

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

XXXXXXX

**DOCKET NUMBER:** BC-2022-01154

**COUNSEL:** XXXXX

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

He be placed on Pre-Medical Continuation (MEDCON) orders for the time periods of 13–19 Nov 21 and 4–10 Dec 21.

### APPLICANT'S CONTENTIONS

He had an adverse reaction to the COVID-19 vaccination he was ordered to receive during his monthly drill weekends. He was sick and had to obtain medical care because of both shots and missed work from his regular job for five days with each shot. He was still feeling the effects of the vaccination for longer than the time he missed work, but had no choice other than return to work as he needed the paycheck. The effects of the vaccination lasted for nearly a month and the effects were not just physical. He started to distrust his organization and feels he was ill-advised by them. When he approached the base social worker regarding these feelings and concerns, the social worker then ordered him to get checked out by a psychologist. He has experienced both financial and mental hardships as he had to pay out of his own pocket to receive medical care for a vaccination that was forced upon him while he was on active military status. He feels the military should take accountability and this absence of accountability is furthering his distrust.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

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.

## **AIR FORCE EVALUATION**

NGB/A1PS recommends denying the applicant's request for Pre-MEDCON orders. 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 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.

Additionally, according to DAFMAN 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.

While the applicant references a previous Pre-MEDCON denial in his request, he neither provided the documentation which shows that a Pre-MEDCON request had been submitted and subsequently disapproved, nor did he provide the AF Form 348 as required by DAFI 36-2910.

Furthermore, NGB/A1PS conducted a records search of the applicant's LOD case in the electronic case tracking (ECT). This search revealed the applicant's ECT case number XXXXXXX and the LOD determination reflected on the associated AF Form 324 is Not-In Line of Duty (NILOD) – Not Due to Member's misconduct. In order to be eligible for Pre-MEDCON, the applicant must have an In-Line of Duty (ILOD) determination. As such, the more appropriate action is for the applicant to file a LOD appeal IAW DAFI 36-2910, paragraph 3.2.5.

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 11 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.
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 Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application 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-2022-01154 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 4 Apr 22.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, NGB\_A1PS, w/atchs, dated 8 Jul 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 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.

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Board Operations Manager, AFBCMR