RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXXXX

DOCKET NUMBER: BC-2017-02899

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel records amended to:

a. Publish Medical Continuation (MEDCON) orders for the period 30 May 12 – 26 Mar 15.

b. Reimburse medical expenses and travel pay for medical appointments for the same period.

c. Award service credit, accrued leave, pay and allowances for the same period.

d. Provide a DD Form 214, *Certificate of Release or Discharge from Active Duty*, for the same period.

APPLICANT'S CONTENTIONS

He had a line of duty (LOD) injury post-deployment and should have been placed on MEDCON orders; however, due to poor guidance, lack of support, and not adhering to federal law, he was not. The applicant had issues with both of his shoulders and developed a tremor in both of his hands. He notified the medical group of the issues with his shoulders and the tremor in his hands and provided x-rays, MRIs, and neurologist reports identifying the issues. The applicant was placed on MEDCON orders for approximately seven months, then taken off because Department of Defense instructions (DoDI) requiring him to be continued on orders until the final disposition of his case were not followed.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard (ANG) technical sergeant (E-6).

According to Special Order XXXXX, dated 26 Sep 11, the applicant was called to active duty under Partial Mobilization authority in accordance with Title 10, United States Code § 12302 (10 USC § 12302) for the period 14 Nov 10 – 20 Oct 11.

On 16 Sep 11, according to AF Form 469, *Duty Limiting Condition Report*, provided by the applicant, he was placed on mobility restriction with code 31 [illness or injury will be resolved within 31-365 days], with a release date of 20 Mar 12. According to AFPC/DPFA advisory opinion, this medical profile was extended to 12 Jun 12.

On 5 Nov 11, according to AF IMT 348, *Line of Duty Determination*, the applicant was treated for a partial thickness tear of the supraspinatus of the right shoulder on 1 Jun 11 and the injury was determined to be in the line of duty (ILOD).

On 23 Jan 12, according to AF IMT 348, the applicant was treated for left- and right-hand tremors on 1 Jun 11 and the injury was determined to be ILOD.

On 11 Mar 12, according to AF IMT 348, the applicant was treated for left shoulder ache on 29 Feb 12 and the injury was determined to be ILOD.

According to Special Order XXXXX, dated 2 May 12, provided by the applicant, he was called to active duty under Medical Hold in accordance with 10 USC § 12301(h) for the period 29 Nov 11 – 30 May 12.

On 22 May 13, according to DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552*, the applicant requested the Air Force Board for Correction of Military Records (AFBCMR) correct his official military personnel record to reflect continuation of his MEDCON orders for the period 21 Oct 11 – 28 Nov 11, restore 21 days of leave, and reinstate 14 days of rest and reconstitution time.

On 23 May 13, the applicant signed the *IDES [Integrated Disability Evaluation System] Counseling Acknowledgement Sheet,* acknowledging he had been briefed on the IDES process.

On 12 Jun 13, according to AF Form 469, the applicant was placed on duty and mobility restrictions with code 37 [medical defect/condition requires Medical Evaluation Board (MEB) or Physical Evaluation Board (PEB) processing], with a release date of 12 Jun 14.

On 16 Oct 23, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with:

- Essential tremor
- Right shoulder pain
- Left shoulder pain

The applicant's conditions were Incurred while entitled to basic pay: Yes; Existed prior to service: No; Permanently aggravated by service: Yes; LOD: Yes. The applicant was referred to the informal Physical Evaluation Board (IPEB). The applicant did not request an impartial review of his MEB.

On 4 Jun 14, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions Which Are Compensable And Ratable:
  - Osteoarthritis, Left Shoulder; Department of Veterans Affairs (DVA) Rated as Left Shoulder Acromioclavicular Joint Degenerative Joint Disease with Status Post Rotator Cuff Impingement and Biceps Tendinopathy with Arthroscopic Repair (Non-Dominant); Incurred while entitled to basic pay: Yes; LOD: Yes; Disability Compensation Rating: 20 percent; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 5010-5201; Combat Related: No.
  - Essential Tremor, Bilateral Hands; DVA Rated as Benign Essential Tremor; Incurred while entitled to basic pay: Yes; LOD: Yes; Disability Compensation Rating: 0 percent; VASRD Code: 8199-8103; Combat Related: No.

- Category II – Conditions That Can Be Unfitting But Are Not Currently Compensable Or Ratable:
  - Right Shoulder Acromioclavicular Joint Degenerative Joint Disease with Status Post Rotator Cuff Impingement and Biceps Tendinopathy with Arthroscopic Repair (Dominant); VASRD Code: 5201-5010
  - Tinnitus; VASRD Code: 6260
  - Residual Scar Left Shoulder, Status Post Arthroscopy; VASRD Code: 7804

- Degenerative Joint Disease, Bilateral Knee; VASRD Code: 5010
- Cervical Spine Degenerative Joint and Degenerative Disc Disease; VASRD Code: 5242.

The IPEB recommended Discharge With Severance Pay (DWSP) and a combined compensable percentage of 20 percent.

On 20 Jun 14, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant did not agree with the findings and recommended disposition of the IPEB and requested a formal hearing of his case.

On 31 Jul 14, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Formal)*, the applicant was unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions Which Are Compensable And Ratable:
- Left Shoulder Acromioclavicular Joint Degenerative Joint Disease with Status Post Rotator Cuff Impingement and Biceps Tendinopathy with Arthroscopic Repair (Non-Dominant); Incurred while entitled to basic pay: Yes; LOD: Yes; Disability Compensation Rating: 20 percent; VASRD Code: 5010-5201; Combat Related: No.
- Essential Tremor, Bilateral Hands; DVA Rated as Benign Essential Tremor; Incurred while entitled to basic pay: Yes; LOD: Yes; Disability Compensation Rating: 0 percent; VASRD Code: 8199-8103; Combat Related: No.

- Category II – Conditions That Can Be Unfitting But Are Not Currently Compensable Or Ratable:
- Right Shoulder Acromioclavicular Joint Degenerative Joint Disease with Status Post Rotator Cuff Impingement and Biceps Tendinopathy with Arthroscopic Repair (Dominant); VASRD Code: 5201-5010
- Tinnitus; VASRD Code: 6260
- Residual Scar Left Shoulder, Status Post Arthroscopy; VASRD Code: 7804
- Degenerative Joint Disease, Bilateral Knee; VASRD Code: 5010
- Cervical Spine Degenerative Joint and Degenerative Disc Disease; VASRD Code: 5242.

The formal PEB (FPEB) recommended DWSP and a combined compensable percentage of 20 percent.

On 4 Aug 14, according to AF Form 1180, the applicant agreed with the findings and recommended disposition of the FPEB and also requested a one-time reconsideration of the disability ratings for the conditions found unfitting by the PEB.

On 14 Aug 14, the applicant's Disability Evaluation Attorney submitted a memorandum, Subject: Request for One Time Only Rating Reconsideration of Proposed Rating Decision for [Applicant].

On 12 Sep 14, according to AFBCMR Docket Number BC-XXXX-XXXXX directive, the applicant's MEDCON orders were extended to 28 Nov 11 and 21 days of leave were restored.

On 1 Oct 14, according to DVA Decision Review Officer Decision, the applicant's evaluation of essential tremor, bilateral hands, which was currently evaluated at 0 percent disabling, was increased to 30 percent disabling, effective 21 Oct 11 to 29 Nov 11 (the date of return to active duty). The 30 percent evaluation is reinstated on 31 May 12.

On 12 Dec 14, according to AF Form 356 (Formal), the applicant was unfit because of physical disability and diagnosed with:

- Category I – Unfitting Conditions:
  - Essential Tremor, Bilateral Hands; Incurred while entitled to basic pay: Yes; LOD: Yes; Disability Compensation Rating: 30 percent; VASRD Code: 8199-8103; Combat Related: No.
  - Left Shoulder Acromioclavicular Joint Degenerative Joint Disease with Status Post Rotator Cuff Impingement and Biceps Tendinopathy with Arthroscopic Repair (Non-Dominant); Incurred while entitled to basic pay: Yes; LOD: Yes; Disability Compensation Rating: 20 percent; VASRD Code: 5010-5201; Combat Related: No.

- Category II – Conditions That Can Be Unfitting But Are Not Currently Compensable Or Ratable:
  - Right Shoulder Acromioclavicular Joint Degenerative Joint Disease with Status Post Rotator Cuff Impingement and Biceps Tendinopathy with Arthroscopic Repair (Dominant); VASRD Code: 5201-5010
  - Tinnitus; VASRD Code: 6260
  - Residual Scar Left Shoulder, Status Post Arthroscopy; VASRD Code: 7804
  - Degenerative Joint Disease, Bilateral Knee; VASRD Code: 5010
  - Cervical Spine Degenerative Joint and Degenerative Disc Disease; VASRD Code: 5242.

The FPEB recommended permanent retirement with a combined compensable percentage of 40 percent.

On 21 Jan 15, according to an AFPC/DPFD memorandum, Subject: Physical Evaluation, the Secretary of the Air Force directed the applicant be permanently retired under the provisions of 10 USC § 1201.

On 26 Mar 15, according to Special Order Number XXXXX, dated 28 Jan 15, the applicant was relieved from active duty, organization and assignment. Effective 27 Mar 15, he was permanently disability retired with a compensable percentage for physical disability of 40 percent.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C, F, and I.

AIR FORCE EVALUATION

AFPC/DPFA recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. It does not appear the applicant met all MEDCON eligibility criteria at the time his MEDCON orders ended on 30 May 12. Specifically, the applicant did not clearly have a MEDCON eligible treatment plan or a valid profile. Additionally, requests for medical documentation from his local ANG medical unit apparently went unanswered. At the time of the reapplication for MEDCON orders in Jan 13, the applicant would have required a new LOD, given the gap in profile, or documentation that showed the care was clearly covered by the current LOD.

The applicant had three ILOD conditions. He was initially injured during a deployment from 14 Nov 10 – 20 Oct 11. The applicant was retroactively granted MEDCON orders via the AFBCMR, from 20 Oct 11 – 28 Nov 11. He was then placed on MEDCON orders from 29 Nov 11 – 30 May 12. At the expiration of these dates, he applied for an extension of the MEDCON orders, but was denied on 30 May 12 and he was removed from MEDCON orders.

The applicant is now seeking MEDCON orders from 30 May 12 to 26 Mar 15 when he was permanently disability retired. The applicant was profiled via AF Form 469 with a mobility restriction for his conditions from 16 Sep 11 through 20 Mar 12, with an extension to 12 Jun 12 and then again from 12 Jun 13 to 12 Jun 14.

The applicant initially had right shoulder pain in Apr 11, with arthroscopy including debridement of the rotator cuff and shaving of the right clavicle performed on 30 Nov 11. His left shoulder pain was reported in Oct 11. The applicant underwent two arthroscopic procedures on his left shoulder, on 29 Feb 12 and on 22 Feb 13. After the first surgery, the applicant was enrolled in post-operative physical therapy (PT) which carried him through Jun 12 and coincides with the extension of his profile to 12 Jun 12.

A memorandum dated 30 Apr 22, from orthopedics, recommended a return-to-work date of 1 Jun 12. A PT note, dated 9 May 12, documented that a Home Exercise Program (HEP) was being recommended one to two times per week with recheck in four weeks. A Sports Medicine note, dated 29 May 12, noted continued pain which seem to be worsened with PT. An injection was performed, and the plan was for PT to decrease to one time per week for the next two months. There is documentation from the applicant's medical group, dated 29 May 12, documenting a conversation where the applicant stated his PT was decreased to once weekly and that he "didn't need any more orders." There were additional entries on 1 Jun 12, 24 Jul 12, 8 Sep 12 and 14 Oct 12 requesting medical information, including a request from the Medical Group Deputy Commander. The applicant failed to show for a follow-up appointment as well, where he was to discuss his LOD. A formal appeal of the denial of the MEDCON extension request was also not submitted.

On 19 Oct 12, there was an entry from the applicant's medical group stating the Military Medical Support Office was contacted regarding a request from the applicant for another opinion on his shoulders. He was instructed that since he had a Military Treatment Facility (MTF) local to him, he would need to receive his care from the MTF. An MRI of his left shoulder had been repeated on 10 Aug 12, showing (in addition to post-operative changes of subacromial debridement, biceps tenodesis and superior labral debridement), moderate tendinosis of subscapularis tendon and a small partial thickness articular surface tear of the anterior supraspinatus fibers superimposed on moderate supraspinatus tendinosis. An MRI of his left humerus was also completed to evaluate his continued left shoulder pain. The radiologist suspected retraction of the long head of the biceps tendon distal to the subpectoral tenodesis anchor site. The applicant followed up with Sports Medicine on 10 Oct 12 for continued pain following his left shoulder surgery and to review the MRIs. The orthopedic specialist believed the pain was coming from his biceps tenodesis site and recommended left shoulder diagnostic arthroscopy to clean out any scar tissue. At a primary care appointment on 26 Oct 12, a second opinion from orthopedics was requested on the applicant's left shoulder. This consult was ultimately placed on 30 Oct 12 and the applicant followed up with Sports Medicine on 9 Dec 12. Surgery was again discussed, and the applicant opted to follow up after discussing his case with the nursing coordinator at his work.

An email from NGB/SG, dated 8 Jan 13, recommended MEDCON for surgery and recovery. It states the applicant had surgery seven months prior, but still had not achieved a full recovery. There was a note from the XXX Medical Group (XXX MDG) on 25 Jan 13 stating the applicant's case was returned due to lack of sufficient medical documentation communicating a continuance of care. The applicant then canceled his surgery, which was scheduled for that same day (25 Jan 13). A note, dated 31 Jan 13, acknowledged the surgery was approved by TRICARE and scheduled for 25 Jan 13. At that time, the applicant's provider noted he would declare the applicant had achieved maximal medical improvement if he did not move forward with a therapeutic option. The surgery was then rescheduled on 22 Feb 13. Post-operative PT was recommended twice a week through May 13. The applicant reported he had difficulty obtaining

post-operative PT and was instructed to access the local MTF for care. He finally established PT care and continued through May 13.

On 29 May 13, the applicant's orthopedic surgeon referred him for an additional three months of PT. There is a note, dated 4 Jun 13, citing significant improvement with the right shoulder and that the left shoulder was at maximum medical improvement. The applicant declined treatment for the tremor, but additional PT was recommended at that time. He followed up with his orthopedics provider on 9 Aug 13 and additional PT was recommended due to continued pain and decreased range of movement. At that time, the applicant requested a referral for civilian PT, which was ultimately declined. He then dropped out of the XXX Medical Group (XXX MDG) PT program due to no progress with their program but was instructed to continue HEP and follow up in one month.

Another email, dated 3 Sep 13, stated the applicant was requesting MEDCON orders so he could process through the MEB. He was identified for an Initial Review in Lieu of on 16 May 13. A note, dated 20 Aug 13, states the MEB was approved, and the applicant was briefed by the Physical Evaluation Board Liaison Officer. IPEB findings, dated 4 Jun 14, noted the unfitting conditions included left shoulder status post rotator cuff impingement and biceps tendinopathy with arthroscopic repair and essential tremor bilateral hands. The right shoulder joint degenerative joint disease status post rotator cuff impingement and biceps tendinopathy with arthroscopic repair are not compensable or ratable. The IPEB recommendation was for DWSP with a disability rating of 20 percent.

The applicant appealed to the FPEB, and on 12 Dec 14, they recommended permanent retirement with a disability rating of 40 percent. The applicant was permanently disability retired on 27 Mar 15.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 31 Oct 19 for comment (Exhibit D) and the applicant replied on 19 Dec 23. In his response, the applicant addressed individual statements within the advisory opinion. He disputes that he stated he would not need to be continued on orders. His PT was decreased to once per week, vice the three time per week required for MEDCON eligibility but he was still having medical issues. The applicant contended his physical therapist stated three times a week was too extreme; however, he believes it was an attempt to remove him from MEDCON orders.

The applicant was providing requested medical documentation to the XXX MDG, and when told he was supposed to send the documentation to the XXX MDG, he sent the documents to them from that point. He also provided a medical records release so they had access to the documents they needed. The applicant had issues with his scanner and could not scan the documents and had some confusion on how the system worked. He was not in a pay status but tried to address issues presented to him. The XXX MDG did not take into account he was dealing with pain, and it was hard to communicate with the tremors in his hands. The applicant confirmed he missed a follow up appointment to discuss his LOD due to his pain and confusion with the system.

Although an NGB/SG email recommended MEDCON for surgery and recovery, the XXX MDG note states his case was returned due to lack of sufficient medical documentation reflecting continuation of care. This did not support the DoDI to have a service member on orders until final disposition. The Air Force Medical Operations Agency (AFMOA) had only one goal, to deny his request at all costs. They showed no support. The applicant did cancel his scheduled surgery due to this lack of support and MEDCON orders. He could not take the chance of

having the surgery and not having an income. The advisory also does not address his efforts from 6 Dec 22 (sic[1]) through 29 May 13. Further, the applicant did not decline treatment for his tremors and PT was never a part of his care plan for tremors.

The advisory opinion states the applicant did not have a MEDCON eligible treatment plan or valid profile. This is using his disability against him. He has tremors in his hands and is being held accountable for a treatment plan. The applicant has no technical knowledge of how to prepare this document. It is the responsibility of the XXX MDG to manage all documentary aspects of the MEDCON orders. Additionally, a valid profile is not the applicant's responsibility. Of the three profiles completed, the applicant only had knowledge of the first. The advisory opinion also stated requests to his local ANG unit for medical documentation went unanswered. This is an action the XXX MDG should have executed; however, the applicant also provided contact information in case anything was needed.

The requirement for a new LOD given a gap in profile is proof of mismanagement of the system. The XXX MDG never maintained updated LOD documents, allowed documents to expire, did not request medical documents from his providers for a continuous care plan, and never requested final action to support his removal from MEDCON because he was fit for duty. The applicant questioned why a new LOD was required when medical history and documentation was there for support. Furthermore, DoDI 1241.1 (sic[2]), *Reserve Component (RC) Line of Duty Determinations for Medical and Dental Treatments and Incapacitation Pay Entitlements*, provides the guidance to place the applicant on orders for medical evaluation, medical care, and to process through the IDES until final disposition. From 31 May 12 through 26 Mar 15, the applicant was never fit for duty. He continuously sought medical care, was processed through the IDES, and his final disposition was a medical retirement. The XXX MDG and AFMOA did not use this guidance to maintain the applicant's active duty orders.

Finally, the applicant summarized the actions of the XXX MDG and AFMOA to support his contention that they mismanaged the MEDCON program. His post-operative PT was cancelled by TRICARE and the XXX MDG would not take him without a referral. The XXX MDG was aware and took no action. In Jun 13, he was recommended to go through the IDES and requested active duty orders. He was denied because he lacked a medical care plan. The applicant contested the DVA rating results. Further, the VASRD codes assigned to his disabilities by the DVA were incorrect and he fought this error for six years. The applicant's goal through this process was to get healthy and he was not given the resources. He should have received PT in a timely manner and provided alternate healthcare when the XXX MDG PT department did not have the manpower to support his care. This program was mismanaged and neglected. There was no transparency and the trust in the abilities of the XXX MDG and AFMOA was not there. The applicant contends he may have been reprised against when he filed an Inspector General complaint and congressional inquiry regarding his removal from orders. He was blackballed by the XXX Airlift Wing. All of this told the applicant his life, six deployment rotations, and over 19 years of service did not mean a thing.

The applicant's complete response is at Exhibit E.

AIR FORCE EVALUATION

AFPC/DPFA recommends partially granting the application. Based on the documentation provided by the applicant and analysis of the facts, the applicant was not eligible for MEDCON after 30 May 12 as he did not have both an AF Form 469 (Profile) and a treatment plan covering

[1] Typographical error, should read 6 Dec 12.
[2] DoDI 1241.01 vice DoDI 1241.1

the same time frame. Recommend partially granting his request for MEDCON orders from 22 Feb 13 (date of surgery) – 13 Aug 13 (when post-operative care ended). The applicant did not have an ongoing care plan during the MEB and IDES process from 20 Aug 13 - 26 Mar 15; therefore, he did not meet MEDCON eligibility during this time.

The applicant's MEDCON case occurred and was initially reviewed in May 12. At that time, Air Reserve Component Case Management Division (ARC CMD) was not yet in existence and the MEDCON program was guided by SAF/MR Medical Continuation for Air Reserve Component Airmen Memorandum, dated 9 Dec 11, and Air Reserve Component (ARC) MEDCON Guidelines and Case Management Office Integration Plan Memorandum, dated 15 Aug 12. Eligibility in accordance with that memo states:

(1) Illness, injury, or disease incurred or aggravated in the line of duty; (Met) Note: the applicant had three ILOD conditions for a left shoulder injury, right shoulder injury, and bilateral hand tremor.

(2) An interim or completed LOD (AF Form 348 or DD Form 261, *Report of Investigation Line of Duty, and Misconduct Status*); (Met) Note: see above.

(3) A completed AF Form 469; (Not Met) Note: The applicant was profiled, via AF Form 469, with a mobility restriction for his conditions from 16 Sep 11 through 20 Mar 12, with an extension to 12 Jun 12, and then again from 12 Jun 13 to 12 Jun 14.

(4) A medical condition that renders the airman unable to meet retention or mobility standard that requires treatment; (Met) Note: see 1 & 2 above.

(5) An individual treatment plan approved by a credentialed military provider based on occupational medicine guidelines and peer-reviewed recovery timelines that includes the expected duration of the impairment and certified by a credentialed military medical provider. (Partially Met): Note: The applicant had PT care until Apr/May 12. Intermittent specialty visits (orthopedics, neurology) occurred around Aug 12 - Oct 12. The applicant then had surgery on 22 Feb 13 and post-operative PT through 13 Aug 13.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 24 Jan 24 for comment (Exhibit G) and the applicant replied on 2 Mar 24. In his response, the applicant addressed the advisory opinion statement regarding tracking of his AF Form 469 profile. Per the applicant, when it came to patient care or treatment plans, the XXX MDG, XXX MDG, and AFMOA were responsible for requesting and maintaining the care plan. The applicant should be aware of what the plan is but doesn't have the medical expertise to create such a plan. In support of this contention, the applicant refers to the *Medical Continuation (MEDCON) Policy Guidelines for Wounded, Ill, and Injured (WII) Air Reserve Component (ARC) Airmen*. They should have had the applicant request documentation from his physicians, but not once did the XXX MDG or XXX MDG request any care plan from his orthopedic surgeon or neurologist. The AFMOA should have been the check and balance inquiring why there was no treatment plan from a credentialed military provider.

From 13 Aug 15 through 26 Mar 15, there is no longer an issue with a treatment plan. This period is about being processed through the MEB and IDES to create a final disposition of a medical issue while on active duty deployment. Per this guidance, the applicant should have been placed on MEDCON orders and was denied for no valid reason. Regarding the advisory opinion recommendation for partial administrative relief from 22 Feb 13 - 13 Aug 13, per the guidance, the applicant should be fit for duty, medically separated, or medically retired. No final disposition was addressed or requested, and his request for MEDCON for 30 May 12 – 26 Mar 15 should be honored.

The guidance is in place to support the applicant with MEDCON orders. The XXX MDG, AFMOA, and the Air Force has executing authority to request documents, send the applicant on medical appointments, process him through the MEB/IDES programs, have the applicant travel for evaluation, have the DVA evaluate him, and inform the applicant they can take leave and travel. The applicant disagrees with the recommendation for partial relief and requests full relief in his case.

The applicant's complete response is at Exhibit H.

ADDENDUM AIR FORCE EVALUATION

AFPC/DPFA provided an addendum to their previous advisory opinion (Exhibit F), as follows:

Based on the additional documentation provided by the applicant (Exhibit H), he reiterated the gap between 30 May 12 and 22 Feb 13. There was no additional evidence provided to alter the previous recommendation by this office. In summary, the recommendation to partially grant the applicant's request for MEDCON from 22 Feb 13 – 13 Aug 13 remains the same.

The complete addendum advisory opinion is at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 3 Apr 24 for comment (Exhibit J) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, to include the applicant's rebuttals, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of the AFPC/DPFA addendum advisory and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided documentation that supports the requirements for MEDCON eligibility in accordance with the SAF/MR Memorandum, Subject: Medical Continuation for Air Reserve Component (ARC) Members, dated 9 Dec 11, which is sufficient to justify granting the applicant's request to be placed on MEDCON orders upon his left shoulder surgery on 22 Feb 13 through completion of his post-operative PT on 13 Aug 13. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request.

There was no evidence the applicant was on a duty-restricting medical profile beyond 12 Jun 12 until he entered the IDES. The applicant's unit collected medical documents from Aug 12 – Aug 13. As a result, an AF Form 469, initiated on 12 Jun 13 and signed 25 Jul 13, placed the applicant on duty/mobility restrictions and referred the applicant to the MEB/PEB. The narrative summary evaluating the applicant reflects the prognosis for all three ILOD injuries, stating the applicant was unwilling to take medication recommended by neurology for his tremors and no future treatment was planned at that time, he was at near full recovery for his right shoulder pain and no future treatment was planned, and his left shoulder pain was unlikely to improve with no further treatment beyond PT planned. The applicant did not have an ongoing care plan during the MEB/IDES process from 20 Aug 13 – 25 Mar 15; consequently, he was not eligible for

MEDCON during that period. While normally ARC members on MEDCON orders who are referred into the IDES will remain on MEDCON orders until IDES processing is completed, failure of the member to fully participate in treatment or provide current and sufficient medical information may result in discontinuation of pay, allowances, and benefits. Further, while the applicant was denied an extension of his MEDCON orders, there is no evidence he formally appealed this denial in accordance with the referenced MEDCON guidance. Finally, the applicant did not have to be on MEDCON orders to receive appropriate care for his ILOD injuries. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show he was placed on active duty orders, for the purpose of MEDCON in accordance with 10 USC §12301(h), from 22 Feb 13 through 13 Aug 13, with appropriate entitlements and benefits for this period.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2017-02899 in Executive Session on 16 Oct 24:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 25 May 17.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPFA, dated 28 Oct 19.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Oct 19.
Exhibit E: Applicant's Response, w/atchs, dated 19 Dec 23.
Exhibit F: Advisory Opinion, AFPC/DPFA, dated 23 Jan 24.
Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Jan 24.
Exhibit H: Applicant's Response, w/atchs, dated 2 Mar 24.
Exhibit I: Addendum Advisory Opinion, AFPC/DPFA, dated 2 Apr 24.
Exhibit J: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Apr 24.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR