



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-02319

COUNSEL: *Work-Product*

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Title 10 Active Duty (AD) MPA orders be amended to reflect he stayed on orders, with no break in service, until his Medical Continuation (MEDCON) orders started on 15 Aug 22.

APPLICANT'S CONTENTIONS

On 28 May 22, he should not have been released from his Title 10 AD MPA orders. Instead, he should have remained on orders until 15 Aug 22 when his Medical Continuation (MEDCON) orders started. He was injured while on active duty and believes he should have remained on orders until his injury is resolved and his doctor releases him to return to work. Even though his injury was determined to be In Line of Duty (ILOD), he had approximately an 80 day break from the time he was released from his active duty MPA orders until his MEDCON orders started and due to his injury, he was unable to perform his civilian job.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard master sergeant (E-7).

According to documentation provided by the applicant:

On 15 May 22, according to Order Number *Work-Product* dated 17 May 22, he was on Title 10 orders in support of Operation FREEDOM SENTINEL from 15 May 22 – 28 May 22.

On 1 Jun 22, according to AF Form 348, *Line of Duty Determination* (LOD), an LOD was initiated for Contusion of unspecified shoulder. According to Box 12, *Details of Death, Injury, Illness or History of Disease*, the injury occurred during a field training exercise on 27 May 22 when the applicant fell onto the roadway and injured his right shoulder. On 8 Jun 21, it became Interim and was finalized on 12 Jun 22 when the injury was found ILOD.

On 10 Aug 22, according to the Operative Report, dated 10 Aug 22, the applicant underwent surgery to repair a right rotator cuff tear.

On 15 Aug 22, according to Order number *Work-Product* dated 24 Aug 22, the applicant was placed on Title 10 MEDCON orders from 15 Aug 22 – 2 Dec 22.

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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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*. 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 Examinations 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 6.5. Pre-MEDCON. The purpose of Pre-MEDCON orders of 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 expiration of members' existing tour. (T1). 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. (T-1).

6.7. MEDCON Overview. 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.

6.8. Requesting MEDCON Orders. If the member's medical condition is not resolved prior to completion of the order or Pre-MEDCON order extension, MEDCON may be requested through the ARC CMD. Requests for MEDCON shall be electronically forwarded, with all supporting documentation from the servicing reserve or GMU or from the member's Individual Reservist Readiness Integration Organization/Individual Reserve Medical Office for AFRC Individual Mobilization Augmentee to the ARC CMD for validation and approval of the request and certification of the MEDCON days. (T-1). Note: All email containing personally identifiable information must be encrypted and organizational email box must be able to accept encrypted emails and encryption/signature certificates.

6.8.3. The AFBCMR, Secretary of the Air Force, or other authority may order correction of a separated member's records to provide for retroactive MEDCON orders. Such corrections may occur years after the member belonged to a particular unit and, moreover, the member's unit may no longer exist. In these cases, AFRC and AF/A1 shall work expediently to approve MEDCON orders pursuant to any AFBCMR direction to do so. An AFBCMR corrective order may substitute for the requirement for a Manpower MPA Man-day Management System (M4S) number where no M4S is available.

Air Force Instruction (AFI) 48-133, *Duty Limiting Conditions*, 7 Aug 20, 1.3. Duty Limitations. Duty limitations will be entered on the AF Form 469, *Duty Limiting Condition Report*. Duty

limitations are a type of profile which will indicate what the member cannot do based on his/her current occupational duties with resultant mobility and/or fitness restriction (FR) if appropriate.

AIR FORCE EVALUATION

AFPC/DPFA recommends partially granting the request for backdated MEDCON orders beginning on 10 Aug 22. Based upon the documentation provided by the applicant and review of the record, there is evidence of an error or injustice. The applicant was on Title 10 orders when the injury was sustained and on 7 Jun 21, he would have partially met the criteria for MEDCON as he had an Interim ILOD determination and was on a mobility restricting profile. However, he did not have a restorative treatment plan as he was being treated for what the medical providers believed was bursitis. It was not until 28 Jul 22, when an MRI revealed a rotator cuff tear that a recommendation for surgery occurred. Thus, between the time of the applicant's injury and the orthopedic evaluation on 28 Jul 22, the diagnosis was not established and therefore the plan of care could not be validated. On 5 Aug 22, he was notified that his rotator cuff tear surgery was scheduled for 10 Aug 22. This date, 10 Aug 22, not only represents the beginning of the restorative plan of care that could be validated in accordance with Air Force Instruction (AFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, paragraphs 5.6.1.1 and 5.5.1.7, but also reflects the date he met all other MEDCON eligibility criteria in accordance with paragraph 5.2. Specifically, it was on this date that he possessed a valid LOD, a mobility restricting profile, and a validated plan of care.

AFI 36-2910, paragraph 5.2. Eligibility, states 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 IAW AFI 48-123.

Additionally, paragraph 5.6.1, *MEDCON Validation*, subparagraph 5.6.1.1 states to validate the MEDCON request, the ARC CMD will use occupational medicine guidelines and peer-reviewed recovery timelines and coordinate directly with the member's treatment team to concur/nonconcur with the member's individual treatment plan and duration of the requested number of days for MEDCON orders.

Furthermore, IAW paragraph 5.5.1.7, medical documentation, including individual treatment plan that incorporates occupational medicine guidelines, peer-reviewed recovery timeline with expected duration of the impairment and certified by a credentialed military medical provider; Note: Medical documentation, including individual medical treatment plan, will be reviewed by ARC CMD to ensure consistency with occupational medicine guidelines and peer-reviewed recovery guidelines.

Regarding his statement that he should have remained on orders based on the fact that he was on an MPA order at the time of his injury, it should be noted that this is not mandatory for members that are on orders for 30 days or less. IAW Department of Defense Instruction (DoDI) 1241.01, *Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements*, Enclosure 3, paragraph 5(b), *AD for Medical and Dental Treatment When on Orders for a Period of 30 Days or Less*. An RC Service member who incurred a covered condition while serving on active duty for a period of 30 days or less may be ordered to, or continued on orders to receive appropriate medical and dental treatment for a covered condition in accordance with section 12322 of Reference (e) if the covered condition occurred while: (1) Serving on inactive duty training or (2) Traveling directly to or from such duty.

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 1 Mar 23 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. While the Board notes the recommendation of AFPC/DPFA to partially grant the applicant's request, the Board finds the preponderance of the evidence substantiates the applicant's contentions. The Board finds when an Air National Guard member is injured during a drill weekend or while performing Annual Training, in accordance with DAFI 36-2910, Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay standard practice is to place the member on Pre-MEDCON orders for up to 30 days to ascertain whether the injury renders the member unable to meet retention and mobility standards and to provide the time needed to obtain medical documentation and to process mobility restrictions. In the applicant's case, the Board determined he should have been placed on Pre-MEDCON immediately following the end of his AT as had his condition been correctly diagnosed, he would have ultimately met all the criteria for MEDCON within the prescribed Pre-MEDCON 30-day window. Therefore, 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 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 May 22 through 2 Dec 22.

CERTIFICATION

The following quorum of the Board, as defined in 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-2022-02319 in Executive Session on 26 Apr 23, 23 May 24, and 30 May 24:

| | |
|---------------------|--------------|
| <i>Work-Product</i> | Panel Chair |
| <i>Work-Product</i> | Panel Member |
| <i>Work-Product</i> | Panel Member |

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 31 Aug 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPFA dated 23 Feb 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 1 Mar 23.

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.

6/6/2024

X *Work-Product*

Work-Product
Board Operations Manager, AFBCMR
Signed by: USAF