

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-01288

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His AF Form 348, *Line of Duty (LOD) Determination*, be corrected as follows:

Block 13, *Medical Opinion of Member's Condition when First Treated*, reflect he was not under the influence of alcohol or drugs.

2. Part III, *Immediate Commander*, Part IV, *Wing Staff Judge Advocate*, and Part V, *Appointing Authority*, be filled out properly and routed for signature.

### APPLICANT'S CONTENTIONS

He was injured while on active duty orders. When he applied for Department of Veterans Affairs (DVA) disability benefits in 2019, it was discovered that his AF Form 348, was incomplete which resulted in the DVA rejecting his claim that his lower left back and glut strain/spasm injury was service-connected. On the AF Form 348, the medical technician failed to properly route the form for signatures and erroneously checked the box that the incident that caused his injury was alcohol or drug related. He would not have graduated his military training course if his injury were alcohol or drug related.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) staff sergeant (E-5).

On 26 Feb 11, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving four years of active duty. He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

On 10 Jan 15, DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, indicates the applicant enlisted in the ANG for three years.

Dated 22 Dec 15, AF Form 348, provided by the applicant, indicates he was injured on 30 Oct 15 while on active duty orders for the period of 10 May to 21 Nov 15. He was diagnosed with a lower left back and glut strain/spasm injury. In addition, box 13 indicated the applicant was under the influence of alcohol or drugs when first treated.

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

### **AIR FORCE EVALUATION**

NGB/SG recommends partially granting the application. There is evidence of an error or injustice to the applicant's LOD; it is incomplete, and the process stopped at the military medical provider signature and was not routed for completion. The applicant has supporting medical documentation for left lower back and glut strain/spasm. The applicant's LOD would need to be completed per AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, defined guidelines.

The complete advisory opinion is at Exhibit C.

NGB/A1PS recommends granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. Notably, the pain and problem should have been resolved long ago; the applicant can now only submit a claim through the DVA. The AF Form 348, provided by the applicant, indicates he was injured on 30 Oct 15 while on active duty orders for the period of 10 May to 21 Nov 15. He was diagnosed with a lower left back and glut strain/spasm injury. According to the AF Form 348, box 13, the applicant was under the influence of alcohol or drugs when first treated; however, NGB/SG agrees with the applicant that this was likely an error. The applicant would not have graduated from training and there is no indication he did not complete training. The applicant started having pain on 29 Oct 15 and was able to do a 12-mile Ruck and then presented with pain on 30 Oct 15. Due to continued pain, the applicant requested care and an AF 348 was accomplished dated 22 Dec 15. The next health care records submitted were dated 9 Jun 16 with complaint of the same pain for the last month (chronic pain that is intermittent) and dry needling therapy was done. Relief should be given to the member in the form of an In the Line of Duty (ILOD) decision for the purpose of DVA eligibility; however, it is not possible to complete an AF Form 348 after a member has separated. In addition, based on expert medical opinion, an updated diagnosis of herniation at L5- S1 on 29 Oct 15 should be documented; therefore, recommend providing an official memorandum for the applicant to submit to the DVA to validate the herniation at L5-S1 is ILOD as of 29 Oct 15.

The complete advisory opinion is at Exhibit D.

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

The Board sent a copy of the advisory opinion to the applicant on 30 Nov 21 for comment (Exhibit E) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 concurs with the rationale and recommendation of NGB/A1PS and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided evidence that his AF Form 348, *Line of Duty (LOD) Determination* was incomplete and erroneously reflected that his injury was alcohol or drug related, which is sufficient to justify correcting the applicant's record to reflect an In Line of Duty (ILOD) determination was made for his medical condition of herniation at L5-S1. 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. 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 the APPLICANT be corrected to show that on 29 Oct 15, an In the Line of Duty (ILOD) determination was made for the medical condition of herniation at L5-S1.

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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-01288 in Executive Session on 23 Nov 21 and 24 Jan 22:

, 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 22 Jan 21.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory opinion, NGB/SG, dated 7 Sep 21.  
Exhibit D: Advisory opinion, NGB/A1PS, dated 29 Nov 21.

Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 30 Nov 21.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

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Board Operations Manager, AFBCMR