

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00092

XXXXXXXXXXXX

COUNSEL: XXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be allowed to appeal his Not in Line of Duty (NILOD) determination.

APPLICANT'S CONTENTIONS

He was not given due process for an appeal of a NILOD determination. Initially, he had been informed that his LOD for Guillian Barre Syndrome (GBS) was determined to be In Line of Duty (ILOD). The LOD package he initially received was missing the page containing the approving authority's final NILOD-Not Due to Member's Misconduct determination. When he was finally notified of the NILOD determination, the 30 day time limit to appeal had expired. His ability to receive the COVID-19 vaccination has been affected by his medical condition and he fears this inability will negatively impact his military career, causing separation from the service and undue financial and medical burdens.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve senior airman (E-4).

On 19 Jul 18, an AF Form 348, *Line of Duty Determination*, provided by the applicant was initiated for Guillian Barre Syndrome (GBS). On 3 Feb 19, the appointing authority found his condition to be ILOD; however, on 3 Jun 19, the ARC LOD Determination Board recommended that the applicant's condition was NILOD-Not due to Member's Misconduct. In addition, the form shows that on 3 Jul 19, the approving authority found the condition to be NILOD-Not due to Member's Misconduct; however it is unsigned.

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

AIR FORCE EVALUATION

NGB/A1PS, recommends granting the application. Based upon documentation provided by the applicant, and analysis of the facts, there is evidence of an error or injustice. On 18 Feb 19, the applicant was informed that a final LOD determination of ILOD was completed at the wing level via email from the wing's medical group. On 16 Jul 20, he received another email notification informing him another final LOD determination of NILOD was completed at the LOD Determination Board level. NGB/A1PS confirmed that the Feb 19 ILOD determination was an Interim LOD determination which was appropriately finalized by the Jul 20 LOD Determination Board. It appears that confusion, and lack of explanation/guidance, of the LOD process may have prevented the applicant from submitting a LOD appeal. Interim LOD knowledge is not

expected from individual members but should have been explained or briefed to the applicant by the wing's LOD Program Manager.

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 24 Mar 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. The Board concurs with the rationale and recommendation of NGB/A1PS and finds a preponderance of the evidence substantiates the applicant's contentions. The Board finds that confusion, and lack of explanation/guidance of the LOD process prevented the applicant from submitting a timely LOD appeal. 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 be allowed to submit an appeal to his Not in Line of Duty (NILOD) determination for Guillain Barre Syndrome (GBS) initiated on 19 July 2018 in accordance with DAFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*.

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-2022-00092 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 13 Jan 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, NGB/A1PS, dated 21 Mar 22.
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 24 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.

