

Work-Product

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

Work-Product

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-01242

Work-Product

**COUNSEL**

Work-Product

**HEARING REQUESTED:** YES

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**APPLICANT'S REQUEST**

He be placed on Medical Continuation (MEDCON) orders for the period of 2 May 21 through 4 Dec 21.

**APPLICANT'S CONTENTIONS**

In Mar 21, while on Title 10, temporary duty (TDY) orders to an overseas location he incurred a neck injury. He returned to his home of record (HOR) and was placed on 30 days temporary MEDCON orders. These orders stopped prior to him receiving all his medical treatment and his Line of Duty (LOD) determination was Not In Line of Duty. Subsequently, he had neck surgery and received 30 days of Incapacitation (INCAP) Pay. However, he went from 1 Jun 21 – 15 Oct 21 without pay. He was not able to return to his civilian job or work due to this injury. He appealed the NILOD determination which was then changed to In Line of Duty (ILOD). He still has not received military pay, basic allowance for housing (BAH), or points towards retirement. Additionally, he made an Inspector General (IG) complaint as his LOD paperwork was not completed in time and he should have never come off MEDCON orders.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 3 Mar 21, according to Order Number **Work-Product** dated 2 Mar 21, he was placed on Title 10 Non-Contingency MPA orders for a deployment to Greenland for the period 3 Mar 21 – 1 Apr 21. According to the *Statement of Duty*, attached to the orders, he certified he reported for duty on 10 Mar 21 and was released from duty on 2 Apr 21.

On 2 Apr 21, according to Special Order **Work-Product** dated 9 Apr 21, the applicant was placed on Title 10 MEDCON orders for the period of 2 Apr 21 – 1 May 21.

On 5 May 21, AF Form 348, *Line of Duty Determination*, was initiated. The informal LOD investigation showed the applicant was deployed on Title 10 orders when he experienced instances of vertigo with left arm numbness and was returned home on 2 Apr 21. On 5 Apr 21, he was diagnosed with: Left C5 radiculopathy secondary to HNP C4, C5. On 2 Sep 21, the LOD became Interim and was determined to be In Line of Duty (ILOD) by his immediate commander and the appointing authority. However, on 22 Sep 21, the approving authority's final determination was found to be NILOD-Not Due to Member's Misconduct. On 14 Oct 21, he appealed the NILOD

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determination and on 8 Jul 22, according to an AFPC/DPFA advisory opinion, dated 5 Jun 23, the applicant was notified by the appellate authority his LOD determination was found to be ILOD.

On 5 Aug 21, according to an IG Complaint, provided by the applicant, after he returned home on 2 Apr 21, he was put on “Temporary Medical Condition Title 10 orders to determine a treatment plan.” On 15 May 21, when he did not receive any military pay he was informed his LOD was not completed and his paperwork was initiated for INCAP Pay, which he received for the following dates:

1. 2 May 21 – 14 May 21; INCAP Pay received on 4 Jun 21.
2. 16 May 21 – 30 May 21; INCAP Pay received on 9 Jun 21.
3. 1 Jun 21 – 15 Jun 21; INCAP Pay received on 23 Jun 21.
4. 16 Jun 21 – 15 Jul 21; INCAP Pay received on 30 Jul 21.
5. 16 Jul 21 – 30 Jul 21; scheduled to receive on 11 Aug 21.
- 6.

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*:

In accordance with paragraph 6.1, 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. Members who are referred into DES while on AD may be retained on AD while processing through the DES IAW DoDI 1332.18. However, members without an active treatment plan will not be maintained on MEDCON solely for the purpose of entry in DES. If the member requires further treatment and has a restorative care plan, they may reapply for MEDCON while processing through the DES.

IAW paragraph 6.2. 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. Members who decline or are found ineligible for MEDCON orders may be eligible for and elect INCAP Pay in accordance with paragraph 6.12. Members with a ILOD have the choice to apply for MEDCON or INCAP Pay. Commanders shall not direct either avenue.

Paragraph 7.1.1, states the purpose of INCAP Pay is to authorize pay and allowances to those members who are not able to perform military duties to include light duties not associated with their Air Force specialty code, because of an injury, illness or disease incurred in the LOD; or to provide pay and allowances to those members who are able to perform military duties but experience a loss of earned income as a result of an injury, illness or disease incurred in the LOD. IAW paragraph 7.2, the initial request for INCAP Pay eligibility requires at a minimum an interim LOD for the initial request for up to 6 months. An extension beyond 6 months requires a final LOD determination of ILOD. In addition, a treatment plan by a credentialed military medical provider that annotates the member is unable to perform their military duties, or if member is able to perform military duties, member must demonstrate a loss of civilian earned income. For ARC cases, when there is evidence to believe the LOD determination appears to be contrary to the evidence, the information will be shared with the wing commander for consideration. When

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appropriate, the wing commander should change the determination. When a determination is changed from ILOD to NILOD, INCAP Pay requests shall be suspended or denied.

IAW paragraph 7.2.1. Unable to Perform Military Duties. A member, who is unable to perform military duties including light duties outside the member's Air Force Specialty Code, as determined by a military medical authority and the member's immediate commander, due to an injury, illness or disease incurred or aggravated ILOD, is eligible for full pay and allowances (including incentives and special pays to which entitled, if otherwise eligible) in accordance with paragraph 7.2, and less any civilian earned income the member has, regardless of type of duty status. If there is no civilian income, there is no offset of monies and member is entitled to full INCAP Pay.

IAW paragraph 7.3, Program Responsibilities. The member: will provide the INCAP Pay PM with all required documentation every 30 days while applying/receiving INCAP Pay; submits medical treatment plan; submits copies of all medical treatment received to GMU/RMU; submits monthly official payroll (or tax returns) documentation from the civilian employer if claiming loss of civilian earned income to the wing finance office or reserve pay office; submits employer or self-employment information; reports all changes in medical and/or financial status immediately to the unit commander and INCAP Pay PM to prevent possible recoupment of overpayment; member will initiate the AF Form 1971, *Certification for Incapacitation Pay*, within 30 calendar days of the requested INCAP period. Member will acknowledge personnel, financial entitlements, and medical briefings.

IAW 7.5. Termination of INCAP Pay. Termination of INCAP Pay will be coordinated through the member's immediate commander, INCAP Pay Manager, Reserve Pay Officer or ANG Wing Finance and the ARC CMD (if applicable). Mandatory Termination of INCAP Pay. INCAP Pay shall be terminated on the earliest date when one of the following actions occurs: The member declines INCAP Pay; The member's LOD determination was found to be NILOD-Due to Member's Misconduct or NILOD-Not Due to Member's Misconduct.

**AIR FORCE EVALUATION**

AFPC/DPFA recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant suffered multiple episodes of vertigo with left arm numbness while he was deployed and was returned home where he was referred to the Albany Medical Center by the Naval Branch Health Clinic. An magnetic resonance imaging (MRI) was performed, which revealed herniated discs at C4-C5 that compressed the left forearm. He was prescribed a cervical traction kit as the first step in treatment. However, he did not provide any treatment notes leading up to surgery or treatment notes for post-surgical care. The only medical note provided was a surgical note, dated 13 Aug 21, for a reconstruction/fusion of C4-C5.

In order to be eligible for MEDCON, the applicant would have to meet the eligibility criteria in accordance with AFI 36-2910 which includes: a copy of the orders covering the period in which the injury, illness or disease was incurred; an interim or finalized LOD determination of ILOD, a completed AF Form 469, *Duty Limiting Condition Report* with a Mobility Restriction; a medical evaluation by a credentialed military medical provider that describes why the Airman is unable to meet retention or mobility standards; and an individual treatment plan approved by a credentialed military provider.

On 3 May 21, an AF Form 469, reported he was placed on profile with Mobility Restrictions for the time period 3 May 21 – 4 Dec 21 for cervical radiculopathy. Additionally, a LOD was initiated

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on 5 May 21, became Interim ILOD on 2 Sep 21, but was found in the finalized determination to be NILOD. The applicant appealed the NILOD decision and on 8 Jul 22, the appellate authority reversed this decision and found it to be ILOD. However, the only treatment note provided was a surgical note, dated 13 Aug 21, for C4-C5 anterior cervical reconstruction, interbody fusion cage, allograft, and plate placement on C4-C5. No additional medical treatment notes were provided for the initial assessment of care which led to the surgery, or post-surgical care. These notes are necessary to substantiate MEDCON eligibility from 2 Sep 21 – 4 Dec 21.

The applicant states he received INCAP Pay for the period of 2 May – 30 Jul 21. He also submitted an INCAP Pay request for the period of 1 Jun 21 – 15 Oct 21. If he is approved for this additional INCAP Pay request, he would not be eligible for MEDCON until 16 Oct 21 as he cannot receive both MEDCON and INCAP Pay concurrently. In this case, in order for him to be considered for MEDCON for the period of 16 Oct 21 – 4 Dec 21, he is encouraged to provide treatment notes for that time period.

In summary, they recommend denying his request for MEDCON for the period of 2 May 21 – 4 Dec 21 as the applicant did not provide sufficient medical treatment notes to validate the need for MEDCON and he has already received INCAP Pay for the period of 3 May 21 – 30 Jul 21. However, if the applicant did not receive INCAP Pay for the period of 1 Jun 21 – 15 Oct 21, he may be entitled to MEDCON from 1 Jun 21 – 4 Dec 21 if he can provide treatment notes that demonstrate a restorative treatment plan as previously discussed. Or, if he has received INCAP Pay through 15 Oct 21, then starting 16 Oct 21 he may be eligible for MEDCON through 4 Dec 21 if he can provide treatment notes.

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 12 Jun 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 not 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 does not substantiate the applicant’s contentions. The Board determines the documents provided by the applicant do not support a continuum of care that would meet MEDCON eligibility. Specifically, the Board finds there is insufficient evidence of medical treatment notes, to include a restorative treatment plan, to validate the need for MEDCON. In addition, the Board finds the applicant has already received INCAP Pay for a portion of the requested MEDCON period, and in accordance with DAFI 36-2910, members cannot receive both INCAP Pay and MEDCON concurrently. Therefore, the Board recommends against correcting the applicant’s records.
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 Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

**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-2023-01242 in Executive Session on 27 Sep 23:

*Work-Product* [redacted] Panel Chair  
*Work-Product* [redacted] Panel Member  
*Work-Product* [redacted] Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 15 Mar 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFA, dated 5 Jun 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Jun 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.

1/24/2024

X *Work-Product* [redacted]

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*Work-Product* [redacted]  
Board Operations Manager, AFBCMR  
Signed by: *Work-Product* [redacted]