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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00199

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COUNSEL: NONE

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HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her deceased husband's records be posthumously corrected to reflect the following:

1. His Creutzfeldt Jakob Disease (CJD) be found in the line of duty (ILOD) **(Administratively Corrected)**.
2. He be retroactively placed on active-duty orders for Medical Continuation (MEDCON) from the date of his return from deployment in Jan 19 until the date of his death 23 Mar 21.

APPLICANT'S CONTENTIONS

Her deceased husband contracted a rare illness for which he was hospitalized in Jul 18 while serving on a deployment in Jordan. His symptoms persisted and he repeatedly sought medical care while deployed and upon his return. Despite documenting 21 new and ongoing health concerns on his post-deployment physical, he was released from active-duty service on 12 Feb 19. Her deceased husband tried to correct this error over the remaining 26 months of his life. However, his illness left him unable to work or maintain normal daily activities and his release from active duty left him without access to necessary military medical treatment. Tragically, her husband died on 23 Mar 21 from CJD.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The deceased service member is a former Air National Guard master sergeant (E-7).

According to the deceased service members DD Form 214, *Certificate of Release or Discharge from Active Duty*, he served on active duty from 5 Jul 18 to 13 Feb 19 in support of Operation INHERENT RESOLVE during the period 11 Jul 18 to 9 Jan 19.

On 23 Mar 21, the deceased service member passed away from CJD.

On 11 Feb 22, according to AF Form 348, *Line of Duty Determination*, provided by the applicant, the appointing authority found the service member's CJD in the line of duty (ILOD) and on 20 Apr 22, the approving authority non-concurred and deemed the deceased service member's

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CJD existed prior to service and was not attributed to military service or military service beyond the natural progression and deemed the condition not in the line of duty (NILOD).

On 16 Feb 23, ANGRC/CC overturned the deceased service member's NILOD decision and deemed his CJD as ILOD.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, dated 8 Oct 15:

5.1. Overview. The purpose of MEDCON is to authorize medical and dental care for members who incur or aggravate an injury, illness, or disease ILOD and to provide pay and allowances while they are being evaluated, treated for or recovering from a service-connected injury, illness or disease. ARC members may be entitled to MEDCON when they are unable to perform military duties due to an injury, illness or disease incurred or aggravated while serving in a duty status.

5.1.1. MEDCON orders shall begin when the condition renders the member unable to perform military duties (not necessarily when the injury or illness occurred, when the disease was diagnosed or when the member was released from active duty). (T-1)

5.2. Eligibility. 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.

AIR FORCE EVALUATIONS

NGB/A1PS does not hold equity or authority of service members who are on contingency orders effecting pre-MEDCON nor MEDCON orders. The death LOD appeal is found to be ILOD per ANGRC/CC thus granting the benefits this affords.

The complete advisory opinion is at Exhibit C.

AFPC/DPFA recommends partially granting the application and approve MEDCON for the dates of treatment of the ILOD condition with LOD for CJD. Care of this condition can be validated from 11 Feb 21 through 23 Mar 21. However, there is no further evidence, medical records or information given to recommend MEDCON for dates prior to 11 Feb 21.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS

The Board sent copies of the advisory opinions to the applicant on 30 May 23 for comment (Exhibit E) 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 deceased service member 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 in part. Specifically, there is sufficient evidence the deceased service member meets the criteria for MEDCON in accordance with AFI 36-2910 which is sufficient to justify granting active-duty orders for the period 11 Feb 21 thru 23 Mar 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. Should the applicant provide additional medical documentation, the Board would reconsider MEDCON for the remaining requested time period. Therefore, the Board recommends correcting the deceased service members 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 the DECEASED SERVICE MEMBER be corrected to show for the period 11 Feb 21 through 23 Mar 21, he was placed on active duty, for the purposes of medical continuation in accordance with Title 10, U.S.C. §12301(h).

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 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-2023-00199 in Executive Session on 25 Oct 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 4 Jan 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, NGB/A1PS, w/atchs, dated 24 Apr 23.
- Exhibit D: Advisory opinion, AFPC/DPFA, dated 22 May 23.
- Exhibit E: Notification of advisories, SAF/MRBC to applicant, dated 30 May 23.

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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.

3/19/2024

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Board Operations Manager, AFBCMR

Signed by:

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