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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-02107

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Line of Duty (LOD) determination be changed from Not In Line of Duty (NILOD) to In Line of Duty (ILOD).

APPLICANT'S CONTENTIONS

His LOD was not properly adjudicated per AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP)*. After his LOD determination was finalized, he was never contacted, nor was his LOD determination discussed with him as to what was decided or what options were available to him. This correction needs to occur in order for him to obtain medical treatment or a disability rating due to an injury sustained while on active duty.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard (ANG) technical sergeant (E-6).

While serving as an Air Force Reserve (AFR) technical sergeant, on 26 Mar 21, according to AF Form 348, *Line of Duty Determination*, document provided by the applicant, a LOD was initiated for shoulder pain for one year – MRI result Syrinx from T1 -10. Block 10 reflects treatment was first provided on 15 Mar 19. Block 12, *Details of Death, Injury, Illness, or History of Disease*, states "Conducting mock fitness test in Mar 19, began to experience sharp pain in right shoulder. Conducted PT with no improvement, therapist recommended MRI. Multiple imaging conducted, MRI 24 Sep 20 result in thoracic syrinx from T1-T10."

On 28 Aug 21, the AF Form 348 provided by the applicant, shows his immediate commander recommended a Formal LOD Determination.

On 30 Sep 21, according to Reserve *Work-Product* dated 6 Oct 21, the applicant was honorably discharged from the AFR and was sworn in to the <state> ANG, effective 1 Oct 21.

On 24 Feb 22, according to AF Form 261, *Report of Investigation Line of Duty and Misconduct*, the investigating officer, in Block 10g, *Remarks*, states "There is no documentation in the medical notes providing clear and unmistakable evidence this injury was a direct result of activities that occurred during the mock physical fitness training test in March 2019. Records show damage to the right shoulder area, which is likely causing pain, but it cannot be determined that the injury

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was sustained while completing a specific exercise during the mock test.” Block 11, *Findings*, reflect Not In Line of Duty – Not Due to Own Misconduct.

On 10 Mar 22, according to AF Form 348, the appointing authority stated they have appointed an investigating officer to conduct a formal LOD investigation.

On 22 Apr 22, according to AF Form 261, Block 15, *Final Approval*, reflects “Not ILOD – Not Due to Own Misconduct.”

According to AF Form 348, dated 26 Mar 21, Block 28, *Medical Reviewer Recommendation*, reflects “EPTS, Not SA = NILOD.” Block 30, *Legal Review/Recommendation*, reflects “Concur with Appointing Authority and SG and recommend a finding of NILOD – Not due to Members Misconduct.

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)*, 3 Sep 21:

1.1. The Line of Duty (LOD) Determination and its Objective. An illness, injury, disease or death sustained by a member while in a qualified duty status is presumed in the line of duty (ILOD). The burden of proof is with the Department of the Air Force to overcome the presumption. There are different standards of proof for the Department of the Air Force to overcome presumption based on order duration (see paragraph 1.9 and Table 1.1). Members must provide timely medical documentation that the illness, injury, disease or death that occurred while in that duty status. Requested medical documentation should be limited to relevant information to reasonably identify the initial condition for which the LOD determination is being requested; this can include an initial diagnosis, treatment plan, or note from provider describing the condition. A LOD determination is a finding made after an informal or formal investigation into the circumstances of a member's illness, injury, disease, or death. The LOD finding determines: (1) whether or not the illness, injury or disease was incurred in a qualified duty status, EPTS, and if an EPTS condition was aggravated by military service; (2) whether or not the illness, injury, disease or death occurred while the member was in an unauthorized absence; and (3) whether or not the illness, injury, disease or death was due to the member's misconduct or willful negligence. A LOD determination protects the interests of both the member and the United States government.

1.8. LOD Determinations Findings. One of the following findings will be applied to the member's illness, injury, disease, or death:

1.8.1. ILOD: The illness, injury, disease, or death was incurred or aggravated while the member was in an authorized duty status and was not the result of the member's misconduct.

1.8.2. Existed Prior to Service-Service Aggravation (EPTS-SA). A condition is aggravated in a qualified duty status when there is a worsening of the condition over and above natural progression, caused by trauma or the nature of military service. Natural progression is the course an illness, injury or disease would take over time, regardless of military service.

1.8.3. NILOD, Not Due to Own Misconduct.

1.8.3.2. (Total Force). Existed prior to service-not service aggravated (EPTS-NSA). An informal LOD determination must be accomplished in every case where a NILOD-EPTSNSA finding is made. This requirement applies to both RegAF/RegSF and ARC personnel. A NILOD-EPTS-NSA finding can only be made after a thorough review of the evidence determined that the member's illness, injury, or disease existed prior to the member's entry into military service with any branch or component of the Armed Forces or current periods of such service, and was not service aggravated. See **Table 1.1** for standards of proof.

Table 1.1. Standards of Proof.

Duration of Member's Orders	In Line of Duty	Not in Line of Duty-Not Due to Member's Misconduct-EPTS-Not Service Aggravated	Not in Line of Duty - Due to Member's Misconduct
30 days or less	Preponderance of the Evidence	Preponderance of the Evidence	Clear and Convincing Evidence
Greater than 30 days	Preponderance of the Evidence	Clear and Unmistakable Evidence	Clear and Convincing Evidence

3.2.5. Appeal of the Final LOD Determination. Overview. A final LOD determination may be appealed once by the member or next of kin (if the member is deceased or incapacitated) if the following requirements are met: The appellant must: Provide the appeal in writing for any reason to the LOD PM; Submit the written appeal within 30 days of receipt of the LOD determination (exception for death and next of kin can be made to the timeline); and If there is new and compelling evidence (see glossary for definition) that was not previously considered, but is now present and indicates new information relevant to the appeal, attach the LOD report that is being appealed. (T-1). The member's statement alone or disagreement with the determination does not constitute new evidence. New information relevant to the appeal may include, but is not limited to: **3.2.5.2.3.1**. The member alleges a mistake of law or policy; The member includes evidence to substantiate allegations of fraud, misrepresentation or abuse of discretion during the LOD process.

5.1. Formal LOD. A formal LOD determination is required to support a determination of NILOD due to member's misconduct or NILOD-not due to own misconduct by reason of unauthorized absence. A DD Form 261 is used to supplement AF Form 348. For ARC, see **paragraph 3.2.2** for Informal LOD process which leads into formal LOD Processing from the approval/appointing authority. For ARC, all formal LOD determinations require review by the ARC LOD Determination Board. The immediate commander may also recommend a formal LOD determination when the member's illness, injury, disease, or death occurred: Under strange or doubtful circumstances; or Under circumstances the commander believes should be fully investigated.

Table 3.1. Processing Timelines for LOD Determinations.

Member is:	Agency	Action Completed Within
ARC (see Note 2)	Formal LOD Process (see Note 4)	
	Unit commander	4 Workdays (See Note 3 and Note 4)
	ANG: State Air Surgeon	7 Workdays
	Investigating Officer	30 Workdays
	Wing Legal Advisor	30 Workdays
	Appointing Authority	10 Workdays
	ARC LOD Determination Board and Approving Authority	20 Workdays (see Note 2)
	LODPM	1 Workday (see Note 3)
	Immediate Commander	4 Workdays
	LODPM	1 Workday
	If member appeals- a written appeal request	30 Workdays

Note 4. If a LOD determination results in initiation of a formal investigation, the formal investigation processing timeline will have another 90 days (starting with the investigating officer through the ARC LOD Determination Board) to complete the formal investigation.

AIR FORCE EVALUATION

AFRC/SG recommends denying the request. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. On 22 Apr 22, after a complete and accurate adjudication during the Formal Line of Duty Determination process, the applicant’s case was found Not In Line of Duty. If the applicant requires ongoing medical treatment or disability processing, that would now occur via his ANG medical unit.

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 23 Jan 24 for comment (Exhibit D), and the applicant replied on 7 Feb 24. In his response, the applicant contended numerous instances where errors were made during the processing of his LOD. In addition, he asserts that his LOD is in error as the Air Force failed to adhere to the processing timelines per AFI 36-2910. Finally, he contends due to the lack of communication from the LOD Program Manager, he was not notified of the finalization of his LOD or provided an explanation or his rights to appeal the decision in direct violation of AFI 36-2910, paragraph 3.2.5.2.3.1.

The applicant’s complete response is at Exhibit E.

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 the Board notes the recommendation of AFRC/SG against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant’s contentions in part. Specifically, the Board notes the LOD processing delays due to the applicant’s transfer between Air Force components, more likely than not, resulted in the applicant not being notified of the final LOD determination in a timely manner, in which to allow him the opportunity to appeal the LOD determination. 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.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show the applicant be allowed to submit an appeal of his Not in Line of Duty (NILOD) determination initiated on 26 Mar 21 in accordance with AFI 36-2910.

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-2023-02107 in Executive Session on 12 Mar 24:

<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 21 Jun 23.

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- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFRC/SG, dated 16 Jan 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 23 Jan 24.
- Exhibit E: Applicant's Response, w/atchs, dated 7 Feb 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.

6/3/2024

X

Work-Product

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Board Operations Manager, AFBCMR

Signed by

Work-Product