

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01762

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be placed on medical continuation (MEDCON) orders for the period of 19 Sep 18 to 4 Oct 18.

APPLICANT'S CONTENTIONS

On 7 May 18, while enroute to a temporary duty (TDY) assignment to Germany, he fell out of a C-130H aircraft flight deck and injured his shoulder and back. His MEDCON orders were delayed for several reasons and he had to use his personal civilian leave to attend medical appointments, physical therapy, surgery and recovery.

He returned from his TDY on a weekend and his orders were terminated. His commander was unaware he would not be able to go on Pre-MEDCON orders if there was a break in service, per DAFI 36-2910. *Line of Duty (LOD) Determination, Medical Continuation (MEDCON) and Incapacitation (INCAP) Pay.*

He did not immediately request MEDCON orders due to the uncertainty of his prognosis, not having been placed on Pre-MEDCON and the uncertainty on the number of MEDCON days he would be granted. Upon confirmation, he would require shoulder surgery and that the treatment plan would be greater than 30 days, MEDCON orders were requested but delayed. The paperwork had to be reaccomplished and re-routed to AFRC/SG twice due to exacting standards. One of his line of duty (LOD) determinations did not include the word "shoulder." His surgery took place on 19 Sep 18, but his MEDCON request was not approved until 9 Oct 18, with a start date of 5 Oct 18. He used his civilian sick leave to cover the time between his surgery and the start of his MEDCON orders.

He provides a letter of support from his unit commander dated 5 Jul 19, stating she made the mistake of not placing him on Pre-MEDCON orders. She was not familiar with the process and no one in their medical squadron mentioned it. It also did not occur to her the applicant could apply for MEDCON orders and he received no counsel. The LOD was kicked back and forth and the applicant decided to proceed with surgery whether he was on orders or not since he was in extreme pain and did not want the condition to worsen. Ultimately, he used his personal resources from his civilian position as an Air Reserve Technician (ART) to convalesce from the injury he incurred while performing active military duty. This happened because of her mistake and flaws within the system that make the MEDCON process excessively complicated and burdensome.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve master sergeant (E-7).

The applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, shows he performed a period of active duty service from 7 May 18 to 25 May 18 in accordance with 10 U.S.C. § 12301. He was credited with 19 days of active duty service.

AF Form 978, *Supervisor Mishap Report*, undated shows the applicant while enroute to Germany fell off the flight deck of the aircraft and immediately reported the event to supervision. He proceeded on the TDY. He sought medical treatment several days after the incident due to continued pain. On 16 May 18, x-rays revealed transverse spinous process fracture/vertebrae broken and his doctor contacted the neurosurgeon for treatment/prognosis.

AF Form 348, *Line of Duty Determination*, dated 22 Jun 18, reflects the applicant fell while in a plane on 7 May 18 and hurt his left shoulder and back. However, he waited a few days to report to the clinic. He went to the clinic due to continued pain.

The applicant provides Automated Time Attendance and Production System (ATAAPS) Timekeeper Review showing he used sick leave for the period 24 Sep 18 to 28 Sep 18.

The applicant's MEDCON request was approved effective 5 Oct 18 to 9 Nov 18. He was credited with one month and five days of active duty service. On 10 Nov 18, he entered another period of active duty for MEDCON and was released from active duty on 27 Feb 19. He was credited with 3 months and 18 days of active duty service.

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

APPLICABLE AUTHORITY/GUIDANCE

DAFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON) and Incapacitation (INCAP) Pay*, paragraph 6.1. Purpose. The primary purpose of MEDCON is to facilitate the authorization for access to medical and dental care for members who incur or aggravate an injury, illness or disease while in a qualified duty status. Paragraph 6.2. Eligibility. MEDCON eligibility requires an LOD determination and a finding by a credentialed military medical provider that the member has an unresolved health condition requiring treatment that renders the member unable to meet retention or mobility standards, in accordance with DAFMAN 48-123, *Medical Standards*.

DAFI 36-2910, Pre-MEDCON. The purpose of Pre-MEDCON orders of up to 30 days is to allow additional time for Air Reserve Component members to ascertain whether the medical condition renders the member unable to perform military duties or unable to meet retention and mobility standards in accordance with DAFM 48-123. Pre-MEDCON orders cannot be backdated.

Per 10 U.S.C. § 5533, Federal dual compensation for the same period is prohibited. An employee is not entitled to basic pay from more than one federal position for more than a total of 40 hours in one calendar week, unless exempted. For military members, pay from a federal civilian position in addition to pay received while on terminal leave pending honorable release or separation is exempt. Should the Board grant the applicant's request, the Defense Finance and Accounting Service (DFAS) will be required to adjust the applicant's civilian's time, pay and leave records.

AIR FORCE EVALUATION

AFPC/DPFA recommends denial. Per the applicant's own admission, the extent of his shoulder injury was not known at the time he was released from his military personnel appropriation (MPA) orders on 25 May 18. The definitive diagnosis was made only after an MRI was performed on 11 Jun 18. The debt the applicant is now attempting to recoup is the result of his decision to move forward with surgery prior to receiving final approval of his LOD and MEDCON application. The time it took for adjudication of the LOD from the date of the recommendation for surgery on 29 Aug 18 and the initiation of the LOD on 10 Sep 18 was less than 30 days.

The applicant was not MEDCON eligible until the LOD for his shoulder injury had final adjudication on 23 Sep 18. It is not clear why the LOD for the shoulder injury was not initiated on the same AF Form 348 documenting the back injury. It is also not clear why the LOD for the shoulder injury was not initiated until after the recommendation for surgery. Had the MRI result and recommendation for additional treatment (physical therapy) been communicated to the Reserve Medical Unit (RMU) in Jun 18, in their opinion, an LOD should have been initiated at the time. Nevertheless, the applicant was aware he required a finalized LOD to apply for MEDCON and made the decision to move forward with his surgery prior to finalization of the LOD.

The applicant was placed on a mobility restricting profile for his left shoulder on 14 Jul 18. He then possessed an eligible restorative treatment plan, including surgical repair of the left shoulder, as of 19 Sep 19. Once the LOD for the left shoulder was finalized as in the LOD on 23 Sep 18, the applicant met all MEDCON eligibility criteria. His MEDCON application was submitted on 26 Sep 18. Due to several missing items, the case was returned on the same day. On 28 Sep 18, the discrepancies were addressed and the case was accepted for medical review the same day. It was medically validated on 4 Oct 18 with a plan to allow the applicant to continue post-operative rehabilitation. The case was approved and certified on 5 Oct 18. The orders were then allocated by AF/A1MP on 9 Oct 18, with the allocation notice going out via email.

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 22 Jun 21 for comment (Exhibit D), and the applicant replied on 14 Jul 21. It is a fact he informed his unit of his injury prior to his return from TDY. He had no knowledge of the MEDCON process or that his orders should have been extended to have no break in service. The issues with the LOD were the fault of his unit and not due to his own fault.

He was injured and requested medical help. An injury report was completed and sent to his unit letting them know upon return he would need assistance. He should have been placed on MEDCON orders upon his return from TDY. His commander has stated she was unaware of the MEDCON requirements.

The advisory states the LOD was initiated on 10 Sep 18 and finalized on 23 Sep 18; however, that is incorrect. The LOD was started on 22 Jun 18 and completed 13 Jul 18. The advisory also stated he was unsure if he wanted to proceed with MEDCON coverage since he was an ART. Since his TDY was less than 28 days, he was concerned about health care coverage for his family should there have been issues with MEDCON. His family has a complicated medical history and he could lose his coverage if he was to be on leave for an extended period of time as an ART.

The reason he did not want to put off his shoulder surgery any longer was due to pain. He also wanted to limit further damage to his joint. He asks the Board to keep in mind the injury took place in May 18 and it was more than four months to start procedures. In hindsight, based on the timeline, if he had waited four more days for the surgery, this could have been avoided. However, at the time, with the back and forth in the correction of the paperwork, he did not want to put off taking care of his health and well-being.

The applicant's complete response, with attachments, is at Exhibit E.

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. While the Board notes the recommendation of AFPC/DPFA against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. In this respect, there is no dispute the applicant injured his shoulder while in the performance of active duty service. Moreover, while there were administrative errors and delays in the processing the applicant's LOD and placement on MEDCON orders, his injury was ultimately certified and approved on 5 Oct 19. Further, the Board finds his commander's letter dated 5 Jul 19 sufficient to conclude he was unjustly not placed on MEDCON orders for the period requested. The Board also notes the applicant's case will require review by DFAS to preclude dual federal compensation for the same period pursuant to 10 U.S.C. § 5533. 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

- a. He was placed on active duty, for the purpose of medical continuation, for the period of 19 Sep 18 to 4 Oct 18, in accordance with 10 U.S.C. § 12301(h).
- b. The DFAS review his pay and leave records to preclude dual federal compensation for the period of 19 Sep 18 to 4 Oct 18, in accordance with 10 U.S.C. § 5533.

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-2021-01762 in Executive Session on 15 Dec 21:

, 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 5 Sep 19.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFA, dated 21 Jun 21.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Jun 21.
Exhibit E: Applicant's Response, w/atchs, dated 14 Jul 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.