



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03066

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His record reflect that he was placed on medical continuation (MEDCON) orders from 5 Mar 21 to 17 Jun 21.

APPLICANT'S CONTENTIONS

His MEDCON orders, at no fault of his own, were delayed significantly and he requests the error and unjust action be corrected. He contacted AFPC/DPFAM regarding the delay and was told it was due to the Covid-19 pandemic restrictions that effected agency workloads and errors in the documentation submitted by his local Medical Group. His local Medical Group stated the delays were caused by the interpretation with AFPC/DPFAM on the governing, AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, that is out of date, dated 8 Oct 15. He has used his own personal sick leave to cover the treatment for his injury that happened In-the-Line-of-Duty (ILOD). He was deployed and injured his right shoulder during the deployment and the injury was found ILOD. His deployment orders ended on 21 Feb 21 and his MEDCON orders did not start until 18 Jun 21. He first inquired about MEDCON orders when he returned home and started physical therapy. He had the initial physical therapy assessment on 5 Mar with 30 days of physical therapy, 3 times a week. This was done to see if physical therapy alone would help alleviate the pain and discomfort. The shoulder did not improve to an acceptable level, and he had a Magnetic Resonance Imaging (MRI) done 1 Apr. On 14 Apr he had a consultation on the results of the MRI, and had surgery on 22 Apr. He has been doing physical therapy since his post-op recovery time. The MEDCON order request went in before his surgery date of 22 APR, but did not start until 18 Jun. Current MEDCON orders should be amended to start on 5 MAR, the date of his physical therapy assessment and run concurrent with his current MEDCON orders.

He believes this action is not only unjust but probably illegal to have a federal employee use their own personal sick leave to cover a military medical condition that was found ILOD. From 5 Mar - 17 Jun, he was not on a military order, and he signed his own personal sick leave to cover all medical appointments before his current MEDCON orders started. He understands how the Covid-19 pandemic could slow the processing time down and a disagreement on interpreting AFI's could delay the approval of MEDCON orders. However, to penalize the individual for those delays with no exception to policy for the correct start date for his MEDCON orders is unjust.

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The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air National Guard (ANG) Colonel (O-6).

From 5 Nov 20 to 21 Feb 21, DD Form 214, *Certificate of Release or Discharge from Active Duty*, shows that the applicant was deployed.

According to the documents provided by the applicant:

On 10 Feb 21, as noted on AF Form 348, *Line of Duty Determination*, the applicant injured his right shoulder and the injury was found by the appointing authority ILOD on 25 May 21.

On 11 Feb 21, Order Number **Work-Product** was published and indicates that the applicant was on Title 10 USC 12304b orders from 5 Nov 20 to 21 Feb 21.

On 22 Apr 21, as noted in the Plan of Care Certification from St. Francis Memorial Hospital, the applicant underwent surgery on his right shoulder.

On 17 Aug 21, Order Number **Work-Product** was published and indicates that the applicant was on MEDCON orders from 18 Jun 21 to 13 Oct 21.

For more information, see the applicant's submission at Exhibit A, the applicant's records at Exhibit B, and the advisory at Exhibit C.

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, dated 8 Oct 15:

5.5.3 For members with a Break in Order. *The member's servicing medical unit, or RIO/IRM (for AFR IMA's), shall electronically send the documentation listed in para 5.5.1., including a finalized LOD (see para 1.7.1.), to the ARC CMD for validation, approval and certification of the MEDCON request (see para 5.6.). (T-1) Exception: For conditions that are latent or exhibit delayed onset, an Interim LOD may be use*

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. Given the fact there was a break in service at the end of the qualifying order (20 Feb 21), the applicant required a finalized LOD as part of his MEDCON eligibility. The LOD was not finalized by NGB until 25 May 21. The MEDCON application was promptly resubmitted on 2 Jun 21 with final approval

taking 15 days. Air Reserve Component (ARC) Command (CMD) routinely communicates to the field that 10 to 15 days are required for processing of MEDCON applications. This case was processed within that timeline. Therefore, AFPC/DPFA recommends denying the applicant's request for MEDCON orders for the period from 5 Mar 21 through 17 Jun 21.

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 10 Nov 21 for comment (Exhibit D), and the applicant replied on 9 Dec 21. In his response, the applicant contended he requested MEDCON orders for physical therapy when he returned home from his deployment but was directed to use his sick leave. The OPR stated that his surgery was an elective surgery. He responds that he is able to provide a letter from the orthopedic surgeon who corrected his injury on his rotator cuff that states it was not an elective surgery. He continues with, TRICARE does not cover elective procedures and TRICARE covered his surgery. Additionally, he states, that what caused his MEDCON orders to be approved was the paperwork catching up to the situation. This is why he is requesting the change from the AFBCMR to correct the delay in the start date to his MEDCON orders.

In regard to timely approval by the NGB, he states his injury happened in Jan, followed by physical therapy, which led to surgery to correct the injury on 22 Apr. This was followed by post-operative physical therapy, and then a delay in finally receiving MEDCON orders with an 18 Jun start date. The NGB timeline is a very selective in how it is presented.

He originally requested orders to start for the pre-surgery physical therapy and to run concurrent to the initial MEDCON order. However, MEDCON orders should be amended to start on 22 Apr, the date of the surgery that put him on a profile and run concurrent to the original MEDCON order when he was finally placed on that started 18 Jun. He has attached an email that shows the Health Services Technician was working the treatment issue back while he was still on the original deployment order which was approximately two months prior to the surgery.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

BCMR Medical Advisor recommends partially granting the application. The Medical Advisor recommends denial of the applicant's petition to amend his MEDCON orders with a start date of 5 Mar 21 through 17 Jun 21. However, instead recommend the Board consider an alternative start date of 27 Apr 21 through 17 Jun 21. Based upon the documentation provided, there is an argument that the applicant could have been retained on Active Duty orders at the termination date of his deployment in Feb 21. Perhaps the injury was not deemed serious enough, noting the provider elected to simply advise that he receive follow-up upon return to home station; although released with duty/work restrictions. However, the next documented interaction with the servicing medical

unit was 30 Mar 21, when the applicant was released without work/duty restrictions; although still symptomatic. The ARC/CMD advisor made valid points in the recommendation to deny the applicant's petition, to include the requirement for a new LOD Determination, after closure of the initial LOD Determination due to a *break in service*, and the elective nature of his surgery, among other factors.

The Medical Advisor provided policy extracts from AFI 36-2910, in effect at the time of the applicant's re-injury [Jan 21] and surgical procedure [Apr 21]. The Medical Advisor believes that the applicant took advantage of a window of opportunity made available to him, in order to undergo required surgical treatment, albeit not an emergency. Unfortunately, the servicing medical unit was unable to meet the relative short notice demand to timely qualify for MEDCON orders as noted by ARC/CMD. Given the government's opportunities to improve, from the time the applicant was released from deployment, with restrictions, but without an extension of orders, to the time he was first evaluated in military follow-up [30 Mar 21] with pain and weakness, but without restrictions, then finally requiring an AF Form 469, *Duty Limiting Condition Report*, on 27 Apr 21, the Medical Advisor opines some relief is warranted. Therefore, the Medical Advisor recommends granting an alternative start date for MEDCON orders of 27 Apr 21, the date an AF Form 469 was established, through 17 Jun 21; which were maintained until he was returned to duty.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 3 Mar 22 for comment (Exhibit G), 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, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of the BCMR Medical Advisor and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided his AF Form 348, that indicates the injury to his right shoulder and supraspinatus tear was ILOD. Additionally, the Board notes the applicant received an AF Form 469 on 27 Apr 21 for the injury, which is sufficient to justify partially granting the applicant's request to amend his MECON orders with a start date of 27 Apr 21 through 17 Jun 21. 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 APPLICANT be corrected to show he was placed on Medical Continuation (MEDCON) orders for the period of 27 Apr 21 to 17 Jun 21.

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-2021-03066 in Executive Session on 1 Feb 22 and 27 Sep 22:

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, Panel Chair

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, Panel Member

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, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 16 Sep 21.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFPC/DPFA, dated 8 Nov 21.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Nov 21.

Exhibit E: Applicant's Response, w/atch, dated 9 Dec 21.

Exhibit F: Advisory Opinion, BCMR Medical Advisor, dated 2 Mar 22.

Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Mar 22.

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.

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