



**CUI//SP-MIL/SP-PRVCY**

**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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**ADDENDUM TO RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2017-05280-3

*Work-Product*

**COUNSEL:** *Work-Product*

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

The Board reconsider his request for Medical Continuation (MEDCON) orders from 5 Jun 13 through 11 May 14 and any other relief that is equitable and just. The previous Board granted MEDCON orders from 26 Jan 14 through 11 May 14.

**RESUME OF THE CASE**

The applicant is a former Air Force Reserve (AFR) staff sergeant (E-5).

On 15 May 19, the Board considered and partially granted his request for MEDCON orders. The applicant originally requested MEDCON orders from 6 Jun 13 through 11 May 14. The Board concurred with the rationale and recommendation of AFPC/DPFA and found a preponderance of the evidence substantiated his contentions in part granting the applicant's request to issue active duty continuation orders from 26 Jan 14 to 11 May 14 (106 days). However, for the remainder of the applicant's request, the Board found no basis to recommend granting that portion of his request. Specifically, due to the applicant's break in orders, a line of duty (LOD) is required to be finalized for MEDCON eligibility per AFI 36-2910; *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, paragraph 5.5.3, which was not finalized until 26 Jan 14.

On 19 Dec 19, the applicant requested reconsideration of his request for MEDCON orders from 6 Jun 13 through 11 May 14 stating his orders were cut and the LOD only paid for his surgery and not the 11 months of missed work. On 6 Feb 20, the applicant was sent a non-viable letter from SAF/MRBC stating his current application contained no new evidence and therefore did not meet the criteria for reconsideration.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibits G and I.

On 31 May 22, the applicant requested reconsideration of his request for MEDCON orders. He again contends, through counsel, he reported right knee pain on 8 Apr 13, was released from active duty on 4 Jun 13, and his injury was found in the line of duty (ILOD) on 26 Jan 14. Counsel states

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the previous Board granted a correction to his records to reflect he was on active duty MEDCON orders, but only for the time period of 26 Jan 14 to 11 May 14. The 26 Jan 14 date was the date the LOD report was finalized, but it is unclear why the previous Board chose to grant relief starting on the date of the LOD and not the date the error and injustice occurred which was on 5 Jun 13, the date he was released from active duty.

The applicant was injured and required ongoing care at the time he was released from active duty on 5 Jun 13. These facts also demonstrate he was entitled to back pay starting 5 Jun 13, not 26 Jan 14, as the Board determined in its previous decision. Moreover, DoD Directive 1241.01, *Reserve Component Medical Care and Incapacitation Pay for Line of Duty Conditions*, which was in effect during the relevant time period, provided for this exact form of incapacitation pay. DoDI 1241.01, *Reserve Component Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements*, which came into effect after his separation from service, also provides for incapacitation pay for members in these circumstances. Both of these policies would have applied to his situation.

In support of his reconsideration request, the applicant submitted additional medical records not previously seen by the Board along with a legal brief from counsel with new arguments.

The applicant's complete submission is at Exhibit J.

#### **AIR FORCE EVALUATION**

AFPC/DPFA recommends denying the applicant's request for MEDCON orders beginning on 5 Jun 13 through 11 May 14, finding no evidence of an error or injustice. Per the Secretary of the Air Force (SAF) MEDCON Memorandum, members must be on continuous orders to qualify for an interim LOD to meet eligibility. The applicant's LOD was initiated on his last day of orders. It was not finalized until 26 Jan 14. The Primary Care Manager (PCM) did document in the health records restrictions for mobility, not worldwide qualified (WWQ), for duty and fitness purposes but a profile was not initiated until 1 Jun 13 and was signed on 3 Jun 13. Air Reserve Component Command (ARC CMD) suspects it was generated after definitive diagnosis from the magnetic resonance imaging (MRI) conducted on 31 May 13. Up until this point, the applicant was progressing through physical therapy (PT) goals with continued pain but after his evaluation, it was determined there may be meniscal involvement which is why the MRI was ordered. After the MRI there was no additional treatment provided or notes for ARC CMD to review until Ortho recommended surgery on the right knee for which the applicant was awarded partial MEDCON in his initial AFBCMR application. Although the applicant asserts in this application per DoDI 1241.01 Enclosure 3, Paragraph 1, Section (a), dated 19 Apr 16, he should have been brought onto MEDCON orders, the DoDI does not speak specifically to MEDCON, and this regulation is dated after this specific situation. The superseded DoDI, dated 28 Feb 04, with updates from 23 Apr 07 would apply which states the reference he cited did exist at the time; directed a member, with their consent, be kept on orders so their medical conditions could be resolved or lead to a Medical Evaluation Board (MEB); however, that DoDI does not direct that members be brought on MEDCON orders. The intent is to extend the current order to allow the member to continue to receive care. The intent of the DoDI was to maintain the members on their current set of orders to provide benefits for unresolved medical conditions, the law was written prior to MEDCON's

existence. Also, per DoDI 1241.2, *Reserve Component Incapacitation System Management*, dated 30 May 02, paragraph 6.6.3, the member should have been retained on active duty for continued evaluation and care with their consent. Unfortunately, MEDCON has more restrictive eligibility requirements than Reserve Personnel Air Force (RPA) orders the applicant was on. The applicant also contends he was prohibited from being profiled after the initial profile expired; however, there is no evidence provided to substantiate this concern.

AFPC/DPFA would encourage the applicant to seek active duty days directed by DoDI 1241.01 and DoDI 1241.2, regarding an extension of his RPA orders. Regrettably, with the limited medical documentation available and a lack of correspondence speaking to the issues regarding delayed LOD initiation and/or profiles, ARC CMD is unable to validate the need for MEDCON outside of what has already been granted in the previous AFBCMR case.

The complete advisory opinion is at Exhibit K.

#### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 23 Dec 22 for comment (Exhibit L), and the applicant replied on 23 Dec 22. In his response, the applicant's counsel contends the advisory opinion fails to acknowledge this Board is to access the fairness, justice, and equity of each discharge and issue raised by the applicant. The Service acknowledges the applicant was wronged in that it concedes he sustained an injury while on training orders. Yet the advisory opinion asserts he failed the requirement of an interim or finalized LOD and failed to provide evidence of a treatment plan, hence denying his request. The Service erred in not initiating the LOD earlier, despite the applicant's need for one. He should not be denied relief because of a missing LOD; the Service failed to properly initiate one. The evidence the applicant presented with his original application supports his request and the advisory opinion is nothing more than a biased, conclusory opinion which recommends a denial based on the failure of the Service.

The applicant's complete response is at Exhibit M.

#### **ADDITIONAL AIR FORCE EVALUATION**

AFRC/A1KK recommends granting the request to extend the applicant's original RPA orders from 5 Jun 13 through 25 Jan 14. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error, the applicant was not provided an order extension to continue medical care and MEDCON consideration processing. Per AFRCI 36-3004, *Incapacitation Pay and Management of Reservist on Active Duty Orders*, the unit commander should have continued him on RPA orders (a minimum of 60 days) until the member is returned to military duty prior to expiration of orders, regardless of type. Additionally, per the SAF/MR memo dated 9 Dec 11, an interim or completed LOD determination, as well as an AF Form 469, *Duty Limiting Condition Report*, completed by a credentialed military health care provider and reviewed by a profile officer, are required for an ARC member to be considered for MECON orders. Per the AFPC/DPFA advisory, the member provided an interim LOD that was signed on 4 Jun 13 and the applicant provided an AF Form 469 from 1 Jun 13 to 1 Sep 13 with duty and fitness restrictions; therefore there is evidence the applicant could have been considered for MEDCON orders if he had been appropriately extended on an RPA order per AFRCI 36-3004.

The complete advisory opinion is at Exhibit N.

### **APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 12 Apr 23 for comment (Exhibit O), and the applicant replied on 12 Apr 23. In his response, the applicant's counsel agrees with the second advisory opinion to grant the applicant's request for relief. His client has demonstrated his case constitutes an error and injustice and encourages the Board to grant the applicant full relief.

The applicant's complete response is at Exhibit P.

### **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, the Board concludes the applicant is the victim of an error or injustice. The Board notes the conflicting advisory opinions prepared in this case; however, after thoroughly reviewing the application, the Board concurs with the rationale and recommendation of the AFRC/A1KK advisory opinion and finds a preponderance of the evidence substantiates the applicant's contentions. Specifically, the Board notes the applicant's active duty orders should have been extended so he could have continued with his medical care and been assessed for MEDCON consideration processing. Even though the applicant is not eligible for MEDCON orders per regulation as outlined in the advisory opinion from AFPC/DPFA due to the LOD not being completed until 26 Jan 14, the Board does find an error has occurred when the applicant's RPA order was not extended due to the injury he sustained while in an active duty status. Therefore, the Board recommends correcting the applicant's records as indicated below.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

### **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show he was on active duty Reserve Personnel Air Force (RPA) orders from 5 June 2013 to 25 January 2014.

### **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-2017-05280-3 in Executive Session on 26 Apr 23:

*Work-Product*

, Panel Chair

*Work-Product*

, Panel Member

*Work-Product*

, Panel Member

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

Exhibit G: Record of Proceedings, w/ Exhibits A-F, dated 15 May 19.

Exhibit I: Non-Viable Letter, SAF/MRBC, w/ Exhibit H, dated 6 Feb 20.

Exhibit J: Application, DD Form 149, w/atchs, dated 31 May 22.

Exhibit K: Advisory Opinion, AFPC/DPFA, dated 22 Dec 22.

Exhibit L: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Dec 22.

Exhibit M: Applicant's Response, dated 29 Dec 22.

Exhibit N: Advisory Opinion, AFRC/A1KK, atchs, dated 11 Apr 23.

Exhibit O: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Apr 23.

Exhibit P: Applicant's Response, dated 12 Apr 23.

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.

1/1/2024

*Work-Product*

Board Operations Manager, AFBCMR

Signed by:

*Work-Product*