

RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXX

DOCKET NUMBER: BC-2022-00949

COUNSEL: XXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Line of Duty determination be corrected.

APPLICANT'S CONTENTIONS

The substantial amount of medical documentation proves that the arthritis was not the only issue with the right hip and that the worsening of the injury to the right hip did occur in line of duty.

In support of his contentions, the applicant provides memoranda from the wing electronic LOD (eLOD) program manager, who states that through no fault of the applicant the LOD appeal was not submitted within the appropriate timeframe.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard staff sergeant (E-5).

According to the memoranda addressed to the AFBCMR, from the wing eLOD program manager, dated 21 Mar 22 and provided by the applicant:

- On 10 Dec 21, the applicant was notified that his LOD determination was found to be NILOD.
- On 14 Dec 21, the applicant acknowledged his intent to appeal and submitted his supporting documentation to the wing eLOD program manager.

For more information, see the excerpt of the applicant's record at Exhibit B 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*, paragraph 3.5.2.2, states that the appellant must submit the written appeal within 30 days of receipt of the LOD determination.

Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)* paragraph 3.4, states that the applicant has the burden of providing evidence in support of their claim they are the victim of an error or injustice.

AIR FORCE EVALUATION

NGB/SGPS recommends denying the applicant's request to change his LOD determination from NILOD to In Line of Duty (ILOD). Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice and it is his burden to provide proof of an error or injustice. The medical records provided with his request are incomplete as only civilian medical records were submitted. The applicant's request requires a copy of the LOD for the right hip, along with all supporting military and civilian medical records and absent this documentation this office is unable to review the case to either recommend if the condition(s) were incurred or service aggravated while in a qualified duty status or incurred or aggravated in a non-duty status.

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 27 Jun 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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of NGB/SGPS and finds a preponderance of the evidence does not substantiate the applicant's contentions. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

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-2022-00949 in Executive Session on 27 July 22:

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

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 29 Mar 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGPS, dated 14 Jun 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Jun 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