

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02851

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

She be placed Medical Continuation (MEDCON) orders for the period of 19 Feb 22 – 22 Jun 22 to include all pay and entitlements.

APPLICANT'S CONTENTIONS

She was released from MEDCON orders due to an incorrect Line of Duty (LOD) determination finding of Not in Line of Duty (NILOD) resulting in a break in MEDCON orders for the period of 19 Feb 22 – 22 Jun 22. She appealed the NILOD finding to the approving authority, the Air National Guard Readiness Center Commander (ANGRC/CC), who granted her appeal and awarded the finding of In Line of Duty (ILOD). As such, the break in MEDCON orders should be eliminated and she should be placed on MEDCON for the period of 19 Feb 22 – 22 Jun 22.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard (ANG) staff sergeant (E-5).

According to documentation provided by the applicant:

On 1 Jan 21, according to Order Number XXXXXXXX, dated 8 Oct 21, the applicant was placed on Title 32 USC 502 (f)(2)(a) orders for Full Time National Guard Duty – Operation Support for the period of 1 Jan 21 – 31 Dec 21.

From 1 Jan 22 – 18 Feb 22, according to Order Number XXXXXXXX, dated 23 Feb 22, the applicant was placed on Title 32 USC 502 (f)(2)(a) orders for the purpose of MEDCON.

On 2 Feb 22, according to her commander's memorandum, *Notification of Determination of Not In Line of Duty, Case # XXXXXXXXXX*, dated 2 Feb 22, she was notified the approving authority had determined her Malignant Neoplasm of Unspecified Site of Right Female Breast occurred Not In Line of Duty (NILOD), and she indicated she would submit new and significant evidence to the Appointing Authority within 45 days.

On 28 Feb 22, according to her memorandum for record, *Appeal of the Denial for Line of Duty Determination*, dated 28 Feb 22, the applicant appealed the NILOD determination stating in accordance with Department of the Air Force Instruction (DAFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, her illness was discovered and reported while she was on orders of a duration greater than 30 days and, as a result, there is an initial presumption the illness occurred In Line of Duty.

On 15 Jun 22, according to the ANGR/CC memorandum, dated 15 Jun 22, the applicant was notified her appeal was approved, and she was granted a LOD determination of ILOD.

On 23 Jun 22, according to Order Number XXXXXXXX, dated 30 Sep 22, the applicant was placed on State 32 USC 502 (f)(1)(b) and 32 USC 503 orders for the purpose of MEDCON.

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

AIR FORCE EVALUATION

AFPC/DPFA recommends granting the applicant's request. Based upon the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. The applicant was initially placed on MEDCON orders while undergoing care for her LOD condition until those orders were curtailed, based on LOD finding her disease process was NILOD, on 18 Feb 22.

On 15 Jun 22, the NILOD finding was overturned, and her condition was determined to be ILOD. She then reapplied and her MEDCON orders were restarted on 23 Jun 22. Had her initial LOD finding not have been found NILOD, she would have met all the MEDCON eligibility criteria during the time in question.

In accordance with Department of Defense Instruction (DoDI) 1241.01, *Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements*, dated 19 Apr 16, Enclosure 3, Section 3, *Appeal of Denial of in-LOD Status*. An Reserve Component (RC) Service member may appeal the denial of an in-LOD determination to an appellate review authority designated by the Secretary of the Military Department concerned or the Commandant of the USCG, in accordance with regulations prescribed by the Secretary of the Military Department concerned or the Commandant of the USCG. When the in-LOD determination is reversed as a result of this review: (1) The RC Service member's eligibility for medical and dental treatment, as provided in section 1 of this enclosure, will be reinstated immediately to include any medical and dental treatment rendered during the period of eligibility covered by the approved in-LOD finding.

Therefore, the recommendation is to approve the applicant's request for MEDCON and all benefits and entitlements for the period of 19 Feb 22 through 22 Jun 22.

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 26 Jan 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. The Board concurs with the rationale and recommendation of AFPC/DPFA and finds a preponderance of the evidence substantiates the applicant's contentions. Specifically, the Board finds that based upon the successful appeal of her LOD determination, in accordance with DoDI 1241.01, Enclosure 3, Section 3, her MEDCON eligibility be reinstated. 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 that for the period 19 Feb 22 through 22 Jun 22, she was placed on full time national guard duty – other than training, for the purposes of medical continuation in accordance with Title 32, U.S.C. § 502 (f)(1)(b).

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 2.5, considered Docket Number BC-2022-02851 in Executive Session on 26 Apr 23:

, 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 1 Nov 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, AFPC/DPFA, dated 23 Jan 23.
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 26 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

Board Operations Manager, AFBCMR