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**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01861

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Line of Duty (LOD) Determination dated 17 Jul 06 be found in the line of duty (ILOD).

APPLICANT'S CONTENTIONS

His LOD was originally approved as ILOD on 4 Nov 06 by his wing commander (WG/CC). However, on 5 Dec 07, the LOD was altered via a pen and ink change to Not ILOD (NILOD). His back pain was determined as existed prior to service (EPTS) LOD Not Applicable (EPTS-LOD NA). There was no evidence to support the change and he only discovered the change on 15 Mar 22 when inspecting his medical records.

He was not informed of the change to an NILOD finding and was not given the opportunity to appeal the decision in accordance with DAFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON) and Incapacitation (INCAP) Pay*. The ILOD determination made on 4 Nov 06 was based on paid doctor fees, magnetic resonance imaging (MRI) images and physical therapy (PT). There is no medical evidence he had prior back issues and even if his back injury was EPTS, it would have been service aggravated (SA) making it ILOD. Pen and ink changes to an official record are highly unusual and the ILOD finding should be upheld.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a colonel (O-6) in the Air National Guard (ANG).

AF IMT 348, *Line of Duty Determination*, dated 17 Jul 06, shows the applicant had lower back (lumbar) pain. It stated the applicant noted he felt radiating pain along his belt line on 18 Jun 06 while deployed to Puerto Rico. The applicant indicated he informed the senior noncommissioned officer (SNCO) of his pain but did not seek medical evaluation or intervention. The applicant noted the pain origin may have been due to a C-130 aircraft ride in conjunction with poor mattress support at the deployed location. He presented to the medical group (MDG) for a LOD due to the chronic nature of his injury. On 8 Aug 06, the WG/CC recommended a finding of ILOD. On 22 Jul 07, the judge advocate (JA) non-concurred and recommended an EPTS-LOD NA finding, with note "See Legal Review." The Appointing Authority, the State ANG Commander, signature reflects 4 Nov 06; however, a pen and ink notation shows on 5 Dec 07 he concurred with the legal review and found the applicant's injury was EPTS – LOD NA. The ILOD finding is crossed out and initialed with the 5 Dec 07 date.

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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The applicant provides SF 600, *Chronological Record of Medical Care*, which shows he was seen at his military treatment facility (MTF) on 2 Aug 06, 15 Aug 06, 6 Sep 06, 23 Sep 06, 28 Sep 06 and 10 Feb 07 for an LOD injury of lower back. An MRI showed he had mild degenerative disc disease with small central disc protrusion at L5-S1. The SF 600 dated 10 Feb 07 noted the applicant was cleared from LOD without restrictions and he had no prior back injury since 1992.

On 13 Dec 21, ARPC/DPTT informed the applicant he was eligible for Reserve retired pay at age 60 (20-year letter).

On 5 Dec 22, the applicant's case was administratively closed per his 2 Dec 22 request for additional time to prepare a response to the advisory opinions.

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

AIR FORCE EVALUATION

NGB/SGPS recommends upholding the NILOD determination for the diagnosis of low back pain. Low back pain is a symptom and not a diagnosis. In accordance with AFI 36-2910, a clear distinction between the symptoms and the actual medical condition causing the symptoms is crucial in making an EPTS determination. An LOD determination is based upon the onset of the disease illness or injury process, not the existence of symptoms. EPTS conditions include chronic diseases, illnesses, injuries and illnesses or disease with an incubation period that would rule out a finding they were incurred during periods of active duty or inactive duty training. If the determination was EPTS, then the military medical officer must determine whether the condition was aggravated by military service. The applicant's MRI revealed mild degenerative disc disease, which is a chronic injury. There is no evidence the military aggravated his condition.

The applicant contended his lower back pain was caused by the C-130 aircraft ride to Puerto Rico or sleeping on a bad mattress. He experienced low back pain the first morning waking up in Puerto Rico on 18 Jun 06. However, the pain did not hinder the applicant from performing his duties and he did not seek treatment until 2 Aug 06, upon return to his home station. The applicant's MRI revealed mild degenerative disc disease with small central disc protrusion on L5-S1. There was no injury or specific event that would have accounted for military SA. The applicant was prescribed PT and continued follow-up care with his provider through 28 Sep 06. He completed his PT and was cleared from LOD without restrictions in Feb 07. The clinical note indicated the applicant possibly had a prior back injury noting no back injury since 1992.

It is outside the scope of NGB/SG to weigh in on the issue pertaining to the AF IMT 348 being changed. The AF IMT 348 indicates the Appointing Authority signed on 4 Nov 06 but the judge advocate (JA) completed on 22 Jul 07, then the finding updated on 5 Dec 07.

The complete advisory opinion is at Exhibit C.

NGB/AIPS recommends partial grant. There is no evidence of an error or injustice that would result in a changed LOD determination. The documentation submitted by the applicant and the applicant's medical records reviewed by SG clearly show his symptoms led to an MRI revealing a mild degenerative disc disease, which is a chronic condition, and there was no evidence the military aggravated the condition. The final determination of NILOD – NSA should be upheld based on the substantiating evidence.

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However, NGB/A1 recommends partially granting the use of the AF Form 348 from 8 Aug 06 to 5 Dec 07, the date the appointing authority readjusted his final determination from ILOD to NILOD. On 4 Nov 06, the Appointing Authority determined an ILOD determination. During this time, no notification was completed. On 22 Jul 07, the JA then nonconcurred and recommended EPTS LOD NA. On 5 Dec 07, the Appointing Authority overturned the original LOD determination from ILOD to EPTS-LOD NA per the legal review in pen and ink. The legal documentation was not provided in the AFBCMR case. The timeline from the lack of notification and the administrative process from the Wing is an injustice to the applicant.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 31 Oct 22 for comment (Exhibit E). In a response dated 2 Dec 22, he contends he needs to clarify his C-130 ride included hitting turbulence when he fell into a seat rail against his lower back. He also led the effort to unload baggage and other equipment. As the advisory stated, the pain did not prevent him from going to work. However, it failed to mention from the documents reviewed, he could not run, lift weights and the pain took his breath away and limited his normal routine. He thought the pain would go away but because it did not, he sought treatment at the base hospital. The advisory incorrectly points out in the last sentence that he had not injured his back since 1992. He entered service in 1992 via the Air Force Reserve Officer Training Corps (ROTC) program. Thus, his medical records begin as of this date. There is zero reference to any previous back injury removing the basis of EPTS. The LOD determination was changed in the most irregular manner and did not follow procedure to allow him due process.

According to a doctor with 15 years experience, an initial stress or injury may occur, causing acute pain that may be severe. The degenerative cascade is a slow process that typically continues for 10 to 30 years. Stiffness and limited mobility may occur immediately after the initial injury or stress to the disc. In many cases, there is no clear injury that causes the onset of symptoms. This means it is difficult to determine an exact diagnosis. The advisory focuses solely on the degenerative disc and nothing regarding the bulging disc, which can cause pain, pain into the legs, buttock and feet and can be caused by trauma to the back.

The injustice as admitted by NGB was discovered 16 years after it occurred. The improper or failed routing of the LOD is an error within the agency and should not be held against him. If it was invalid, the entire process should have been re-accomplished but the system did not discover the potential error and he received no notification, documentation or follow through. The LOD was signed on 4 Nov 06 and the notification of the ILOD finding was completed. The JA change of the LOD to NILOD is not applicable. Further, AFI 36-2910 states JA concurs or nonconcurs with the commander's findings and forwards the recommendation to the appointing authority. Making a medical determination of EPTS is outside of JA's expertise. In his case, there was no determination by a medical officer. There was also no legal review in his medical record or within the wing. The lack of due process has irrevocably harmed his entitlement under the LOD program. If notified, he could have appealed and could have proven his back injury was caused by the C-130 aircraft ride when he fell on board due to turbulence and hit his lower back on the seat rail. He was very young to have that level of degenerated disc. There was no avenue for him to make a distinction linking his back pain to his military duty. The back pain started then and is clearly SA at the very least. Additionally, the statement that all degenerative disc is EPTS is a ridiculous assumption. If he was notified of the NILOD, he could have appealed and provided more tests and diagnosis from physicians to make a professional determination, rather than simply basing his career benefit on one line from an MRI and the opinion of a military lawyer.

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He had plenty of evidence his back injury was at a minimum SA. Just because the MRI showed degenerative disc disease does not mean it was therefore EPTS. Some experts have proven it can be caused by wear and tear or aggravated by wear and tear by activities such as running, lifting weights and military activities. The MRI also pointed out a bulging disc, which is brought up by the advisory and quickly dismissed as non-causal. However, this can cause back pain and sciatic episodes into the extremities. He did not understand due process at the time.

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. The Board concurs with the rationale and recommendation of NGB/AIPS and finds a preponderance of the evidence substantiates the applicant’s contentions in part. Specifically, the applicant has provided sufficient evidence to show the timeline for the lack of notification and the administrative process resulted in an injustice to the applicant. However, for the remainder of the applicant’s request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant’s request. In this respect, the Board finds the applicant has not sustained his burden of proof his back injury was incurred or aggravated during a period of qualifying military service. While the pen and ink change on his AF Form 348 is highly unusual and the Board does not know why the applicant was not properly made aware of the NILOD finding, the Board does not find sufficient evidence to conclude the NILOD finding was incorrect. Therefore, in the interest of justice, the Board recommends correcting the applicant’s records as indicated below.
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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show the AF Form 348, *Line of Duty Determination*, dated 17 Jul 06, was eligible for in the line of duty (ILOD) benefits from 8 Aug 06 until overturned and determined not in the line of duty (ILOD) on 5 December 2007.

However, regarding the remainder of the applicant’s request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in the Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-01861 in Executive Session on 21 Jun 23:

Work-Product	, Panel Chair
Work-Product	Panel Member

Work-Product

Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 22 Jun 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/SGPS, dated 16 Sep 22.
- Exhibit D: Advisory Opinion, NGB/A1PS, w/atchs, dated 19 Oct 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Oct 22.
- Exhibit F: Applicant's Admin Close Request, dated 23 Nov 22.
- Exhibit G: Letter, AFBCMR, dated 5 Dec 22.
- Exhibit H: Applicant's Response, dated 14 Dec 22.

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

8/23/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by: USAF