

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03126

XXXXXXXXXX

COUNSEL: XXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His medical continuation (MEDCON) orders be backdated to the end of his Pre-MEDCON orders to cover the period of 30 Oct 20 - 3 Feb 21 [sic].

APPLICANT'S CONTENTIONS

Through no fault of his own, his Line of Duty (LOD) determination took greater than three months to process due to various factors which caused a break in his orders. While on Title 10 orders, in support of Operation FREEDOM SENTINEL (OFS), he became ill from Malaria and COVID-19. He was hospitalized so the LOD/MEDCON process was delayed. He was then initially placed on Pre-MEDCON orders from 1 Oct 20 – 30 Oct 20. Due to numerous factors the LOD process was slow and it wasn't completed until 5 Feb 21. During that time period, he was receiving and answering requests from his MEDCON manager as well as receiving treatment.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve technical sergeant (E-6).

On 5 Aug 20, according to Order number XXXX, dated XX Aug 20, the applicant was placed on Title 10 orders in support of OFS for the period 5 Aug 20 – 30 Sep 20.

On 17 Sep 20, AF Form 348, *Line of Duty Determination*, was initiated for Malaria and COVID-19. On 23 Nov 20, it became Interim and was finalized on 26 Jan 21 when the illness was found In-Line-of-Duty (ILOD).

On 22 Sep 20, according to AF Form 469, *Duty Limiting Condition Report*, the applicant was placed on a profile until 27 Oct 20. Subsequently, his profile was extended until 11 Dec 20.

On 1 Oct 20, according to Order number XXXXX, dated XX Sep 20, the applicant was placed on Title 10 MEDCON orders for the period 1 Oct 20 – 30 Oct 20.

On 28 Oct 20, according to medical records, the applicant was seen for fatigue and general muscle weakness with the last recorded visit (number 18 of 20) being 2 Mar 21.

On 4 Feb 21, according to Order number XXXXS, dated XX Feb 21, the applicant was placed on Title 10 MEDCON orders for the period 4 Feb 21 – 26 Mar 21.

On 12 Mar 21, the applicant's squadron commander signed a memorandum addressed to the Board. He stated that the applicant's Line of Duty determination case was delayed due largely

to COVID-19 issues, teleworking delays, was no fault of the applicant, and the applicant received treatment during that entire time frame.

On 27 Mar 21, according to Order number XXXXX, dated XX Jul 21, his Title 10 MEDCON orders were modified to delete the period 27 Mar 21 – 16 Jul 21 and on the same date modified to include the period 27 Mar 21 – 30 Sep 21.

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

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Instruction (DAFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*. 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 Examinations and Standards*.

DAFI 36-2910, if the member's medical condition is not resolved prior to completion of the order or pre-MEDCON order extension, MEDCON may be requested through the ARC CMD. Submit the following required documentation: a copy of the member's order or documentation indicating the member's duty status covering the period during which the injury, illness or disease was incurred or aggravated; an Interim or finalized LOD; a completed AF Form 469; a medical evaluation conducted by a credentialed military or civilian medical provider within the last 30 days and certified by a credentialed military medical provider that describes why the member is unable to meet retention or mobility standards IAW AFI 48-123; and medical documentation, including individual medical treatment plan that incorporates occupational medicine guidelines, peer-reviewed recovery timeline with expected duration of the impairment and certified by a credentialed military medical provider.

Department of the Air Force Manual (DAFMAN) 36-2905, *Air Force Physical Fitness Program*, 26 Jul 21, 4.2.3.3. The expiration date on the AF Form 469 represents the date the Airman is medically cleared to resume physical activities previously restricted.

AFI 48-133, *Duty Limiting Conditions*, 7 Aug 20, 1.3. Duty Limitations. Duty limitations will be entered on the AF Form 469, *Duty Limiting Condition Report*. Duty limitations are a type of profile which will indicate what the member cannot do based on his/her current occupational duties with resultant mobility and/or fitness restriction (FR) if appropriate.

AIR FORCE EVALUATION

AFPC/DPFA recommends denying the application. Based upon a thorough review of all the documentation submitted by the applicant, and analysis of the facts, there is no evidence of an error or injustice. The applicant did not have a valid profile for the entire time frame during the initial MEDCON application process and, therefore, he did not meet all the MEDCON eligibility requirements. A careful review of the evidence, taking into account LOD adjudication delays, shows that had he been profiled the entire duration, from 22 Sep 20 – 8 Aug 21, he would have met the requirements for MEDCON eligibility. However, there was a period from 12 Dec 20 to 25 Jan 21 where he was not on profile, and therefore, he did not meet all the requirements for MEDCON eligibility. Unfortunately, even when taking into consideration all the delays he experienced during the LOD determination adjudication process, he did not meet all the requirements for MEDCON eligibility.

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 5 Apr 22 for comment (Exhibit D), 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. 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. Specifically, the applicant provides evidence that he was under medical care and continued to address his medical condition during the entire period in question (30 Oct – 3 Feb 21). Also, the applicant's former squadron commander's letter, attesting that the applicant's line of duty (LOD) delays were largely due to COVID-19 issues and teleworking delays, were through no fault of the applicant, is sufficient to justify granting the applicant's request to backdate his MEDCON orders to cover the period 31 Oct – 3 Feb 21. Therefore, the Board finds it is more likely than not, had it not been for all the delays, the applicant would have been on a profile for the entire period and would have met the requirements for MEDCON eligibility. 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 that he was continued on active duty, for the purpose of medical continuation, for the period of 31 October 2020 to 3 February 2021, in accordance with Title 10, U.S.C. § 12301(h).

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-2021-03126 in Executive Session on 25 May 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 11 Aug 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFA, dated 25 Mar 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 5 Apr 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.

X

Board Operations Manager, AFBCMR