



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-02121

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Line of Duty (LOD) Determination be changed from "Not In Line of Duty (NILOD) - Not Due to Own Misconduct" to "In Line of Duty (ILOD)."

APPLICANT'S CONTENTIONS

In Mar 20, while serving on Title 10 active duty orders in support of USSTRATCOM from Oct 17 – Oct 20, he was diagnosed with a rare blood cancer called Polycythemia Vera. The NILOD determination was unjustly decided on by the Air National Guard (ANG) without any evidence showing the medical condition occurred outside of military service. He is a veteran of the war in Afghanistan and was exposed to toxic burn pits and these toxic burn pits could be the source of the rare blood cancer. Furthermore, the Department of Veterans Affairs (DVA) determined his condition is directly related to military service and awarded a service connection disability rating of 60 percent backdating the rating to when he was released from his Title 10 active duty orders on 30 Oct 20.

He has served 15 years and only has five years remaining before he completes 20 years of service. His medical condition could end his career in the ANG and he does not want to be forced out with nothing because of a medical condition that occurred while on active duty.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 5 Sep 08, according to the applicants DD Form 214, *Certificate of Release or Discharge from Active Duty*, dated 5 Sep 08, he was honorably discharged from the Regular Air Force and was credited with four years of active service.

On 28 Sep 18, according to the applicants DD Form 214, dated 28 Sep 18, he was released from active duty. Block 18, *Remarks*, reflects he served on Active Duty for Non-Contingency MPA tour in support of USSTRATCOM in accordance with Title 10 USC 12301(d) from 2 Oct 17 to 28 Sep 18.

On 30 Sep 19, according to the applicants DD Form 214, dated 30 Sep 19, he was released from active duty. Block 18, *Remarks*, reflects he served on Active Duty for Non-Contingency MPA tour in support of USSTRATCOM in accordance with Title 10 USC 12301(d) from 1 Oct 18 to 30 Sep 19.

**AFBCMR Docket Number BC-2023-02121
CUI//SP-MIL/SP-PRVCY**

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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On 30 Oct 20, according to the applicants DD Form 214, dated 30 Oct 20, he was released from active duty. Block 18, *Remarks*, reflects he served on Active Duty for Non-Contingency MPA tour in support of USSTRATCOM in accordance with Title 10 USC 12301(d) from 2 Oct 19 to 30 Sep 20. He served on Active Duty for Medical Continuation (MEDCON) in accordance with Title 10 USC 12301(d) from 1 Oct 20 to 30 Oct 20.

According to AF Form 348, *Line of Duty Determination*, dated 23 Jul 20, provided by the applicant, reflects the following:

On 19 Mar 20, Block 12, *Details of Death, injury, Illness or History of Disease*, reflects that while on MPA orders from 2 Oct 19 – 30 Sep 20 member was being evaluated for hypertension and WBC count was high, so he was immediately referred to hematology for evaluation where a subsequent bone marrow biopsy demonstrated JAK2 V617F positive for chronic myeloproliferative neoplasm, favor polycythemia vera. Hematologist detailed he is low risk for the disease given his age, lack of clotting and JAK2+ classification.

On 14 May 21, his immediate commander, recommended a LOD determination of ILOD, with the wing staff judge advocate’s concurring on 25 May 21.

On 11 Jun 21, the appointing authority found the LOD determination to be ILOD.

On 23 Sep 21, the approving authority concurred with the ARC LOD Determination Review Board’s recommendation found the final LOD determination to be NILOD-Not Due to Member’s Misconduct, EPTS-NSA.

On 14 Aug 22, according to the memorandum, *Line of Duty Determination Appeal Decision <applicant’s name>*, document provided by the applicant, the appellate authority, the Air National Guard Readiness Center Commander (ANGRC/CC), denied the applicant’s appeal and the final decision remains NILOD-Not Due to Own Misconduct.

On 11 Jan 24, a Point Credit Summary Report (PCARS) from the Military Personnel Database System (MilPDS) reflects he has 14 years, 9 months, and 9 days of satisfactory service along with the following:

R/R Year	AD	IDT	ECI	MBR	Retirement	Satisfactory Service (Year)
21 Jan 17 – 20 Jan 18	208	24	46	15	293	010000
21 Jan 18 – 20 Jan 19	363	0	11	15	365	010000
21 Jan 19 – 20 Jan 20	364	0	0	15	365	010000
21 Jan 20 – 20 Jan 21	284	4	0	15	303	010000
21 Jan 21 – 20 Jan 22	15	56	0	15	86	010000
21 Jan 22 – 20 Jan 23	15	52	0	15	82	010000

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

APPLICABLE AUTHORITY/GUIDANCE

Air Force Instruction (DAFI) 36-2910, Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay, 8 Oct 15:

1.7.4. **ARC only.** After release from active duty or IDT, members have 180 days to ensure any illness, injury or disease that was incurred or aggravated while in a duty status is reported for LOD determination consideration. When the member does not report his/her illness, injury or disease, the member is presumed to be able to perform military duties, does not require treatment and has no unresolved health condition rendering the member unable to meet retention or mobility standards IAW AFI 48-123, *Medical Examinations and Standards*. **The only avenue for addressing previously unreported illness, injury or disease is through the VA.**

1.9. Standard of Proof for LOD Determinations. Except where otherwise noted, the standard of evidentiary proof used in making an LOD determination is preponderance of evidence. Preponderance of evidence is defined as the greater weight of credible evidence.

1.9.3. Where clear and unmistakable evidence is required to establish a condition is NILOD, it may be provided by accepted medical principles. Accepted medical principles may be discerned through reference to medical literature. Medical determinations relating to the etiology and onset of a disease or condition may constitute clear and unmistakable evidence when supported by the weight of medical literature.

1.10. LOD Determinations.

1.10.1. In Line of Duty (ILOD). A determination of ILOD is made when the illness, injury, disease or death was not due to the member's misconduct and was incurred when the member was present for duty or absent with authority or when the illness, injury or disease was service aggravated.

1.10.2. Not in Line of Duty (NILOD)-Not Due to Member's Misconduct. 1.10.2.2. Existed Prior to Service (EPTS)-Not Service Aggravated (NSA). A determination of NILOD-Not Due to Member's Misconduct is also made when an investigation determined, by clear and unmistakable evidence, the member's illness, injury, disease or the underlying condition causing it, existed prior to the member's entry into military service with any branch or component of the Armed Forces or between periods of such service, and was not service aggravated. EPTS-NSA conditions include chronic conditions and conditions where the incubation period rules out a finding that the condition started during any period of active duty, active duty for training (ADT) or IDT.

1.10.2.2.1. Standard of Proof. 1.10.2.2.1.1. RegAF and ARC members with conditions that became unfitting while ordered to active duty of more than 30 days (other than for ADT or IDT). The standard of evidentiary proof used in making EPTS-NSA determinations is *clear and unmistakable evidence*. Clear and unmistakable evidence means undebatable information that the condition existed prior to military service or if increased in service was not aggravated by military service. In other words, reasonable minds could only conclude that the condition existed prior to military service from a review of all of the evidence in the record. It is a standard of evidentiary proof that is higher than a "preponderance of evidence" and "clear and convincing evidence."

AIR FORCE EVALUATION

NGB/A1PS recommends denying the request. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence an error or injustice with the applicant's NILOD determination as the applicant was determined to have a condition that existed prior to service. On 19 Mar 20, during the applicant's initial workup for hypertension essential thrombocythemia was found incidentally. At the time of the diagnosis, he was immediately referred to hematology for further examination and he was diagnosed with Polycythemia Vera: Chronic Myeloproliferative Neoplasm. On 23 Apr 20, he then followed up with a civilian medical provider to confirm the diagnosis and establish a baseline. He continued to receive treatment through this civilian provider through Aug 20 then transitioned to the DVA in Dec 20 where he continues to receive treatment. Currently, he has been assigned a 60 percent disability rating by the DVA for Polycythemia Vera.

While the applicant claims that he incurred the disease in Mar 20 while on orders from 2 Oct 19 to 30 Sep 20, the LOD determination, which was finalized on 23 Sep 21, was found to be NILOD, EPTSA-NSA which was upheld on appeal by the appellate authority. In accordance with AFI 36-2910, paragraph 1.9, which defines the standard of proof, except where otherwise noted, as the preponderance of the evidence, the legal review determined because the applicant was on orders for greater than 30 days that, in accordance with paragraph 1.10.2.2.1, that the standard of evidence needed to support a determination of EPTS-NSA is clear and unmistakable evidence, which means there is undebatable information that the condition existed prior to military service or if increased in service was not aggravated by military service.

According to NGB/SG, polycythemia vera is a chronic disease that develops very slowly over many years and an individual may have the condition for years without knowing as there are no or very minimal symptoms. Typically, polycythemia vera is found when bloodwork is ordered for a different reason or symptom that may have become an issue/concern. In this regard, he was diagnosed with polycythemia vera five months into his orders which indicates his condition existed prior to his active-duty orders. In addition, receiving a diagnosis while on an active-duty order does not indicate that the condition was incurred on active duty. While he also states that he was exposed to burn pits during his 2007 deployment to Afghanistan, there is no clear data currently linking polycythemia vera to burn pit exposure and, in accordance with AFI 36-2910, paragraph 1.7.4, for previous periods of service "the only avenue for addressing previously unreported illness, injury or disease is through the DVA."

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 30 Oct 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 NGB/A1PS and finds a preponderance of the evidence does not substantiate the applicant's contentions. Although the

applicant contends his condition of Polycythemia Vera should be found ILOD as it was diagnosed while he was in a qualified status, the Board disagrees. The Board notes NGB/SG's analysis that Polycythemia Vera is a chronic disease that develops very slowly over many years and an individual may have the condition for years without knowing as there are no or very minimal symptoms. In this regard, it is more than likely that the applicants medical condition existed prior to service. Furthermore, it is the Board's opinion that the applicant was given due process and his LOD determination was reviewed by his chain of command and the appropriate medical personnel that have the expertise in making such determinations. In this regard, the applicant's medical condition was found to be NILOD, EPTS-NSA which was further upheld on appeal by the ANGRC/CC who is the appellate authority. As such, the Board finds no error or injustice with the processing of his LOD, and the applicant has not provided any new or substantial evidence that would justify overturning their decision. Therefore, the Board recommends against correcting the applicant's records.

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-2023-02121 in Executive Session on 13 Feb 24:

Work-Product Panel Chair
Work-Product Panel Member
Work-Product 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.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/A1PS, w/atchs, dated 23 Oct 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Oct 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.

5/8/2024

X **Work-Product**

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