

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01575

XXXXXXXXXX

**COUNSEL:** X

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

While deployed on Title 10 orders in support of Operation SPARTAN SHIELD, he injured a disk in his neck between C4 and C5. Neurosurgery was performed on 18 Feb 22 and he was placed on pre-MEDCON orders from 27 Feb 22 to 28 Mar 22. His unit submitted his MEDCON request three (3) times before he was finally approved for MEDCON beginning 16 May 22 to 22 Aug 22. However, between 29 Mar 22 and 15 May 22, he was still receiving treatment at Walter Reed leaving him without any payment during that period.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an Air National Guard senior master sergeant (E-8).

On 27 Feb 22, according to XXth Wing (WG) Order Number XXXXXX, dated 25 Feb 22, he was placed on pre-MEDCON orders for the period of 27 Feb 22 – 28 Mar 22.

On 16 May 22, according to XX<sup>th</sup> WG Order Number XXXXXX dated 2 Jun 22, he was placed on MEDCON orders for the period of 16 May 22 – 19 Aug 22.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

### APPLICABLE AUTHORITY

Department of the Air Force Instruction (DAFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, paragraph 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 granting the applicant's request to backdate his MEDCON start date. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice, thereby justifying his request to backdate his MEDCON start date along with pay and entitlements to bridge the 29 Mar 22 – 15 May 22 gap between when his pre-MEDCON ended and his MEDCON began. The circumstances surrounding the delay were of no fault of the applicant as there were several administrative errors noted with incorrect documents submitted outside of his control. It can be surmised that if the package was submitted with all the documents that were available on the first attempt, he would have met all eligibility criteria then and would have started MEDCON once his pre-MEDCON orders ended. After a careful review of the multiple attempts to submit his initial application, it was noted that the documents submitted were not being adequately reviewed prior to being attached and submitted, which led to the gap. All the required documents were available as they had been submitted over the course of six (6) attempts beginning 14 Mar 22 thru 6 May 22 when his case was finally submitted with all the appropriate documents together. The applicant was being seen by his neurosurgeon and following the prescribed physical therapy regiment one (1) to two (2) times per week beginning on 11 Mar 22 as demonstrated by the progress note provided.

The circumstances surrounding the delayed acceptance of the Initial Application were outside his control and should not negatively affect him in his request for MEDCON for which he clearly met the eligibility criteria. Had all the documents been submitted initially, then he would have been brought onto MEDCON beginning 29 Mar 22, immediately following the end of his pre-MEDCON orders.

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), 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 the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFA and finds a

preponderance of the evidence substantiates the applicant's contentions. 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 show he was placed on active duty orders, for the purpose of medical continuation in accordance with Title 10, U.S.C. §12301(h), from 29 Mar 22 through 19 Aug 22.

**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-2022-01575 in Executive Session on 5 Oct 22:

- , 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 2 Jun 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.

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