

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02446

XXX

**COUNSEL:** XXXXx

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

He be placed on Medical Continuation (MEDCON) orders, with all pays and entitlements, for the period of 16 Sep 21 through 12 Dec 21.

### APPLICANT'S CONTENTIONS

He was unable to timely apply for MEDCON due to administrative issues involving the processing and adjudication of his Line of Duty (LOD) determination. While on active duty, MPA Title 10 orders, from 1 Jan 19 – 31 Mar 19, he incurred an injury that required continuation of care after completion of his active duty tour. Conservative care failed and surgery was required to resolve the injury. A pre-surgery consult was completed, and notification was sent that a finalized LOD for MEDCON was to be approved for approximately 87 days. His reserve medical unit (RMU) processed a LOD determination for the injury; however, the LOD was not submitted in the Electronic Case Tracker (ECT) until 7 Sep 21. While he completed his surgery on 17 Sep 21, his LOD was not finalized until 9 Dec 21 which prevented the issuance of MEDCON orders.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a currently serving Air Force Reserve major (O-4).

According to documentation provided by the applicant:

On 1 Jan 19, according to Reserve Order No XXXX, dated 29 May 18, the applicant was ordered to active duty, in accordance with Title 10 United States Code 12302, for the period of 1 Jan 19 – 5 Apr 19, in support of Operation INHERENT RESOLVE.

On 20 Feb 21, according to AF Form 469, *Duty Limiting Condition Report*, the applicant was placed on Mobility, Duty, and Fitness Restrictions for the period of 20 Feb 21 – 31 Dec 21.

On 7 Sep 21, AF Form 348, *Line of Duty Determination*, was initialized for an injury diagnosed on 23 Mar 19: right wrist injury of triangular fibrocartilage, tear of Right scapholunate ligament. On 22 Sep 21, it became Interim and was finalized on 9 Dec 21 when the injury was found In-Line-of-Duty (ILOD). Block 12, *Details of Death, Injury, Illness or History of Disease*, states the applicant was on Active Duty/MPA status for the period of 1 Jan 19 – 31 Mar 19. On 23 Mar 19, he was diagnosed with a tear of right wrist. He was initially evaluated by the Naval Medical Center, Camp Pendleton and then referred to a specialist for magnetic resonance imaging (MRI). He was scheduled for surgery on 17 Sep 21.

On 17 Sep 21, according to the *Operative Report*, the applicant underwent surgery for the right wrist.

On 23 Sep 21, according to the *Physical Therapy Prescription*, the applicant was prescribed physical therapy three times per week for two weeks.

On 12 Dec 21, according to his Chronological Record of Medical Care notes, the applicant was returned to duty and flying status.

For more information, see the applicant's submission at Exhibit A and the advisory at Exhibit C.

#### **APPLICABLE AUTHORITY/GUIDANCE**

According to the myPers website, *Initial MEDCON application (applicable to Air National Guard and Air Force Reserve)*, service members must consult with their Guard Medical Unit (GMU) or Reserve Medical Unit (RMU) Medical Point of Contact (MEDPOC) or HQ Readiness Integration Organization/Individual Reserve Medical Office (HQ RIO/IRM) prior to submitting an initial application. MEDCON eligibility requires a Line of Duty (LOD) determination and a finding by a credentialed military health care provider the Airman has unresolved health conditions requiring treatment and renders the Airman unable to meet retention or mobility standards IAW DAFMAN 48-123, *Medical Examinations and Standards*.

If the service member's medical condition is not resolved prior to completion of the current order or Pre-MEDCON order, MEDCON may be requested through the Air Reserve Component Case Management Division (ARC CMD). An initial MEDCON application must be submitted no later than 15 business days prior to the start of orders request date. Packages should only be submitted for a member showing a LOD condition(s) that will not be medically resolved within 30 days. Required documents: ARC CMD Letter of Acknowledgement; DD Form 2870, *Medical Disclosure Authorization*; AF Form 469, *Duty Limiting Condition Report*, with an Assignment Availability Code (AAC) of 31 or 37 and Mobility Restrictions greater than 31 days; Proof of Military Status; and AF Form 348, *Line of Duty (LOD) Determination*.

#### **AIR FORCE EVALUATION**

AFPC/DPFA recommends denying the applicant's request for backdated MEDCON orders for the period of 16 Sep 21 - 12 Dec 21. The member was profiled from 20 Feb 21 – 12 Dec 21 with Mobility Restrictions and would have met MEDCON eligibility for a portion of this period if he had a valid ILOD or Interim ILOD determination. On 22 Sep 21, he received a valid ILOD determination when his LOD became an Interim LOD with his immediate commander's signature. However, the applicant provided only his surgical note from his 17 Sep 21 surgery and a prescription for physical therapy (PT) for two – three times per week for six weeks. This limited medical documentation included no progress notes or additional treatment for review. This lack of documentation/information makes it difficult to validate the need for MEDCON. If the applicant has any medical notes for the initial PT prescribed and any additional modalities of care that extend beyond that, he is strongly encouraged to submit them for additional consideration. Unfortunately, based on the lack of documentation provided for review, there is insufficient evidence to grant the applicant's request.

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 17 Nov 22 for comment (Exhibit D), and the applicant replied on 10 Dec 22. In his response, the applicant states he has attached the documentation requested by AFPC/DPFA in their advisory. The documents provided include the required treatment, recovery, and rehabilitation notes in order to appeal

Item 5 of the advisory, an individual treatment plan approved by a credentialed military provider based on occupational medicine guidelines and peer reviewed recovery timelines that include the expected duration of the impairment – Not Met. This resulted in a denial of his MEDCON application.

The applicant's complete response is at Exhibit E.

### **ADDITIONAL AIR FORCE EVALUATION**

AFPC/DPFA, based on the documentation provided by the applicant in his response to their Advisory Opinion, dated 17 Nov 22, concludes there is evidence of an error or injustice. On 3 Sep 21, with the release of the Department of the Air Force Instruction (DAFI) 36-2910, *Line of Duty (LOD) determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, MEDCON eligibility guidance was updated. In accordance with paragraph 6.2.4, members with an Interim LOD and a finding by a credentialed military medical provider the member has a health condition requiring medical evaluation and treatment that renders the member unable to meet retention or mobility standards may apply for MEDCON.

On 22 Sep 21, when his immediate commander signed, it became an Interim ILOD and the applicant met the MEDCON eligibility criteria as specified above. Additionally, the applicant provided restorative treatment plan progress notes which shows he complied with his restorative treatment plan consisting of physical therapy 2 – 3 times per week for 10 weeks until he was released after his final physical therapy appointment on 2 Dec 21. He then continued his home exercise program until he was seen by the flight surgeon and returned to flight status on 12 Dec 21, at which point his MEDCON was terminated.

In summary, AFPC/DFPA recommends partially granting the applicant's request for MEDCON and all benefits and entitlements for the period of 22 Sep 21 through 12 Dec 21.

The complete advisory opinion is at Exhibit F.

### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 25 Jan 23 for comment (Exhibit G), 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 we note the conflicting advisory opinions prepared in this case; however, after thoroughly reviewing this application, the Board concurs with the rationale and recommendation of the AFPC/DPFA advisory opinion dated 23 Jan 23 and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the Board notes on 22 Sep 21, when the applicant's immediate commander signed the LOD, it became Interim. In addition, the Board finds the newly released DAFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, dated 3 Sep 21, which granted MEDCON eligibility with an Interim LOD determination, sufficient to justify granting the applicant's request for MEDCON for the period 22 Sep 21 through 12 Dec 21. 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. 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 22 September 2021 through 12 December 2021.

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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-02446 in Executive Session on 22 Feb 23:

, Panel Chair  
, Panel Member  
, Panel Member

The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 14 Jul 22.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFPC/DPFA, dated 10 Nov 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Nov 22.  
Exhibit E: Applicant's Response, w/atchs, dated 10 Dec 22.  
Exhibit F: Additional Advisory Opinion, AFPC/DPFA, dated 23 Jan 23.  
Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, 25 Jan 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.

**X**

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Board Operations Manager, AFBCMR