

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

XXXXXXXXXX

**DOCKET NUMBER:** BC-2022-01722

**COUNSEL:** XX

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

She be placed on Medical Continuation (MEDCON) orders, and receive all pay and entitlements, for the time period of 30 Apr 18 through 17 Nov 20.

### APPLICANT'S CONTENTIONS

The MEDCON and extension of her original order should have begun on 30 Apr 18. Her last physical therapy appointment for her left knee was 17 Nov 20. She lost the entitlement to continue on MEDCON orders to resolve her injury when the medical administrative staff failed to process her paperwork for her Line of Duty (LOD) determination in a timely manner. Unfortunately, after the lapse in time the process automatically returned her to duty and her injury was still unresolved. When she went to the doctor, she informed them of the pain in her leg right above the knee. They diagnosed it as a hamstring strain and she was sent back to physical therapy and her request for an magnetic resonance imaging (MRI) was denied. In addition, due to the issue with her LOD not being completed timely, she had to stop her physical therapy and refused service. At that time, the Navy Clinic could no longer see her and referred her to the Department of Veteran Affairs (DVA). She attempted to use the DVA but they required a new LOD which her military unit said she did not need. Since she was in pain and wanted it resolved, she went back to the doctor, used her personal insurance, and paid out of pocket for an MRI and surgery. In addition, she had to take leave without pay from her civilian job to attend doctor appointments and physical therapy.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is Air National Guard captain (O-3).

From Nov 17 through Nov 20, according to medical records and documentation provided by the applicant, she had been seen by multiple providers for treatment for an injury that was sustained on/or about 19 Oct 17 while on Active Duty Operational Support (ADOS) orders. A finalized LOD with an In Line of Duty (ILOD) determination for the diagnosis of hamstring strain was signed by the applicant's wing commander on 13 Sep 18, with the date of diagnosis of 28 Nov 17. According to the Air Reserve Component Case Management Division (ARC CMD), the applicant had applied for MEDCON on 7 Nov 18, 21 May 19, and 6 Dec 19. Each application was denied.

From 3 Jan 17 through 29 Apr 18, according to Special Orders XXXX and XXXX, provided by the applicant, she was on placed on Title 10 USC 12301 orders for Active Duty for Operational Support (ADOS).

On XX Apr 18, according to the applicants DD Form 214, *Certificate of Release or Discharge from Active Duty*, she was on active duty for the time period of 3 Jan 17 – 29 Apr 18 and was credited with one (1) year, 3 months, and 27 days of active service.

On 13 Sep 18, according to AF Form 348, *Line of Duty Determination*, provided by the applicant, her LOD determination was determined to be In Line of Duty (ILOD) for left leg hamstring strain with a date of diagnosis of 28 Nov 17.

On 24 Sep 18, according to AF Form 469, *Duty Limiting Report*, provided by the applicant, she was placed on a Fitness Restriction until 23 Nov 18 with no Duty Restrictions or Mobility Restrictions.

On 29 Nov 18, according to a myPers notification, provided by the applicant, her request for MEDCON had been Returned Without Action due to missing and/or incorrect medical documents.

On 19 Jun 19, according to another myPers notification, provided by the applicant, her request did not support MEDCON eligibility. Specifically, the LOD was no longer considered valid and in order to be considered for MEDCON, she would need a new LOD.

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:

1.3.8. Medical Benefits for ARC Members. LOD determinations are used to establish, manage, and authorize healthcare entitlements for members who incur or aggravate an injury, illness, or disease while in a qualified duty status. Members may be entitled to hospital benefits and medical pensions in certain circumstances (10 USC § 1074a, Medical and Dental Care: Members on Duty Other Than Active Duty for a Period of More Than 30 Days; 37 USC § 204). The LOD determination will be used to authorize appropriate medical and dental treatment for the covered condition for not longer than one year from diagnosis unless referred into the Disability Evaluation System (DES) IAW with DoDI 1241.01. A service member will be referred to the DES when the criteria for referral are met in accordance with DoDI 1332.18, Disability Evaluation System (DES).

1.6.8. For ARC, in addition to the situations listed above, an LOD determination, which is valid for one year for medical purposes, must be made when: 1.6.8.4. Members have up to 180 days after completion of their current duty status to report their medical conditions for a LOD determination, absent special circumstances. After 180 days have passed, the avenue for addressing previously unreported illness, injury, or disease is through the DVA. Note: Special circumstances include latent onset conditions such as post-traumatic stress disorder and other mental, behavioral, and neurodevelopmental conditions.

Chapter 6, *MEDCON for ARC Members*, the primary purpose of MEDCON is to facilitate the authorization for access to medical and dental care for members who incur or aggravate an injury, illness or disease while in a qualified duty status and to return members to duty as expeditiously as possible. Members who are referred into Disability Evaluation System (DES) while on Active Duty (AD) may be retained on AD while processing through the DES IAW DoDI 1332.18. However, members without an active treatment plan will not be maintained on MEDCON solely for the purpose of entry in DES. If the member requires further treatment and

has a restorative care plan, they may reapply for MEDCON while processing through the DES. MEDCON eligibility requires an LOD determination and a finding by a credentialed military medical provider that the member has an unresolved health condition requiring treatment that renders the member unable to meet retention or mobility standards in accordance with DAFMAN 48-123, *Medical Evaluations and Standards*. Members who meet eligibility criteria for MEDCON may with their consent be retained or recalled to duty under 10 USC § 12301, *Reserve Components Generally*, 10 USC § 12322, *Active Duty for Health Care*.

Paragraph 6.2.7. If a member has an injury, illness and/or a disease; received care for 365 days and is not in the DES, a new LOD will not be initiated. If the member requires care after a year, the member may receive their care through the Department of Veterans Affairs (DVA).

Paragraph 6.4. Program Responsibilities. Member will provide current and sufficient medical documentation, at minimum every 30 days, while on MEDCON and respond to official correspondence from the servicing medical unit and/or ARC Case Management Division regarding the member's medical status within two duty days of the request. If the member is not responding to correspondence or supporting documentation is not provided, the service member may be processed for discretionary termination (see paragraph 6.6.2). Requested medical documentation should be limited to relevant information to reasonably identify the initial condition for which the LOD determination is being requested; this can include an initial diagnosis, treatment plan, or note from provider describing the condition. Note: if the diagnosis evolves, another LOD may be warranted for subsequent care.

Paragraph 6.11. Appealing Denied MEDCON Requests. Members who are denied MEDCON orders should first resubmit an application for a current review (see paragraph 6.10.4.2) to ARC CMD before submitting an appeal. Then members may submit an appeal through the ARC CMD. Appeals must be made within 45 days of receipt of a MEDCON request denial. Appeal Authority. SAF/MR is the appeal authority for denied MEDCON requests at the validation, approval, and certification or allocation level and can grant or deny the member MEDCON Appeal. If relief is granted, the MEDCON orders will be dated from that day forward. Note: For MEDCON orders to be backdated, the member must request through the AFBCMR.

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 for MEDCON and all pay and entitlements for the time period of 30 Apr 18 through 17 Nov 20. Based on the documents provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The documents provided do not support a continuum of care that would meet MEDCON eligibility. Specifically, there is insufficient evidence to support a restorative treatment plan; she has been placed on and off profile on more than one occasion implying a Fitness for Duty/Return to Duty; and there is no valid LOD that either she or the medical point of contact (MEDPOC) have provided which would meet eligibility for MEDCON.

On 7 Nov 18, when the applicant's first MEDCON application was submitted, she did not have or provide adequate medical treatment notes that would qualify for MEDCON eligibility. ARC CMD contacted the MEDPOC regarding the lack of a treatment plan and the applicant then provided the medical notes she had at the time which was just after her first two prescribed physical therapy regiments had expired. No additional notes have been provided in her BCMR submission that would necessitate a consideration for this first MEDCON application. Furthermore, on 28 Nov 18, the LOD had reached 365 days from the date of diagnosis which would have made this initial application invalid. As a result, any additional application for MEDCON required a new LOD for a new diagnosis or a new LOD for an aggravation of the original injury.

On 21 May 19, when ARC CMD received the second application for MEDCON, it was noted her LOD was no longer valid and that, again, the applicant did not have a valid treatment plan. During the Administrative Review, ARC CMD requested updated medical notes as the attachments provided were right at 30 days prior to submission which would pose a problem during the Medical Review/Validation process. The MEDPOC submitted the physical therapy progress notes from 19 Apr 19 through 17 May 19 for the prescribed six (6) weeks of physical therapy to ARC CMD for review. Since the physical therapy regiment had finished up there was no restorative treatment plan that would meet eligibility for MEDCON. Additionally, since there was no aggravation of the original injury or a new LOD with a more definitive diagnosis for hamstring strain to meniscus tear, they were unable to accept the original LOD as it had exceeded 365 days. Also, the profile and LOD diagnoses do not match as the limited care that the applicant received was for the left knee meniscus tear and no longer for the hamstring strain.

It is important to note that her original profile expired on 23 Mar 19 which implies Fitness for Duty/Return to Duty which negates the validity of the LOD and thus requires a new one. The applicant, MEDPOC, and leadership team were notified that a new LOD would be required in order to meet eligibility for MEDCON and they were encouraged to initiate one and resubmit.

On 6 Dec 19, when ARC CMD received the applicant's third application for MEDCON, which included a recommendation for left knee arthroscopy with meniscectomy surgery scheduled for 9 Dec 19. However, the LOD submitted was again the original which was now well over two (2) years old. ARC CMD again recommended that a new LOD be initiated for the left knee meniscus tear, as recommended on the previous (the 2nd MEDCON application) that was disapproved. Additionally, after the applicant's profile expired on 17 Nov 19, which implies a Fitness for Duty/Return to Duty status, a new profile was initiated on 4 Dec 19 for a new diagnosis, but no new LOD was initiated.

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 28 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 AFPC/DPFA and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board determines that the documents provided by the applicant do not support a continuum of care that would meet MEDCON eligibility. Specifically, the Board finds that there is insufficient evidence to support a restorative treatment plan, that she has been placed on and off profile on more than one occasion implying a Fitness for Duty/Return to Duty, and finally there is no valid LOD that either she or the medical point of contact (MEDPOC) have provided which would meet eligibility for MEDCON. 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 (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2022-01722 in Executive Session on 21 Sep 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 8 Jun 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFA, dated 26 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 28 Jul 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.12.9.

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