



CUI//SP-MIL/SP-PRVCY

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00391

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His medical continuation (MEDCON) orders be backdated to the end of his Pre-MEDCON orders to cover the period of 11 Aug 21 through 24 Jan 22.

APPLICANT'S CONTENTIONS

He sustained an injury during his unit's drill weekend of 9 – 10 Jul 21. He was then placed on Pre-MEDCON Title 10 orders for the period of 11 Jul 21 - 10 Aug 21 in order to develop a treatment plan, initiate an AF Form 348, *Line of Duty Determination (LOD)*, and to apply for MEDCON. Per Air Force Instruction (AFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP)*, 8 Oct 15, the allotted time for completion of the LOD at the Wing level is 30 days. However, due to administrative delays it took over four (4) months to finalize his LOD at the wing level. Additionally, even though he met all documentation suspense dates to the Wing Program Manager, the myPers MEDCON submissions were returned to the Reserve Medical Unit (RMU) multiple times for corrections. He was finally approved for MEDCON with a start date of 25 Jan 22¹. He was receiving medical care during the time period of 11 Aug 21 through 24 Jan 22 and he has been informed by the Air Force Personnel Center (AFPC) that MEDCON orders cannot be backdated and requests that the Board corrects this error.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 10 Jul 21, according to AF Form 348, dated 5 Aug 21, while on Individual Training (IDT) status he sustained an occult fracture of left elbow.

According to documentation provided by the applicant:

On 11 Jul 21, according to Reserve Order *Work-Product* dated 29 Sep 21, the applicant was ordered to Medical Hold for the period of 11 Jul 21 through 10 Aug 21.

On 13 Jul 21, according to AF Form 469, *Duty Limiting Condition Report*, he was placed on both Duty Restrictions and Mobility Restriction until 30 Jan 22.

¹This date is verified by the

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 15 Jul 21, 22 Sep 21, and 14 Jan 22, according to myPers discussion threads, his MEDCON submissions were administratively returned without action due to discrepancies or missing documents.

On 9 Dec 21, the appointing authority found the LOD determination to be In Line of Duty (ILOD).

On 6 Jan 22, he was informed by his squadron commander that his LOD determination was approved and that as a result of his injury he may be entitled to incapacitation pay.

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

APPLICABLE AUTHORITY/GUIDANCE

According to the myPers website, *Initial MEDCON application (applicable to Air National Guard and Air Force Reserve)*, service members must consult with their Guard Medical Unit (GMU) or Reserve Medical Unit (RMU) Medical Point of Contact (MEDPOC) or HQ Readiness Integration Organization/Individual Reserve Medical Office (HQ RIO/IRM) prior to submitting an initial application. MEDCON eligibility requires a Line of Duty (LOD) determination and a finding by a credentialed military health care provider that the Airman has an unresolved health conditions requiring treatment and renders the Airman unable to meet retention or mobility standards IAW DAFMAN 48-123, *Medical Examinations and Standards*.

If the member's medical condition is not resolved prior to completion of the current order or Pre-MEDCON order, MEDCON may be requested through the Air Reserve Component Case Management Division (ARC CMD). An initial MEDCON application must be submitted no later than 15 business days prior to the start of orders request date. Packages should only be submitted for a member showing a LOD condition(s) that will not be medically resolved within 30 days. Required documents: ARC CMD Letter of Acknowledgement; DD Form 2870, Medical Disclosure Authorization; AF Form 469, *Duty Limiting Condition Report*, with an Assignment Availability Code (AAC) of 31 or 37 and Mobility Restrictions greater than 31 days; Proof of Military Status; and AF Form 348, *Line of Duty (LOD) Determination*.

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

6.5. The purpose of Pre-MEDCON orders up to 30 days is to allow additional time for ARC members on and, the MTF, RMU, or GMU to: 1) ascertain whether the medical condition renders the member unable to perform military duties or unable to meet retention and mobility standards in accordance with DAFMAN 48-123; and 2) provide medical documentation to support a request for MEDCON orders with approval from the member, members' commander (either current commander of reporting commander), the using MAJCOM (who is funding the requirement) and the orders issuing authority. Pre-MEDCON orders cannot be backdated.

6.5.1.1. Pre-MEDCON will be activated upon expirations of members' existing tour. AF Manpower office (A1M) will consider up to 15 days extension to the initial 30 days, with a documented timeline of events, and immediate commanders' letter that attest conscious effort was put forth to avoid issues/delays.

Paragraph 7.1.1, states the purpose of INCAP Pay is to authorize pay and allowances to those members who are not able to perform military duties to include light duties not associated with their Air Force specialty code, because of an injury, illness or disease incurred in the LOD; or to

provide pay and allowances to those members who are able to perform military duties but experience a loss of earned income as a result of an injury, illness or disease incurred in the LOD.

Table 3.1 Processing Timelines for LOD Determinations. Note 2. Once an informal LOD determination is initiated following a request by the member, wings have 60 workdays to finalize the LOD determination.

AIR FORCE EVALUATION

ARFC/A1KK defers to AFPC/DPFA (ARC CMD) vice recommending either to grant or deny the applicant's request to backdate his MEDCON start date. The applicant was injured during the 9 Jul 21 – 10 Jul 21 UTA while in IDT status and was, in accordance with (IAW) AFI-36-2910, paragraph 5.4, placed on Pre-MEDCON orders for the period of 11 Jul 21 – 10 Aug 21 immediately following his injury. AFI-36-2910, paragraph 5.4.1, states that the purpose of pre-MEDCON orders (in cases where the condition was incurred or aggravated while the member was on IDT or AT), or orders extension (in cases where a member is already on orders), is to allow additional time to assess the ARC member's medical condition and for the MTF, RMU or GMU to initiate or complete an LOD determination, determine whether the medical condition renders the member unable to perform military duties and provide medical documentation to support a request for MEDCON orders. An ARC member on orders, or in IDT or AT status, may be eligible for up to 30 days of pre-MEDCON orders with approval from the member, the member's home station unit commander, the using MAJCOM and the orders issuing authority, if the member has incurred or aggravated an injury, illness, or disease ILOD. The applicant's 30 day Pre-MEDCON orders expired on 10 Aug 21. Although there is no evidence that a Pre-MEDCON extension was requested, a 30 day extension could have been submitted per paragraph 5.5.1, which states for ARC Airmen on Inactive Duty Training (IDT) or Annual Training (AT) status, their unit may initiate RPA/Title 32 orders for up to 30 additional days for the purposes outlined in paragraph 5.4.1. However, even if a Pre-MEDCON extension order could have been completed to continue coverage after 10 Aug 21, the extension would have only been valid for an additional 30 days and would have not covered the gap associated with the delayed length in LOD processing.

On 14 Jul 21, his RMU concurrently initiated a request for MEDCON orders with a start date of 11 Aug 21. According to AFI 36-2910, paragraph 5.5, if a 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. The myPers ticket, found in applicant's submission at Exhibit A, details the early submission of the MEDCON request (prior to the expiration of Pre-MEDCON orders) and lists the several required documents that were missing in the submission.

Both the applicant and the Wing LOD Program Manager allege the delayed issuance of MEDCON orders was due to a delayed ILOD determination. His LOD request was initiated on 5 Aug 21 and not completed until 9 Dec 21 which exceeded the processing timeline for LOD determinations that specifies units have 70 workdays to process an Informal LOD determination. Although it should be noted that this timeline was reduced to 60 workdays with the release of DAFI 36-2910 on 3 Sep 21. The wing LOD Program Manager confirmed that the applicant was at no fault in the process, stating "There were no delays on the member's part and as the Wing Program Manager, I have verified that all documentation suspense dates were met on time."

Based upon the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice on the part of the ILOD determination process; however, this advisory defers to ARC CMD's response, email dated 29 Sep 21 found at Exhibit C, regarding the applicant's request to backdate the MEDCOM start date to the end date of his Pre-MEDCON orders. In their email, ARC CMD states that the rationale behind the 25 Jan 22 MEDCON start

date is due to the fact that they received the application on 18 Jan 22 and were able to review, validate, and approve MEDCON by 25 Jan 22. DAFI 36-2910, paragraph 6.9.3.2 states that once the MEDCON request has been reviewed and approved and the number of days certified, a start date will be established for the MEDCON order. If the member is currently on a Pre-MEDCON order, that Pre-MEDCON order will end the day prior to the start date of the MEDCON order; this is to prevent a break in orders. If the member is not currently on an order of any kind, the MEDCON will still start the days the member was approved for MEDCON coverage.

ARC CMD states, email dated 28 Sep 21 found at Exhibit C, that extenuating circumstances are taken into consideration during the decision to establish a start date, and further states, in email traffic, that the start date for the applicant was established based on the receipt of all required documents for the initial MEDCON request. Even though this is in accordance with DAFI 36-2910 paragraph 6.9.3.2, considering that as the delays are administrative and of no fault of the applicant, it is unclear why the requested start date was not honored in the initial approval given that the applicant was receiving medical care throughout the process.

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 4 Nov 22 for comment (Exhibit D), and the applicant replied on 2 Dec 22. In his response, the applicant contended he has worked closely with his Med POC, who has been very diligent in helping to process both the MEDCON and AFBCMR packages. The applicant states that for various reasons the MEDCON package was denied, particularly for the lack of physical therapy. ARC CMD stated that, in order to be eligible, he needed to be seen for PT at least two (2) times per week. However, the clinic was short staffed and still processing patients under COVID-19 related precautions, so he was only able to be seen once per week and he was following a closely supervised at home PT program. After 10 Aug 21, he was informed by the clinic that they could no longer see him due to the lack of MEDCON orders.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

AFPC/DPFA recommends denying the applicant's request to backdate his MEDCON start date. The limited documentation that they were able to retrieve for the timeframe specified in the applicant's request does not support eligibility for MEDCON. While it is evident that the member sustained an injury while on UTA /Inactive Duty Status, which required a Finalized ILOD determination, and the LOD was initiated on 5 Aug 21, the Med POC did not complete their actions before submitting to the provider for 34 days. A review of the case in the Electronic Case Tracker (ECT) shows it appears the Med POC was awaiting documentation regarding the applicant's physical therapy and orthopedic evaluations. This delay was due to a lack of information as the member had not yet been evaluated by either physical therapy or had an orthopedic examination at the time. Once these examinations had been completed and the exam notes became available, the case was pushed however, the provider/medical officer held the case for 51 days before reviewing and signing the case in ECT. Additionally, there were also delays in the LOD process which took 33 days to complete before the final signature by the appointing authority.

Although there is evidence in the processing of the LOD, due to no-fault of the applicant, that an injustice occurred between the medical officer and the appointing authority final review/signature that resulted in extending AFI 36-2910 70-day processing timeline to 126 days. However, the lack

of medical documentation provided to ARC CMD to confirm compliance makes it difficult to validate the need for MEDCON at this time. The applicant is encouraged to provide progress notes from physical therapy along with the missing notes from the Orthopedic Surgery Evaluations for consideration, beginning on 13 Oct 21. It should be noted that if the physical therapy care that the applicant received was primarily Home Exercise Program (HEP), that those periods of care do not meet the eligibility requirement for MEDCON.

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 5 Dec 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. While we note the conflicting advisory opinions prepared in this case; however, after thoroughly reviewing the application, the Board non-concurs with the recommendation of AFPC/DPFA and finds that a preponderance of the evidence substantiates the applicant's contentions. It is clearly evident that the applicant incurred an injury while in a qualified status. Additionally, as noted by both advisory opinions, there is evidence of an injustice due to the excessive processing timeline of the LOD determination. Further, the fact that this excessive delay in LOD processing, 126 days, was due to no fault of the applicant and the applicant was receiving care throughout the whole process, it is unclear to the Board why the requested MEDCON start date made by his reserve medical unit was not honored. Furthermore, the Board notes the applicant was finally placed on MEDCON orders on 25 Jan 22 and finds it highly unlikely there was a change in the applicant's medical condition that did not require MEDCON orders for that five-month period. Given he had an ongoing medical condition that was found to be in line of duty, and had the LOD been processed in a timely manner, he would have been placed on MEDCON orders at the expiration of his pre-MEDCON orders, the evidence supports the applicant's request to cover the gap in his MEDCON orders. 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 he was placed on active duty orders, for the purpose of medical continuation in accordance with Title 10, U.S.C. §12301(h), from 11 Aug 21 through 24 Jan 22.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00391 in Executive Session on 30 Nov 22, 23 May 24, and 30 May 24:

Work-Product	Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 26 Jan 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRC/A1KK, w/atchs, dated 30 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Nov 22.
- Exhibit E: Applicant's Response to Advisory, 2 Dec 22.
- Exhibit F: Additional Advisory Opinion, AFPC/DPFA, 9 Nov 22.
- Exhibit G: Notification of Additional Advisory, 5 Dec 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X	Work-Product	6/6/2024
	Work-Product Board Operations Manager, AFBCMR Signed by: USAF	