unable to perform military duty as a result of an LOD condition, will be voluntarily returned to active duty until they are fit for duty or separated from the service via the DES. Airmen eligible under this policy shall have a medical diagnosis rendering them unable to perform military duties and a LOD determination documenting the condition was incurred or aggravated in the LOD. Entitlement under this policy shall begin when the condition renders the Airman unable to perform military duties; not when the injury occurred or when the Airman was released from active duty. The date which the member was considered not fit for duty is a key determinant in effecting the member’s return to active duty. Without it, NGB/A1PS is unable to make a reasonable determination of the applicant’s entitlement to return to active duty.

A complete copy of the NGB/A1PS 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 27 Aug 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.  Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant contends he should have commenced his active duty for medical continuation tour on 1 Jul 10, rather than 19 Jul 10. After a thorough review of the evidence of record and the applicant’s complete submission, we believe a preponderance of the evidence supports corrective action. In this respect, we note the applicant’s LOD Determination was approved on 1 Jul 10; however, for some unknown reason, his medical continuation orders were not published until 23 Jul 10. We note the comments by the NGB/A1PS indicting they were unable to determine when the applicant’s medical continuation tour should have commenced. Nevertheless, we find it reasonable to conclude that his tour should have commenced when the LOD Determination was approved. Therefore, we recommend his records be corrected as indicated below.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that on 1 July 2010, he was ordered to active duty (voluntary) for the period 1 July 2010 through 16 September 2010, under the provisions of Section 12301(h) of Title 10, United States Code, for the purpose of medical continuation.

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The following members of the Board considered AFBCMR Docket Number BC-2010-02838 in Executive Session on 13 Apr 11, under the provisions of AFI 36-2603:

All members voted to correct the records as recommended. The following documentary evidence pertaining to AFBCMR Docket Number BC-2010-02838 was considered:

 Exhibit A.  DD Form 149, dated 28 Jul 10, w/atchs.

 Exhibit B.  Applicant's Master Personnel Records.

 Exhibit C.  Letter, AFRC/SGP, dated 23 Aug 10, w/atch.

 Exhibit D.  Letter, SAF/MRBR, dated 27 Aug 10.