

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01054

XXXXXXXXXX

COUNSEL: XXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Pre-Medical Continuation (MEDCON) orders request, due to a positive COVID-19 test, be approved.

APPLICANT'S CONTENTIONS

During his Aug 21 unit training activity he was exposed to COVID-19 and approximately four days later he tested positive. A Pre-MEDCON request was submitted in a timely manner but was not processed or approved in a timely manner. When an answer was finally received it was that too much time has passed and a BCMR request needed to be submitted.

In support, he provides a signed memoranda from his commander requesting 14 days of Pre-MEDCON due to a positive COVID-19 test result and medical records from his local military treatment facility.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve master sergeant (E-7).

According to documentation provided by the applicant:

On 7 and 8 Aug 21, he attended his units regularly scheduled drill periods.

On 10 Aug 21, he was identified as close contact of a unit member who tested positive on 9 Aug 21 and in accordance with the Center for Disease Control (CDC) guidance, he was told to quarantine and not to report to military duty until cleared by a military provider.

On 13 Aug 21, he became symptomatic and was advised to get tested immediately.

On 14 Aug 21, he tested positive for COVID-19.

For more information, see the excerpt of the applicant's record at Exhibit B 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*, paragraph 1.1, states that an LOD determination is a finding made after an informal or formal investigation into the circumstances of a member's injury, illness, disease or death. The LOD finding determines: whether or not the illness, injury, or disease was incurred in a qualified duty status, existed prior to service (EPTS), and if an EPTS condition was aggravated by military service; whether or not the illness, injury, disease or death occurred while a member was in an unauthorized absence; and whether or not the illness, injury disease or death was due to a member's misconduct or willful negligence.

DAFI 36-2910 paragraph 3.2.5, a final LOD Determination may be appealed once by the member, or next of kin, if the following requirements are met: they must provide the appeal in writing for any reason to the LOD Program Manager; submit the written appeal within 30 days of receipt of the LOD determination; and if there is new and compelling evidence that was not previously considered, but is now present and indicates new information relevant to the appeal, attach the LOD report that is being appealed. The member's statement alone or disagreement with the determination does not constitute new evidence.

AIR FORCE EVALUATION

NGB/A1PS recommends denying the applicant's request for Pre-MEDCON orders and closing the case until the applicant submits all the required documentation. In accordance with DAFI 36-2910, paragraph 6.5, the purpose of Pre-MEDCON orders of up to 30 days is to allow additional time for ARC (Air Reserve Component) members and, the MTF, RMU or GMU to: ascertain whether the medical conditions renders the member unable to perform military duties, or unable to meet the retention and mobility standards in accordance with DAFMAN 48-123; and provide medical documentation to support the request for MEDCON orders with approval from the member, the members' commander (either current commander or reporting commander), the using MAJCOM (who is funding the requirement) and the orders issuing authority. Pre-MEDCON orders cannot be backdated.

Based upon documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. While the applicant states his Pre-MEDCON request was submitted in a timely manner and that it was disapproved because "too much time had passed," a review shows that his Pre-MEDCON package was submitted within the required timeline and disapproved. Additionally, in accordance with DAFI 36-2910, to be eligible for Pre-MEDCON,

he must have an LOD finding of In-Line of Duty (ILOD) and as he failed to submit the AF Form 348, as required by DAFI 36-2910, his LOD determination cannot be verified.

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 19 Jul 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/A1PS 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-2022-01054 in Executive Session on 24 Aug 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 7 Apr 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/A1PS, w/atch, dated 8 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Jul 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