

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01568

XXXXXXXXXXXX

COUNSEL: XXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her Medical Continuation (MEDCON) order start date be backdated to the end of her pre-MEDCON order.

APPLICANT'S CONTENTIONS

She served on Title 10, USC 12301 (d) orders for Active Duty Operational Support (ADOS) with from 1 Dec 20 to 30 Sep 21. During this time, she was officially a member of the Air National Guard where she served as a full-time IT System Administrator (GS-11) Title 32, Dual Status Technician (Technical Sergeant/E-6).

On 11 Apr 21, she slipped and fell at home and injured her knee. She immediately reported the accident and injury to her ANGRG supervisor. On 24 May 21 she had a magnetic resonance imaging (MRI) of her knee. She was informed that she had a complete anterior cruciate ligament (ACL) tear, but surgery was not recommended primarily due to her age. Instead, physical therapy (PT) and Motrin were prescribed. The first available PT appointment was 20 Jul 21 for an initial consult exam where she was prescribed a PT regime of twice per week.

On or about 1 Sep 21, while working at home packing up her apartment, she fell again when her unstable knee buckled and gave away for the third time since the original accident in Apr. It was at this time that she became convinced that she was in no condition to make the permanent change of station (PCS) move back to New Mexico and became committed to pursuing MEDCON orders to treat her injury. She worked with her Medical Point of Contact (MEDPOC) to start the process of getting a Line of Duty (LOD) determination and was placed on Pre-MEDCON orders from 1 Oct 21 – 31 Oct 21.

On 6 Oct 21, she sent her commander a copy of her AF Form 469, *Duty Limiting Condition Report*, which indicated NO PCS movement was allowed while the AF Form 469 was valid. He acknowledged receipt and gave her the impression that her application was "good to go." Based upon this, she cancelled her PCS return trip and her household goods (HHG) reservation with the movers, extended her lease, and continued to meet and coordinate with medical providers to plan her care.

On 29 Oct 21, she received notification from the Air Reserve Component Case Management Division (ARC CMD) that her most recent MEDCON application had been accepted, deemed complete, and would be reviewed for consideration. Two days later, she returned a voice mail call from the ARC CMD case manager and was informed her application was tentatively approved with a likely MEDCON order start date of 1 Nov 21. On 12 Nov 21, she again phoned the ARC CMD case manager to inquire as to why she has not received any further communications concerning her MEDCON orders. The case manager seemed confused by the inquiry and informed her that since their previous conversation on 2 Nov 21, her application for

MEDCON had been denied by her commander, who refused to provide the required alternate work site memo allowing her to remain at Andrews during her MEDCON.

From that date until 31 Jan 22, she sent various requests to her commander expressing her desperate situation and requesting that he reconsider his decision; however, all her requests were either ignored or denied. As such, she immediately began searching for a job and out of sheer desperation she accepted an offer to begin work on 29 Nov 21 as an IT system administrator in XXXXXXXXXXXX. Unfortunately, in order to accept the position, she was forced to resign her Title 32 Dual-Status Technician Federal service position. Although it was a necessary decision, it cost her to lose her sick leave and matching Thrift Savings Plan funds. It also cost her the ability to buy back her military time and add it to her Federal service.

In addition, her family became extremely concerned for her health and well-being and contacted the Governor <State> as well as a <state> Congresswoman, pleading for their assistance. On 31 Jan 22, she was notified that due to the congressional inquiry by her congresswoman, her commanders' supervisor has given her permission to resubmit her MEDCON applications as he has pre-approved an alternate work location at the ANGRC.

On 17 Feb 22, she was notified by ARC CMD that her MEDCON was approved with her initial orders beginning on 15 Feb 22. However, the unnecessary break in orders from 1 Nov 21 to 14 Feb 22, resulted in a total loss of base pay, basis allowance for subsistence (BAS), reduced basic allowance for housing (BAH) due to a reduction in the FY21 to FY22 BAH rate, and the loss of 35 days of accrued annual leave. The break in orders also resulted in a profound loss of future military and civilian retirement earnings. Finally, it left her injured, with a completely torn ACL, with no medical care from 1 Nov 21 to 14 Feb 22.

Her commander's poor handling of her request for MEDCON orders, and his unjustified decision to deny her original MEDCON request has caused irreparable harm to her federal service, military career and her overall health and welfare. She realizes that the Board cannot consider the harmful impact his decision had on her federal service due to her untimely resignation, but she hopes that the Board will consider her request to back date her MEDCON orders to 1 Nov 21 which will not only correct her military record, but will also allow for all lost wages and benefits to be paid retroactively. In addition, it would correct the most pressing and time-sensitive issue involving her HHG entitlement, which will expire on 26 Oct 22.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

According to documentation provided by the applicant:

From 1 Dec 20 to 30 Sep 21, the applicant was on Title 10 USC 12301 (d) orders, Active Duty for Operational Support (ADOS), and assigned to the XXXXX with duty at the XXXXXXXX.

On 12 Apr 21, e-mail traffic from the applicant indicates she reported a knee injury when she slipped at home.

On 29 Sep 21, according to Order Number XXXX, the applicant was placed on Pre-MEDCON orders for the period of 1 Oct 21 to 31 Oct 21.

On 29 Oct 21, a myPers thread states that her MEDCON application had been accepted and determined to be administratively complete, and that this does not serve as MEDCON approval.

On 2 Nov 21, an e-mail from the applicant to her commander indicates that she informed her commander that the ARC CMD case manager was going to approve her MEDCON application with a start date of 1 Nov 21.

On 15 Nov 21, another myPers thread was sent to the applicant stating that her MEDCON was disapproved as she did “not have a MOA stating she can work at a unit/location that is not her assigned unit. Member currently resides in <state> and unit of assignment is in <state>.”

On 14 Nov 21, her commander informs her he will not authorize her to work remotely.

On 31 Jan 22, a letter from her congresswomen states her commander has given permission for her to resubmit a MEDCON application and has pre-approved an alternate work location at the ANGRC.

On 15 Feb 22, according to Order Number XXXX, the applicant was placed on MEDCON for the period of 12 Feb 22 to 22 Jun 22 and assigned to the XXXXX.

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, 3 Sep 21:

6.4.1.2. Members on MEDCON orders will report to their unit of assignment or alternate duty location to perform assigned duties consistent with their diagnosis or physical limitations unless approved for leave in accordance with AFI 36-3003 *Military Leave Program*. Members not compliant with reporting duty at the unit or an alternate duty location may have their MEDCON terminated and may apply for INCAP Pay.

6.4.2.2. Member's unit commander or equivalent may designate an alternate duty location and/or telework, for members to perform duties consistent with their LOD diagnosis and/or AF Form 469, *Duty Limiting Condition Report*. Both the member's commander and alternate duty location commander must concur by written agreement.

6.8.2. For specific MEDCON application instructions, required documents, and follow on application instructions, refer to the myPers MEDCON webpage.

myPers Website: *Initial MEDCON Application*. Required Documents:

- a. ARC CMD Letter of Acknowledgement - Each block must be initialed and signed; digital and/or wet signatures are accepted. Version 8 must be utilized.
- b. DD Form 2870 *Medical Disclosure Authorization - ARC CMD Release*.
- c. Medical Treatment Document(s) - Current treating provider clinical documents for each unresolved LOO condition(s) within 30 days.

- d. AF Form 469 - Profile - with an Assignment Availability Code (AAC) 31 or 37 and Mobility Restrictions >31 days ("Working Copy" will not be accepted).
- e. Proof of Military Status - Copy of the official order(s) or Inactive Duty for Training (Form 40A or NGB Form 633) placing the member in a status during the time of the injury/illness (must be legible, no draft copies accepted, and in chronological order to include ALL modifications/amendments).
- f. AF Form 348 - LOO - (Interim or Finalized) LODs must be processed through ECT and a copy of the ECT LOO is required. Hardcopy LODs are not accepted.

AIR FORCE EVALUATION

AFPC/DPFA recommends denying the applicant's request to back date her MEDCON orders along with all associated benefits and entitlements. The applicant was on orders from 1 Dec 20 – 30 Sep 21 and assigned to the XXXXX and sustained a knee injury on 11 Apr 21 when she slipped and fell at home. She reported to the emergency room the same day that the injury occurred and then obtained an MRI of the injured knee on 24 May 21. The physician recommended physical therapy and the applicant began physical therapy twice a week. After doing physical therapy, the Physical Therapist referred her to be re-assessed by an orthopedic surgeon for possible surgical work-up. The applicant re-injured the knee at home while packing up her apartment and began the process to pursue MEDCON orders.

On 8 Sep 21, the applicant began working with the MEDPOC at the <state> National Guard to get a Line of Duty determination started and Pre-MEDCON orders processed. On 20 Sep 21, the Pre-MEDCON orders were approved for the time period of 1 Oct 21 – 31 Oct 21. On 15 Sep 21, she notified her commander that with her current physical condition she would not be able to undertake a permanent change of station (PCS) back to <state>. Her commander requested she submit documentation from a physician stating that the member should stay in place and receive medical care. She sent him a copy of the AF Form 469 which indicated that no PCS movement was allowed.

On 15 Oct 21, as a precaution to avoid a possible break in orders, she submitted a Pre-MEDCON 30 day extension request to the MEDPOC. It was denied. On 31 Oct 21, her Pre-MEDCON orders ended.

On 2 Nov 21, she was informed by ARC CMD that her MEDCON package was tentatively approved and, in order to avoid a break in orders, with a possible start date of 1 Nov 21. However, the applicant contacted ARC CMD on 12 Nov 21 and was notified that her MEDCON package had been denied due to her unit commander refusing to provide an alternate work site memo. From 14 Nov 21 – 31 Jan 22, the applicant tried to contact her unit commander, but no further forward progress was made.

The applicant reached out to her congresswoman for further assistance resulting in her MEDCON package being resubmitted with a signed alternate worksite memo. She was then brought onto MEDCON starting 15 Feb 22.

Although the applicant inquired about MEDCON via the Headquarters Readiness Integration Organization (HQ/RIO), she would not have met all MEDCON eligibility requirements as she did not have a profile initiated at the time of the request nor was there an established treatment plan in place. Her profile, which was created on 1 Jul 21, may have made her eligible for MEDCON if her injury was aggravated but no documentation was submitted for review. She was placed on a Home Exercise Program (HEP) for 12 weeks with an additional 4 weeks of

Occupational Therapy (OT), both of which are not eligible for MEDCON as HEP is self-paced treatment and the four weeks duration of OT is not long enough to meet MEDCON requirements. HQ RIO was correct in stating she was not eligible for MEDCON at the time she inquired and based off the documentation she provided, she would not have met eligibility requirements if her package was submitted to ARC CMD for consideration.

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 31 Aug 22 for comment (Exhibit D), and the applicant replied on 16 Sep 22. In her response, she contends the advisory writer has apparently confused and conflated the supporting documentation and case details with that of another service member and contains following seven erroneous claims:

1 – Her MEDCON orders were denied. FALSE. Her MEDCON orders were not ultimately denied, they were delayed due to her unit's commander refusing to sign a memorandum authorizing an alternate duty location. This inexplicable refusal resulted in a three and one-half month break in service which is central to the injustice identified in her BCMR application.

2 – The statement “Although the SM inquired about MEDCON via HQ RIO...” FALSE. She did not inquire about MEDCON via HQ RIO. HQ RIO is the acronym for the HQ Readiness and Integration Organization Armed Forces and oversees the training, readiness, and integration of the 7,000 Individual Reservists who augment the active duty Air Force. She is not a Reservist. She is a member of the National Guard. The MEDPOC from her state's unit submitted an administratively complete MEDCON application to ARC CMD on 27 Oct 21. ARC CMD confirmed receipt on 29 Oct 21 at 12:42 pm and deemed the application complete.

3 – The statement “...the SM would not have met eligibility as she did not have a profile initiated at the time of the request...” FALSE. AF Form 469, dated 15 Oct 21, was submitted in her application dated 27 Oct 21 and was assessed to be valid and complete by ARC CMD. If this AF Form 469 was not valid, or not included in the application, then ARC CMD would have returned the MEDCON application as administratively incomplete.

4 – The statement “...and there was no established treatment plan that would have met eligibility.” FALSE. Provider notes detailing her pre-op treatment plan from the physical therapist and orthopedic surgeon were included in her MEDCON application and assessed by ARC CMD as valid. Had the application been missing the provider notes, or if the provider notes were outdated, or did not sufficiently detail a valid treatment plan, then ARC CMD would have returned the application as administratively incomplete.

5 – The statement “Her profile which was created on 1 Jul 21 may have made her eligible if her injury was aggravated but no documentation was submitted for review.” FALSE. This is in error for two reasons: her AF Form 469 was not created on 1 Jul 21, but was created on and dated 15 Oct 21; the AF Form 469, dated 15 Oct 21, was included in her MEDCON application and deemed administratively complete.

6 – The statement “The member was placed on 12 weeks of HEP and an additional 4 weeks of OT both of which are not eligible for MEDCON as the HEP is self-paced treatment and four weeks is not a duration long enough to meet MEDCON requirements.” FALSE. She began an in-clinic physical therapy treatment plan at the earliest appointment available which was on 20 Jul 21. She continued with the in-clinic physical therapy into mid-Nov 21 until she was forced to stop in-clinic physical therapy when she was notified by the ARC CMD case manager on 12 Nov 21 that her MEDCON had been disapproved as her unit commander refused to provide the alternate duty location memo.

When her MEDCON orders were finally issued three and one-half months later, 15 Feb 22, she resumed in-clinic pre-operative physical training until her ACL reconstruction surgery which took place on 18 Mar 22. Since then, she has been accomplishing post-operative in-clinic physical training two – three times per week as prescribed by her physical therapist. She was not prescribed HEP in lieu of in-clinic physical therapy, nor was she prescribed OT as ACL reconstruction surgery requires physical therapy, not OT.

7 – The statement “HQ RIO was correct in stating the member was not eligible for MEDCON at the time she inquired and based off the documents supplied she would not have met eligibility requirements if her package was submitted to ARC CMD for consideration.” FALSE. She never contacted HQ RIO to inquire about MEDCON. As she has previously established, her unit’s MEDPOC submitted her MEDCON application to ARC CMD who, in turn, assessed the application and deemed it administratively complete.

Finally, the advisory writer appears to be denying her request for MEDCON orders. This is in error. To be clear, she is not requesting that MEDCON orders be granted, she is requesting the Board to back date her MEDCON orders start date. On 15 Feb 22, her MEDCON orders were approved, and she is still currently serving on these MEDCON orders.

In order to correct the injustice inflicted on her due to the capricious and arbitrary refusal of her commander to provide an alternate duty location memo, she is requesting that the Board grant her request to backdate her MEDCON orders start date from 15 Feb 22 to 1 Nov 21 as this refusal has resulted in a harmful break in service, a loss of related pay, benefits, entitlements, and points credit for active duty days.

The applicant’s complete response is at Exhibit E.

ADDENDUM TO AIR FORCE EVALUATION

AFPC/DPFA, after a careful review of all the documentation submitted by the applicant for consideration, determines that the member still does not meet the eligibility or the intent of MEDCON. Her progress notes presented demonstrate limited physical therapy (PT) already previously identified through 16 Nov 21 and did not provide any proof of any additional care after that date other than a follow-up appointment with her Orthopedic Surgeon on 25 Jan 22.

In the applicant’s rebuttal, she submitted additional medical documentation for consideration. She was prescribed PT, two times per week, in Oct 21 and had a follow-up with her Orthopedic Surgeon on 26 Oct 21, where options were discussed, conservative treatment (PT and activity modification) versus surgical intervention, and she agreed to have Allograft ACL reconstruction performed to address the ACL tear with plans to have the procedure in Jan 22 with a full recovery expected by Sep 22, as the recovery period was anticipated to be six to nine months. On 28 Oct 21, she returned to PT, which was prescribed for two times per week for four weeks. She was seen again on 3, 4, 8, 9 and 16 Nov 21 when, it appears she was released from PT. She was then, per her progress notes, due to be re-evaluated in Dec 21, but the notes for that evaluation were not submitted so it cannot be determined if the member kept the appointment and/or had any subsequent PT sessions after 16 Nov 21 and the record appears to be closed by the Sports Med Clinic, where she was attending PT, on 28 Dec 21. On 25 Jan 22, she returned to the clinic to see the Orthopedic Surgeon and again Allograft ACL reconstruction surgery is discussed with a new timeframe for the surgery of Feb 22 with PT to continue until that time.

Based on the medical notes provided, the applicant does not meet the eligibility as the time she was actively involved in her restorative treatment plan does not meet the intent of the MEDCON program. MEDCON orders cannot be allocated for less than 31 days. Documentation provided

by the applicant shows that she was actively involved in her care for less than that as her care extended only through 16 Nov 21. There was no additional care demonstrated until the follow-up with her Orthopedic Surgeon on 25 Jan 22.

Therefore, there is no evidence of an error or injustice.

The complete addendum to the advisory is at Exhibit F.

APPLICANT'S REVIEW OF ADDENDUM TO AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 21 Nov 22 for comment (Exhibit G), and the applicant replied on 29 Dec 22. In her response, she contends that a point-by-point rebuttal would be unproductive and only would confuse the issue. Instead, she requests relief due to the singular harmful error caused by her former squadron commander. Specifically, he caused her MEDCON application to be initially disapproved and delayed for 107 days due to his refusal to provide her ARC CMD case manager an alternate worksite memorandum.

Although she understands that her former squadron commander had the authority to refuse to provide an alternate worksite memorandum, this arbitrary decision directly resulted in the 107 days of break-in-service, which left her without military orders, income or benefits, and no access to health care along with essentially stranding her 1,895 miles from home in the middle of a pandemic. Fortunately, her home state governor compelled her state Air National Guard leadership to provide ARC CMD with the required alternate worksite memorandum, which resulted in her MEDCON orders finally being issued on 15 Feb 22, followed by surgery on 18 Mar 22, and upon completion of all her physical therapy and rehabilitation appointments she was released from MEDCON orders on 10 Oct 22.

She states that it is important to note that the evidence shows ARC CMD did not initially disapprove of her MEDCON application for any the stated reasons in their advisories. Instead, the evidence clearly shows ARC CMD disapproved her MEDCON application based solely on her former squadron commander's inexplicable refusal to provide the alternate worksite memorandum.

The applicant's complete response is at Exhibit H.

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 comments of AFPC/DPFA in favor of denying relief, the Board believes a preponderance of the evidence substantiates the applicant's contentions. The Board finds that she was in fact placed on MEDCON orders from 15 Feb 22 - 12 Jun 22, based on her medical condition and injury that occurred while she was on active duty orders and that the gap between her Pre-MEDCON and MEDCON orders was caused by her commander's refusal to approve an alternate work site, which another commander ultimately approved subsequent to a congressional inquiry. Further, the Board finds that timely approval of this request would have prevented this gap in MEDCON orders. 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 reflect that Order Number XXXXX issued for the purpose of medical continuation in accordance with Title 10, U.S.C. §12301(h) for the period of 12 February 2022 to 22 June 2022, be corrected to reflect a start date of 1 November 2021.

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-2022-01568 in Executive Session on 25 Jan 23:

, Panel Chair
, Panel Member
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 5 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFA, dated 18 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Aug 22.
- Exhibit E: Applicant's Response, w/atchs, dated 16 Sep 22.
- Exhibit F: Addendum to Advisory, AFPC/DPFA, dated 15 Nov 22.
- Exhibit G: Notification of Addendum, SAF/MRBC, dated 21 Nov 22.
- Exhibit H: Applicant's Response to Addendum, dated 29 Dec 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