

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00425

XXXXXXXXXXXXXXXXXX

COUNSEL: XXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His medical continuation (MEDCON) orders be backdated to the end of his Title 10 Military Personnel Appropriation (MPA) orders, with entitlement to all pay and allowances, to cover the period of 30 Sep 17 – 11 Mar 18.

APPLICANT'S CONTENTIONS

He has an approved Air Force Form (AF Form) 679, *Air Force Publication Compliance Item Waiver Request/Approval*, that was directed by the now Chief of Staff of the Air Force, (CSAF) during his tenure as Commander, Pacific Air Forces (COMPACAF). This was coordinated through the waiver authorities for concurrence and Headquarters, Air Force (HAF)/A1P and HAF/A1 signed off. In Section III of the AF Form 679, Headquarter (HQ) PACAF/A1 Director, Manpower, Personnel, and Services, stated, "Temporary waiver approved beginning 30 September 2017 and ending 11 March 2018." To date he has been unsuccessful in obtaining all rightful entitlements due as a member on Title 10 orders during the time period listed on the AF Form 679. As a chief master sergeant, he has certainly tried to do his homework on this request and has waited a number of years for this to be corrected. The efforts directed by COMPACAF with regard to this AF Form 679 were to prevent this from adding to the Air Force Board for Correction of Military Records (AFBCMR) workflow. However, in the attached email, Air Force Personnel Center (AFPC) said, " they can't accept this AF Form 679 as a source document." Considering the extensive write up on the AF Form 679 which spells the situation out and its direction to correct the injustice, he is not sure what more he can do on his end. He is submitting this request to the AFBCMR for assistance. Interestingly, his local finance used this AF Form 679 to correct the backpay but that was all they could do and they directed him to AFPC for the rest. He has been unsuccessful in obtaining a points correction for this time period. During the period of orders lapse, he paid for Tricare Reserve Select out of pocket, when he should have been on Tricare Prime. He can overlook this healthcare expenditure if it would be too difficult for the Board to correct. Section 10 of AF Form 679 states "Allow one-time waiver of the AFBCMR (30 Sep 17-11 Mar 18). The Airman was wrongfully released due to an administrative error on the part of the Air Force, requiring the AFBCMR process would place further hardship on the Airman and the USAF." Unfortunately, despite the attempts, this now requires the help of the AFBCMR.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard chief master sergeant (E-9).

On 1 Jul 17, according to Order Number XXXXXX, dated 20 Jul 17, he was placed on Title 10 MPA orders in support of SMART TEAM from 1 Jul 17 – 29 Sep 17.

On 15 Sep 17, according to AF Form 348, *Line of Duty Determination*, was initiated for lateral epicondylitis right elbow. On the same date, it became Interim and was finalized on 27 Sep 17 when the injury was found to be in the line of Duty (ILOD).

On 29 Sep 17, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was released from active duty for the period of 1 Jul 17 – 29 Sep 17 with a narrative reason of separation of “Completion of Required Active Service.”

On 12 Mar 18, according to Order Number XXXXXX, dated 13 Dec 18, the applicant was placed on Title 10 MEDCON orders from 12 Mar 18 – 13 Feb 19.

According to the AF Form 679, *Air Force Publication Compliance Item Waiver Request/Approval*, provided by the applicant:

On 14 Nov 19, PACAF/A5/8, requested TIER 1 waiver authority for Air Force Instruction AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, dated 8 Oct 15, to obtain a one-time waiver of the AFBCMR via (T-1) authority for Air Reserve Component (ARC) members injured ILOD to paragraph 5.7.4. MEDCON orders cannot be backdated. (T-1) Any claim for past entitlements, to include successful MEDCON appeals must be addressed to the Air Force Board for Correction of Military Records (AFBCMR) in accordance with AFI 36-2603, *Air Force Board for Correction of Military Records* (T-1).

On 25 Nov 19, PACAF/A1 concurred with request for temporary waiver authority.

On 28 Jun 20, AF/A1P concurred with request for temporary waiver authority.

On 7 Jul 20, PACAF/A1 approved temporary waiver authority beginning 30 Sep 17 and ending 11 Mar 18 with expiration date of 12 Mar 18.

According to myPers – Total Force Service Center email traffic thread, provided by the applicant:

On 6 Jul 21, the applicant stated he had an AF Form 679 vetted by PACAF/CC and HAF A1 as an attempt to avoid a AFBCMR action. The AF Form 679 was approved. Chief <name masked> worked it earlier this year and took care of the pay side and passed it along to get the Point Credit Accounting Record System (PCARS) updated.

On 12 Jul 21, according to a myPers - Total Force Service Center (TFSC) email string, the applicant was informed that his Point Credit Summary matches his order history and no discrepancies were found between approved orders and points. “Further, that at this time, they cannot add points for 30 Sep 17 – 11 Mar 18 because they do not have valid documents such as certified orders and leave and earning statement (LES). If certified source documents are obtained, please provide those to this office and the records will be updated.” On this same date, the applicant responds and states that the AF Form 679 should be used prior to an AFBCMR as the AFBCMR process requests that all avenues be exhausted. Additionally, the AF Form 679 essentially provides that AFBCMR decision from the 4-star level waiver.

On 5 Sep 21, the applicant was advised that the AF Form 679 is not a source document the TFSC can accept for points update.

For more information, see applicant's submission at Exhibit A, the excerpt of the applicant's record at Exhibit B, and the advisories at Exhibit C and Exhibit E.

APPLICABLE AUTHORITY/GUIDANCE

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

5.1. Overview. The purpose of MEDCON is to authorize medical and dental care for members who incur or aggravate an injury, illness or disease ILOD and to provide pay and allowances while they are being evaluated, treated for or recovering from a service-connected injury, illness or disease. ARC members may be entitled to MEDCON when they are unable to perform military duties due to an injury, illness or disease incurred or aggravated while serving in a duty status.

5.4. Pre-MEDCON. 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 (see para. 1.10.1). Orders will not be issued or extended in cases of misconduct, or for the purpose of taking leave or reconstitution time.

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*.

AIR FORCE EVALUATION

NGB/A1PS recommends granting the applicant's request for MEDCON, with entitlement to all pay and allowances, for the period of 30 Sep 17 through 11 Mar 18. The AF Form 679, which was approved by AF/A1 on 28 Jun 20, summarizes the administrative challenges and missteps

that occurred with the applicant's Pre-MEDCON and MEDCON requests, which although were submitted in a timely manner, his leadership failed to adjudicate within the appropriate timeline. AFI 36-2910, dated 8 Oct 15, paragraph 2.3.3 states the immediate commander may issue an Interim LOD determination to establish initial care and treatment pending the final LOD determination.

Paragraph 5.4 states the purpose of pre-MEDCON orders is to allow additional time to assess the Air Reserve Component (ARC) member's medical condition and 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 the 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. Of note, the guidance does not use the verbiage "interim LOD" in paragraph 5.4, however, paragraph 5.4 outlines that the LOD only requires approval through the member's chain of command up to the MAJCOM level. On 27 Sep 17, the applicant's LOD determination was finalized and determined to be ILOD by the 15th Wing Commander (WG/CC). The 15 WG/CC was the approving authority for the applicant's LOD, as in accordance with AFI 36-2910, Table 2.2, Authorities for LOD Processing, note 1, the appointing authority, reviewing authority and approving authority may be one person (e.g. immediate commander reports directly to the officer exercising special court-martial jurisdiction over the member). As such, the applicant's AF Form 348, coupled with the AF Form 679, signed by PACAF/A1 and endorsed by AF/A1, meets the MAJCOM level approval requirement.

Therefore, based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. PACAF acknowledges the administrative error in the form of the AF Form 679 and NGB/A1PS concurs that the applicant should receive reimbursement of pay and entitlements for the period of 30 Sep 17 through 11 Mar 18 in the form of MEDCON.

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 21 Sep 22 for comment (Exhibit D), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

AFPC/DPFA recommends denying the applicants request for MEDCON, with entitlement to all pay and allowances, for the period of 30 Sep 17 through 11 Mar 18. The applicant claims that on 29 Sep 17, he was erroneously taken off Title 10 orders while his unit was trying to solidify his MEDCON orders and is requesting to receive all pay and entitlements, to include active duty points, for the period of 30 Sep 17 – 11 Mar 18. He initially applied for MEDCON and although he had a valid interim ILOD determination dated 15 Sep 17, and was eventually placed on a profile with Mobility Restrictions dated 17 Oct 17, his application was returned without action (RWOA) as his condition did not meet MEDCON criteria as it was considered chronic and had been managed by physical therapy/occupation therapy (PT/OT) for well over two years. He was advised by ARC CMD that if/when he was prescribed surgery, he should re-apply for MEDCON consideration.

The applicant was provided the opportunity for surgery in May 17, but opted to continue with the non-invasive therapies (PT/OT) through 23 Jan 18 when the occupational therapist reviewed his magnetic resonance imaging (MRI) and determined that there was a risk of a full tear of the

extensor tendon and further complication to the injury and recommended surgical intervention and discontinuation of OT. On or about 6 Feb 18, he was diagnosed with radial tunnel syndrome and referred to a hand surgeon, who recommended extensor tendon debridement and repair/release of radial nerve and was scheduled for surgery on 13 Mar 18. This met the criteria for MEDCON, as was discussed with the applicant on his 24 Jan 18 MEDCON application, and the MEDCON start date was established as 12 Mar 18 to ensure he was in status for the surgery planned for the following day.

Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice on the part of the Air Force. The applicant did not meet MEDCON criteria for the requested time period, 30 Sep 17 - 11 Mar 18. Although he states in his submission, that his local base finance office was able to correct the backpay issue using the AF Form 679 signed by PACAF/A1, he is encouraged to seek other avenues of relief, such as Pre-MEDCON or Incapacitation Pay for this time period, as he may meet the criteria for those programs for any other additional benefits/pay.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 3 Nov 22 for comment (Exhibit F), and the applicant replied on 30 Nov 22. In his response, the applicant contended that this matter was already decided on when the AF Form 679 waiver, which was initiated by the now CSAF, concurred by Senior Executive Service AF/A1P, and was finalized in the summer of 2020. This AF Form 679 waived the following T-1 authority: AFI 36-2910, 5.7.4, MEDCON orders cannot be backdated (T-1). Any claim for past entitlements, to include successful MEDCON appeals, must be addressed to the Air Force Board for Correction of Military Records (AFBCMR) IAW AFI 36-2603, *Air Force Board of Corrections for Military Records*. (T-1).

This AF Form 679 relates to backdating of MEDCON orders for medical retention. He was aware that the DD Form 149 states that AFBCMR applicants *must exhaust all other administrative correction and appeal procedures before applying to the boards*. He has done his due diligence with this problem through the AF Form 679 and reached a satisfactory result by acquiring waiver approval. However, he has been unable to get that favorable waiver decision executed despite trying unsuccessfully with AFPC and other agencies. He believes that this may be because Airmen do not normally use the AF Form 679 prior to submitting an AFBCMR request.

As a result of the AFBCMR internal workup, this matter was re-introduced to the department where the particular section of the AFI was waived in FY19-FY20. That department's (AFPC/DPFA) recent memorandum, dated 24 Oct 22, is not needed as this particular department had already weighed in on this matter during the FY19-FY20 waiver routing and their recent response also contains contradictory language that invalidates their argument within their memorandum advisory opinion. The evidence presented within the AF Form 679 provided sufficient documentary evidence that an error or injustice had occurred which resulted in the waiver being approved.

In a separate document (bookmarked at 10a_Exhibit G), he has responded in detail to the advisory opinion which he claims contains numerous significant holes and has reached conclusions that are not in line with higher-level guidance of the DoDIs and Title 10 laws. Additionally, the advisory opinion does not embrace the current higher-level guidance that is in place to ensure our joint force service members are cared for when an injury occurs while on orders. Had they done so, they would have reached a conclusion that supported approval.

He presently has medical retirement orders (Chapter 61) for XXXXXX after being medically boarded through the Disability Evaluation System (DES). His final medical board decision,

dated 17 Aug 22, determined that the injuries of his right arm, resulted in two of five unfitting conditions. The injury that was rated during the board was directly related to the 2015 injury, which is why the AF Form 679 is still relevant today.

The applicant's complete response is at Exhibit G.

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 concurs with the rationale and recommendation of NGB/A1PS and finds a preponderance of the evidence substantiates the applicant's contentions. Specifically, the Board finds that the applicant's Pre-MEDCON and MEDCON requests were submitted in a timely manner but failed to be adjudicated by his leadership within the appropriate timeline and that HQ PACAF, in coordination with Headquarters, Air Force (HAF/A1 and A1P), acknowledged that administrative challenges and missteps had occurred, due to no fault of the applicant, and attempted to rectify the error and correct the record through administrative means. 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 Medical Continuation orders for the time period of 30 September 2017 through 11 March 2018 with entitlement to all to pay and benefits.

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-2022-00425 in Executive Session on 2 Dec 22:

- , Panel Chair
- , Panel Member
- , Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 6 Feb 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/A1PS, w/atchs, dated 20 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Sep 22.
- Exhibit E: Advisory Opinion, AFPC/DPFA, dated 24 Oct 22
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Nov 22.
- Exhibit G: Applicant's Response, w/atchs, dated 28 Nov 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