RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXX

DOCKET NUMBER: BC-2023-01405

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her official military personnel record be amended to reflect her 2 Aug 16 injury occurred in the line of duty (ILOD).

APPLICANT'S CONTENTIONS

Her medical records state her injury occurred while she was on annual tour from 1 Aug 16 through 5 Aug 16.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve master sergeant (E-7) awaiting retired pay at age 60.

On 1 Jun 13, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States,* the applicant entered the Air Force Reserve.

According to AF Form 938, *Request and Authorization for Active Duty Training/Active Duty Tour* (Reserve Order XXXXX), dated 12 Apr 16, provided by the applicant, she was called to active duty for the purpose of annual training for the period 1 Aug 16 – 5 Aug 16.

On 9 Aug 16, according to medical records provided by the applicant, she was seen by a civilian medical provider and assessed for altered mental state, headache, speech abnormality, and R/O [rule out] transient ischemic attack, with addendum note, "MRI positive for stroke according to [civilian medical provider]."

On 24 Aug 16, according to medical records provided by the applicant, she was seen by a civilian medical provider for follow-up care, and assessed for altered mental state, headache, speech abnormality, R/O glioma [malignant], and cerebral vascular accident, with note, "prelim report of the MRI of brain on 8/9/16 that was ordered showed a small left frontal lobe cortical lesion near the vertex that suggest a subacute infarction. The radiologist suggests 6-8 week f/u MRI to rule out small glioma."

On 11 Sep 16, according to email correspondence provided by the applicant, her unit commander communicated with relevant organization representatives regarding the applicant's ILOD process.

On 22 Sep 16, according to email correspondence provided by the applicant, she communicated with her organization's medical representative regarding her ILOD process.

On 5 Nov 16, according to Standard Form (AF) 600, *Chronological Record of Medical Care*, provided by the applicant, she was seen by a military medical provider, with notes reflecting,

"…will present case to DAWG [Deployment Availability Working Group] meeting for LOD and ME [Medical Evaluation] board. Given a profile on 11-5-16…"

On 15 Feb 17, according to SF 600, provided by the applicant, the applicant's record was reviewed. Notes reflect, "…No LOD in place as of yet…Member's diagnosis is a duty limiting condition (code 37) and the member should not be allowed to participate in any pay or point gaining activity until the disqualifying condition has been removed or an approved waiver is received from AFRC/SG IAW AFI 48-123, 10.1 & IAW AFI 36-2254, 1.6.3..."

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

AIR FORCE EVALUATION

BCMR Medical Advisor found insufficient evidence to support the applicant's request for a favorable ILOD finding.

The applicant is requesting to favorably find an ILOD status for what she states is an injury that occurred on 2 Aug 16 while on annual tour from 1 Aug 16 through 5 Aug 16. Furthermore, in her application, she went on to state, 'My medical records state that (sic) injury occurred while on annual tour.'

Since parts of the medical record indicate various diagnoses, this medical advisor offers the definitions and variances between them. A transient ischemic attack (TIA) is when there is a temporary (transient) lack of blood flow to part of the human brain. Without blood flow, the brain cells malfunction and start to die (ischemia). Often shortened to TIA, a transient ischemic attack is a medical emergency that is very similar to an ischemic stroke. The symptoms of the two are the same, but TIA symptoms go away within 24 hours and most go away in minutes. A stroke, on the other hand, is when something blocks blood supply to part of the brain (ischemic stroke) or when a blood vessel in the brain bursts (hemorrhagic stroke). In either case, parts of the brain become damaged or die. A stroke can cause lasting brain damage, long-term disability, or even death versus the transient/short-term nature of a TIA. Lastly, a glioma is a type of brain or spinal tumor that originates from glial cells; cells that help support the function of the other main brain cell type, the neuron. Often, these tumors can be cancerous.

This case involves looking for definitive evidence that some sort of adverse physical event occurred while the applicant was in a bona fide duty status. The applicant having been assigned to official duty during the first five days of Aug 16 is not at all in question for the orders for such duty were submitted with the application. However, despite a paucity of post-duty dated medical clinic encounters, the evidence that the applicant had a particular event at that particular time remains to be proven.

From the applicant's own words, she reports waking up on the second day of her duty with a deficit/difficulty in communication skills of the inability to speak and or write which were resolved by the next day. Her initial time of seeing a medical provider was seven days after her claimed adverse physical event and four days after her duty orders ended. Additionally, all reported physical symptoms were resolved for six days prior to her first seeking medical care. At that first clinic visit on 9 Aug 16, she reported feeling fine to drive, 'like she could process and physically act – just not speak or write.' Her reasoning for not seeking medical care on 2 Aug 16 was because of being in Montgomery on military orders. This advisor remains unclear as to her stated reason for not seeking emergent care on 2 Aug 16 when being on military orders in a big city like Montgomery, where she would have easy and multiple accesses to an emergency care facility. Nonetheless, her entire chain of events was (as presented in the records) currently based upon her self-reporting a historical summary of a TIA or stroke-like event.

There was no actual definitive evidence that her historical reporting was accurate. Any such adverse physical issues were completely resolved by the time she first sought treatment and was evaluated.

In addressing the issue of a stroke, this advisor directs the reader to the addendum statement of 'MRI positive for stroke according to [civilian medical provider].' There was no further mentioning of [civilian medical provider] nor any radiological reports indicating such a diagnosis which occurred one week prior. Additionally, although noted for a referral and further testing, there were no consultation results from either cardiology or neurology nor results from another MRI that was scheduled for 25 Aug 16. Lastly, although listed as a rule out, no evidence existed pertaining to the presence of any sort of brain tumor. Although it was documented that she was to bring in more information (presumably from civilian medical providers) to the UTA [Unit Training Assembly] in Dec 16, such additional evidence was absent from the submitted records.

The burden of proof is placed on the applicant to submit evidence to support her contention/request. The evidence she did submit was assessed as lacking a definitive nature and timeline of events in proving such a condition occurred while in a duty status. In no way is this advisor opining that the applicant's reported summary to a healthcare provider [well after her orders ended] were of a fictitious nature, but a self-identified historical recollection of brief physical symptoms obtained in the current setting of normal physical parameters is not sufficient to prove prior occurrence. There was ample evidence of the applicant reporting and stating a chronology of events; however, such self-reporting and self-stating post-facto lacks the evidentiary proof of a timed occurrence. Therefore, case documents do not support her request for an ILOD finding.

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 29 Dec 23 for comment (Exhibit D) and the applicant replied on 22 Jan 24. In her response, the applicant provided the names and position titles of individuals she communicated with regarding her LOD request. She contended doctors have not been able to determine what caused her cerebral infarction even today in 2024. She provided an article from the American Stroke Association that notes "1 of 3 ischemic strokes are classified as cryptogenic, meaning the cause is unknown."

In the memo discussion, the doctor did confirm that symptoms of TIA and an ischemic stroke are the same. The doctor also said that brain cells start to die in both cases leading to some brain damage. The initial diagnosis was made by brain damage noted by MRI findings.

During the discussion, the advisor made clear to note not understanding why she did not seek emergent care on 2 Aug when on military orders in a big city like Montgomery where she would have easy and multiple accesses to an emergency care facility. First, she had only one F.A.S.T. [Face, Arms, Speech, Time] symptom. At the time, she dismissed the severity of her symptom thinking it was related to other issues at the time. She thought it was related to stress, possible dehydration, and a headache that day. Due to the lack of emergent awareness, she was not sure where to go for treatment. A big city does mean many options including walk-in clinics and hospitals. Additionally, the military members she would ask for guidance were deployed.

She reported her condition and requested an LOD from her chain of command. Thirty-nine days had elapsed since the event, 33 days since she became aware of the diagnosis, and the first duty day for a traditional reservist. According to Department of the Air Force Instruction (DAFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, paragraph 1.6.8.4., Air Force Reserve members have up to 180

days after completion of duty status to report their medical conditions for an LOD determination. To her knowledge, no LOD was ever initiated nor was an investigation ever conducted. Obviously, she now knows this is not in accordance with the regulations. Furthermore, she was constantly told that a fit-for-duty was her only option even though medical did agree she was on duty during the medical event.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was not timely filed.

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale of the BCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. While there is no question regarding the applicant's duty status from 1 Aug 16 through 5 Aug 16, or her medical condition/diagnosis first identified by her civilian medical provider on 9 Aug 16, there is no definitive evidence the medical condition occurred while she was in a duty status. The applicant did not identify whether she reported her symptoms to her military leadership, at the time of occurrence, while she was in a duty status. Additionally, the Board finds the applicant's reason for not seeking medical treatment for her symptoms, until a week later, unconvincing. Finally, while the applicant introduces email communication regarding the initiation of the ILOD process, she did not provide any additional documentation that reflects the status/outcome of that process to suggest error or injustice. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and 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 application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2023-01405 in Executive Session on 21 Feb 24:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 5 Apr 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, BCMR Medical Advisor, dated 15 Dec 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Dec 23.
Exhibit E: Applicant's Response, w/atchs, dated 22 Jan 24.

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