

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01288

XXXXXXXXXX

**COUNSEL:** XXXXX

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

He be issued Pre-MEDCON (Medical Continuation) orders for the time period of 4 Feb 20 – 14 Feb 20.

### APPLICANT'S CONTENTIONS

While on Title 32 USC 502(a) Annual Training orders, he injured his back and should have been provided compensation for time off of work. His orders were originally from 28 Jan 20 – 14 Feb 20; however, they were amended to 28 Jan 20 – 3 Feb 20 in which Pre-MEDCON should then have been from 4 Feb 20 – 14 Feb 20.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an Air National Guard technical sergeant (E-6).

According to documentation provided by the applicant:

On 24 Jan 20, according to Air National Guard Order number XXXXX, the applicant was placed on Full Time National Guard Duty – Annual Training in accordance with Title 32 USC 502(a) for the time period of 28 Jan 20 – 14 Feb 20.

On 4 Feb 20, the applicant was examined by his medical provider for back pain and stated the applicant may Return to Work/School.

On 12 Feb 20, the applicant's Medical Group Commander (MSG/CC) certified that the applicant was on orders when the injury occurred and that he was diagnosed with a lower lumbar muscle strain. Additionally, the MSG/CC states he approves of the applicant's request for an allocation of 30 Pre-MEDCON days to allow additional time to process the AF Form 348, *Line of Duty Determination*, if applicable.

On 14 Feb 20, the applicant's unit NCOIC for Physical Exams and Standard MEDCON sent an email to NGB/A1P indicating a request for the applicant to be placed on Pre-MEDCON. The email also states that the unit is working on getting a signed DD Form 2870, *Authorization for Disclosure of Medical or Dental Information*, from the member.

On 4 Mar 20, Order XXXXXX was amended to reflect the time period of 28 Jan 20 – 3 Feb 20. For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

## **APPLICABLE AUTHORITY/GUIDANCE**

Title 32 United States Code, 502, *Required Drill and field exercises*, (a): Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall (2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

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

1.2. Personnel Who are Subject to LOD Determination. 1.2.2. ARC members who die, incur or aggravate an illness, injury or disease while in any duty status.

1.2.2.1.2. If an AGR member decides to voluntarily curtail their orders and still requires medical care and treatment, an AF Form 348 will need to be initiated.

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 or 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.

## **AIR FORCE EVALUATION**

NGB/A1PS recommends denying the applicant's request for Pre-MEDCON orders and closing the case as non-viable. Based on the insufficient documentation provided by the applicant and analysis of the facts there is no evidence of an error or injustice. In order to be eligible for Pre-MEDCON, a member must have an In Line of Duty (ILOD) finding. While he did provide the memorandum from his MSG/CC attesting that he was on orders when the injury was incurred or aggravated, he failed to provide the AF Form 348, with an ILOD finding as required by DAFI 36-2910, paragraph 6.5.1.2. Additionally, the applicant did not provide the documentation that his Pre-MEDCON request had been disapproved.

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 30 Aug 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/A1P and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the purpose of Pre-MEDCON is to provide additional time to ascertain whether the medical condition renders the member unable to perform military duties or unable to meet retention and mobility standards and to provide medical documentation to support a request for MEDCON orders. While the Board notes the letter from the applicant's commander supporting his request for Pre-MEDCON, he does not provide any evidence to show that his request was in fact denied or that he was eventually placed on MEDCON orders for his medical condition. 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 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-2022-01288 in Executive Session on 5 Oct 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 5 Dec 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/A1PS, w/atch, dated 18 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Aug 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**

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Board Operations Manager, AFBCMR