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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02287

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be placed on Medical Continuation (MEDCON) orders for the period of 1 Aug 22 – 10 Mar 23.

APPLICANT'S CONTENTIONS

In Feb 22, while deployed on Title 10 orders for the period of 24 Sep 21 – 4 Mar 22, he noticed a lump behind his left ear. On 2 Mar 22, after he returned from his deployment and still on orders, he sought care and the lump was diagnosed as an abscess and he was instructed to seek treatment with a dermatologist. Upon returning home, the dermatologist discovered additional lumps and referred him to a general surgeon who, in turn, referred him to an Ear, Nose and Throat (ENT) specialist, who suspecting cancer ordered four needle biopsies to be performed. The resulting diagnosis was T-cell Lymphoma; Stage 4. He immediately notified his unit's Medical Group (MDG) and upon their request, provided the MDG with all diagnoses and treatment documents up to that date.

On 22 Aug 22, three weeks after his cancer diagnosis, he began chemotherapy (chemo) treatment. Initially he was covered under Tricare due to his deployment, but that coverage expired on 30 Aug 22 and his treatment was then covered by his civilian employer's medical insurance. As such, he was required to pay medical insurance premiums, co-pays, and out-of-pocket costs in order to continue his chemo treatment and after the first chemo treatment, he reached his cap and had to pay \$6,500.00 for the chemo treatment. He notes as a federal employee he is not eligible for Tricare Reserve Select insurance.

On 3 Nov 22, although his Line of Duty (LOD) determination was completed and found In Line of Duty (ILOD), he was not notified until 5 Jan 23 when he attended drill for the first time since his diagnosis. By the time he was made aware of the LOD and his rights, his chemo treatments were complete and on 10 Mar 23, he was deemed fit for duty by the Flight Surgeon.

The MDG was remiss in issuing Pre-MEDCON orders, initiating a LOD in a timely manner, and then issuing MEDCON orders to cover the time from his initial treatment till he was found fit for duty.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard lieutenant colonel (O-5).

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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 24 Sep 21, according to Order Number **Work-Product**, dated 10 Feb 22, the applicant was ordered to active duty in accordance with 10 USC 12302 for the purpose of the COVID-19 Response for the period of 24 Sep 21 – 4 Mar 22.

On 2 Mar 22, according to the Clinical Summary Report, provided by the applicant, he was diagnosed with an epidermal cyst behind his left ear. He was instructed to treat with warm heat and Tylenol, as required, and follow up with his primary care physician if symptoms worsened.

On 4 Mar 22, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects he served on Title 10 USC Partial Mobilization in support of contingency Operation COVID-19 RESPONSE from 24 Sep 21 – 4 Mar 22.

On 13 Jul 22, according to medical notes from **Work-Product**, provided by the applicant, Positron Emission Tomography (PET) images demonstrated multiple pathologic left cervical lymph nodes, potentially malignant or inflammatory/infectious.

On 27 Jul 22, according to email traffic provided by the applicant, he informed the [unit] MDG/SGT of his condition and informed them he initially sought treatment while on orders and he is still covered under TRICARE SELECT until the end of Aug 22 and that he is sending documentation from his 2 Mar 22 treatment and will submit documentation of the additional treatments when he receives the documents. On 28 Jul 22, [unit] MDG/SGT replied they will forward the documents to <redacted> and will contact him with the appropriate actions to take.

On 1 Aug 22, according to post-surgery medical notes from **Work-Product**, provided by the applicant, he underwent the following procedures: Excision of left neck mass, approximately 5 cm; Direct laryngoscopy; Rigid esophagoscopy; Flexible bronchoscopy; and Bone marrow biopsy. According to the surgical pathology exam, dated 10 Aug 22, he received his diagnosis of: Left neck mass; T-cell lymphoma.

On 8 Aug 22, according to email traffic provided by the applicant, [unit] MDG/SGT requested the applicant provide “a copy of your orders that you were on while everything took place.” The applicant responded the same day stating his deployment orders are attached and when he first sought treatment he was still on orders and all subsequent treatments are a result of that visit.

On 22 Sep 22, according to email traffic provided by the applicant, [unit] MDG/SGT requested the applicant have his primary care provider fill out the attached provider form and for the applicant to complete the other attached form and to provide any supplemental medical records he may have.

On 17 Oct 22, according to email traffic provided by the applicant, he responded to their request and provided the following: a form titled *Medical Provider Form*, dated 29 Sep 22, that was completed and signed by his civilian medical provider along with her medical notes dated 27 Jul 22; and a form titled *Member LOD Initiation Form*, dated 14 Oct 22, that appears to have been completed and signed by the applicant.

On 26 Oct 22, according to AF Form 348, *Line of Duty Determination*, a LOD was initiated for a diagnosis of Peripheral T-cell Lymphoma and reflects treatment was initially provided on 2 Mar 22. Further, it reflects that on 3 Nov 22, his condition was determined to be ILOD by both his immediate commander and the appointing authority.

On 12 Jan 23, according to email traffic provided by the applicant, he is provided a copy of his LOD determination.

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According to AF Form 469, *Duty Limiting Condition Report*, provided by the applicant, he was returned to duty with the following restrictions: he may be assigned or deployed to the Continental United States (CONUS), (Hickam and Elmendorf included) facilities with fixed medical treatment facilities and appropriate treatment and referral capability; Member should not occupy a mobility position but may be deployed with the approval of the gaining MAJCOM Chief of Medical Staff or Chief of Aerospace Medicine.

According to the Point Credit Accounting Record System (PCARS) report, he was credited with the with the following Active Duty (AD), Inactive Duty for Training (IDT), membership (MBR), and retirement points from 2021 to 2023:

R/R Year	AD	IDT	MBR	Retirement	Satisfactory Service (Year)
18 May 21 – 17 May 22	272	53	15	340	010000
18 May 22 – 17 May 23	25	46	15	86	010000

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*:

6.1. Purpose. 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.

6.2. 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 in accordance with DAFMAN 48-123.

AIR FORCE EVALUATION

AFPC/DPFA, recommends partially granting the application. Based on a thorough review of the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. According to DAFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, dated 3 Sep 21, the applicant would have to meet the following MEDCON eligibility criteria: (1) A copy of the Airman's orders covering the period during which the injury, illness, or disease was incurred or aggravated; (2) An interim or finalized LOD (AF Form 348, *Line of Duty Determination* or DD Form 261, *Report of Investigation Line of Duty and Misconduct Status*); (3) A completed AF Form 469, *Duty Limiting Condition Report*; (4) A medical evaluation conducted by a credentialed military provider within the last 30 days that describes why the Airman is unable to meet retention or mobility standards, citing a specific paragraph from Chapter 5 or 13 of AFI 48-123; and (5) An individual treatment plan approved by a credentialed military provider based on occupational medicine guidelines and peer-reviewed recovery timelines that includes the expected duration of the impairment.

While the applicant met eligibility criteria (1) as he provided a copy of his orders that covered the period for which the injury, illness, or disease was incurred, he partially met the remaining eligibility criteria as for the following reasons: (2) his LOD was signed by his immediate

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commander on 3 Nov 22, which is the earliest date that MEDCON can start; (3) the member was on a mobility restricting profile from 8 Sep 22 – 9 Mar 23; (5) although he was diagnosed and began treatment on 1 Aug 22, he only underwent treatment through 3 Jan 23 and beyond this date, his ongoing care and medical surveillance would not have met MEDCON eligibility.

Therefore, AFPC/DPFA recommends he be approved for MEDCON orders for the period of 3 Nov 22 – 3 Jan 23 as this represents the time, he met all MEDCON eligibility requirements as he had a finalized Interim ILOD condition, a mobility restricting profile and an active medical plan of care that could be validated.

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 25 Sep 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 the victim of an error or injustice. While the Board notes the recommendation of AFPC/DPFA to partially grant the applicant’s request and place him on MEDCON orders to the date which his immediate commander signed the interim Line of Duty Determination, the Board finds a preponderance of the evidence substantiates the applicant’s contentions. Specifically, the Board notes normally a Reserve member who injures themselves while performing in a qualified active duty status, and requires a LOD determination for MEDCON orders, are placed on Pre-MEDCON orders to cover the gap from the date of injury to the date of approved MEDCON orders. In this case, the applicant was not diagnosed with T-cell Lymphoma until months after being released from active duty and did not receive surgery until 1 Aug 22. AFPC/DPFA indicates on 1 Aug 22, when the applicant began treatment, he had a qualifying condition which warranted MEDCON; however, the applicant’s LOD did not become Interim until three months later when it was signed by his immediate commander. As such, the Board determines the applicant’s medical condition between the time he began treatment on 1 Aug 22 and when his LOD became Interim was unchanged and the delay may be attributed to administrative delays, due to no fault of the applicant, in initiating the Line of Duty Determination process. Therefore, the Board recommends correcting the applicant’s 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 APPLICANT be corrected to show he was placed on active duty orders, for the purpose of medical continuation in accordance with Title 10, U.S.C. § 12301(h), from 1 Aug 22 through 10 Mar 23.

CERTIFICATION

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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-2023-02287 in Executive Session on 9 Apr 24:

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

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 13 Jul 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPFA, dated 21 Sep 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 25 Sep 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.

4/24/2024

X *Work-Product* [redacted]

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