



Work-Product

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02910

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

His Line of Duty (LOD) Determination initiated in 2007 for the diagnosis of: Sprains and strains of other and unspecified parts of back; Upper back strain and Right Hip Contusion, be found In Line of Duty (ILOD).

### APPLICANT'S CONTENTIONS

In Aug 07, while on Annual Training (AT) orders as a member of the Work-... Airlift Wing (AW), he was involved in a motorcycle accident. Although he did not sustain any broken bones, he incurred severe whiplash, pain in his neck and back, bruised arms and legs, road rash, in addition to aggravating an injury he incurred back in 2004. A few months later, in Dec 07, he was transferred from the Work-... AW to the Work-... AW. In 2013, while reviewing his medical records, he noticed the LOD from the motorcycle accident had only been initiated and there was no record of the LOD being submitted for adjudication. After making inquiries, he was informed the LOD had never been submitted to ARC LOD Board for review because the Work-... AW never transferred the case documents to the Work-... AW for submission. As a result, based on the 2007 motorcycle accident, the Work-Pr-... AW initiated a new LOD which was determined to be ILOD. However, the ARC LOD Board reviewed, non-concurred and determined his condition to be Existed Prior to Service (EPTS) – LOD Not Applicable. He was told this determination was made based on the lack of supporting documentation. He then submitted the supporting documentation with his appeal, but the appeal was denied and the LOD was cancelled due to the lack of supporting documentation.

He meets the requirements for an ILOD determination: 1) An "In Line of Duty" determination must be based on the members condition at the time of the incident; 2) An LOD will be found ILOD if it was determined that: The incident was not caused by the negligence of the member; the incident caused the member to miss 24 or more hours of work. In this regard, at the time of the motorcycle accident, he was not able to return and complete his AT tour, and it caused him to miss over a week of work in his civilian job. In addition, the Department of Veterans Affairs has currently rated his service connected disability at 70 percent.

He has been in a no pay, no points status since Aug 16 and is currently in the middle of a Medical Evaluation Board (MEB) review that has been ongoing for seven years. The 2007/2013 LOD issue is slowing the process even more and had the LOD been submitted in 2007, there is no doubt it would have been found ILOD and the MEB review would not be taking so long. He is now suffering from the mistakes made by both the Work-... AW and Work-... AW. As an outstanding member of the Air Force Reserve, he is baffled as to why he is being mistreated and requests the Board correct the injustice so he can move forward with his MEB case.

The applicant's complete submission is at Exhibit A.

**AFBCMR Docket Number BC-2023-02910**

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## STATEMENT OF FACTS

The applicant is an Air Force Reserve (AFR) master sergeant (E-7).

On 13 Feb 96, according to AF Form 348, *Line of Duty Determination*, the applicant's injury of "Severely Strained Back Muscle" was determined to be ILOD.

On 2 Aug 04, according to AF IMT 348, *Line of Duty Determination*, the applicant's injury of "Joint pain and swelling," was determined to be ILOD.

From 4 Sep 07 – 7 Sep 07, according to Reserve Order [Work-Product] dated 1 May 07, amended 26 Jul 07, and provided by the applicant, he was ordered to AT with the [Work-Pr...] Maintenance Operations Flight [Work-Product] IAP FLD.

On 8 Sep 07, according to AFRC IMT 348, *Informal Line of Duty Determination*, an informal LOD was initiated by the 440th Airlift Wing for injuries the applicant incurred due to a motorcycle accident on 4 Sep 07. Block 5, *Medical Section*, reflects he was diagnosed with: Sprains and strains of other and unspecified parts of back; Upper back strain and Right Hip Contusion. He was evaluated at a local emergency department and discharged ambulatory. He was given prescriptions for pain medication and instructed to follow up with his primary medical provider if his symptoms did not resolve.

On 15 Sep 07, according to Reserve Order [Work-Product] dated 17 Aug 07, the applicant was relieved from Det 2, [Work-...] Airlift Wing, [Work-Product] IAP FDL, [Work-...] and assigned to [Work-...] Maintenance Operations Flight, [Work-Pro...] AFB, [Work-P...] with a corresponding Effective Date of Change Strength Accountability (EDCSA) of 15 Sep 07.

On 1 Nov 07, according to Reserve Order [Work-Product] dated 5 Dec 07, the applicant was relieved from 440 Maintenance Squadron, Pope AFB, NC, and assigned to [Work-P...] Maintenance Operations Flight, [Work-Product] IAP, [Work-...] with a corresponding EDSCA of 1 Nov 07.

On 15 Nov 07, according to AFRC IMT 348, Block 8, *Appointing Authority*, reflects the appointing authority determined the LOD to be ILOD and to "Forward HQ AFRC LOD Board," however, the form is stamped "**Case Cancelled. Reason: Member failed to provide documentation.**"

On 5 May 13, according to AFRC IMT Form 348, an informal LOD was initiated by the [Work-Pr...] Aeromedical Squadron for a diagnosis "Contusion of trunk and cervical radiculopathy," due to a motorcycle accident which occurred on 4 Sep 07. Block 5, *Medical Section, Date and time of initial treatment*, reflects 4 Sep 07, 0000. On 31 May 13, the unit commander recommended a finding of EPTS-Service Aggravated (EPTS-SA) and on 1 Jun 13, the appointing authority decided EPTS-SA and Forward HQ AFRC LOD Board.

On 8 Jul 13, the AFRC LOD Board Review non-concurred with the Appointing Authority and recommended a new finding: EPTS-LOD Not Applicable.

On 18 Jul 13, the Approving Authority, the AFRC Vice Commander, made the final LOD determination of: EPTS-LOD Not Applicable.

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 36-2910, *Line of Duty (Misconduct) Determination*, 4 Oct 02, (Incorporating through Chg 5, 5 Apr 10), 1.1. The Line Of Duty (LOD) Determination and Its Objective. A service member who dies or sustains an illness, injury, or disease either while absent from duty, or due to his or her own misconduct, stands to lose substantial government benefits. An LOD determination is a finding made after an investigation into the circumstances of a member's illness, injury, disease or death. The finding concludes (1) whether or not the illness, injury, or disease existed prior to service (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 absent from duty and (3) whether or not the illness, injury, disease or death was due to the member's own misconduct. The LOD determination protects the interests of both the member and the United States Government.

1.4. Personnel Who May Be Subject to LOD Determinations. 1.4.2. Members of the ARC who die, incur or aggravate an illness, injury, or disease while: On published orders for any period of time, or while on inactive duty; Traveling directly to or from the place the member performs active duty, or inactive duty for training (IDT).

1.5. When an LOD Determination is Required. The LOD determination process must be initiated when a member, whether hospitalized or not, has an illness, injury or disease that results in: The member's inability to perform military duties for more than 24 hours; The likelihood of a permanent disability, or; Medical treatment of a member of the ARC regardless of the member's ability to perform military duties.

1.6. Presumption of LOD Status. An illness, injury, disease or death sustained by a member in an active duty status or in IDT status is presumed to have occurred in the line of duty.

1.7. Rebuttal of LOD Presumption. The presumption that a member's illness, injury, disease or death occurred in the line of duty may be rebutted if: A medical officer diagnoses that the illness, injury or disease existed prior to service.

1.8.1. Evidentiary Standard. A preponderance of evidence is required to find that an illness, injury, disease, or death occurred while the member was absent without authority or was due to a member's own misconduct. A preponderance of evidence is the greater weight of credible evidence.

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

In Line of Duty. The illness, injury, disease or death did not occur while the member was absent without authority and was not due to the member's own misconduct. For ARC members, the illness, injury, disease or its aggravation, or death occurred while the member was in a duty or direct travel status, and was not due to the member's own misconduct.

Existed Prior to Service, EPTS, LOD Not Applicable. A medical diagnosis determined that the death, illness, injury or disease, or the underlying condition causing it, existed before the member's entry into military service or between periods of service and was not aggravated by service. Further LOD determination is not required.

## **AIR FORCE EVALUATION**

AFRC/SGO recommends partially granting the applicant's request. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice as the 2007 LOD, which was cancelled, should have been found ILOD for the diagnosis for "sprains and strain of other and unspecified parts of back; upper back strain and right hip contusion." The 2013 LOD, which is based on the same accident that predicated the 2007 LOD but with a different diagnosis of "contusion of the trunk and cervical radiculopathy," correctly determined his condition as EPTS as the documentation provided noted no neck pain and no tenderness of the neck, reporting only injury to the thoracic spine with no documented neck injury due to the motorcycle accident. While cervical spondylosis and radiculopathy is an unfitting condition, there is no evidence the injury incurred in the motorcycle accident led to this condition. Additionally, even though he alleges he injured himself in 1996 lifting a heavy object, there was no mention of neck injury. Furthermore, according to the applicant's clinical record, his neck pain had been present for 20 years and thus existed prior to service. Therefore, the 2013 LOD finding is appropriate and should not be overturned.

In order for his 2007 LOD to be considered for Integrated Disability Evaluation System (IDES) case processing, a Prior Service Condition (PSC) evaluation by the ARC LOD Board would be required as his condition, even if found ILOD, of "sprains and strain of other and unspecified parts of back; upper back strain and right hip contusion," would not be disqualifying. In addition, a review of his medical records indicates he has had neck pain for decades with no evidence the 1996 back injury or the 2007 motorcycle accident resulted in any service aggravation. Therefore, his 2013 diagnosis of cervical spondylosis and radiculopathy, while unfitting, would be considered as PSC-Not Applicable as the diagnosis is based on the natural progression of a chronic condition not incurred or aggravated while in Reserve status.

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 15 Feb 24 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. The Board concurs with the rationale and recommendation of AFRC/SGO and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the Board agrees with AFRC/SGO and finds the applicant's 2007 LOD Determination, which was cancelled, should be found ILOD for the diagnosis for "sprains and strain of other and unspecified parts of back; upper back strain and right hip contusion." However, the Board notes that even with the corrected LOD determination for his 2007 injury, the condition would not have been considered disqualifying and therefore is not eligible for referral to the IDIS. As 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. In this regard, the Board notes the 2013 LOD is based on the same accident that predicated the 2007 LOD but with a different diagnosis of "contusion of the trunk and cervical

radiculopathy” and there was no documented neck injury due to the motorcycle accident. Additionally, while cervical spondylosis and radiculopathy is an unfitting condition, the Board determines there is insufficient evidence the motorcycle accident led to this condition. Therefore, the Board finds this unfitting diagnosis is based on natural progression of a chronic condition not incurred while in Reserve status or aggravated by Reserve status. Lastly, the Board notes the applicant’s clinical records indicate his neck pain has been present for 20 years and thus, the condition more than likely existed prior to service and was not a result of the 2007 injury. Therefore, the Board finds that the applicant’s 2013 LOD determination of NILOD-EPTS should stand but 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 his AFRC IMT 348, *Informal Line of Duty Determination*, Case Number 20070908-002, dated 8 September 2007, for the diagnosis of “Sprains and strains of other and unspecified parts of back; Upper back strain and Right Hip Contusion” be found In Line of Duty.

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-2023-02910 in Executive Session on 9 Apr 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 28 Aug 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFRC/SGO, dated 20 Dec 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 15 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.

7/3/2024

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Board Operations Manager, AFBCMR

Signed by

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**AFBCMR Docket Number BC-2023-02910**

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