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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03901

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be placed on Medical Continuation (MEDCON) orders for the period of 6 Oct 20 – 14 Jun 21 with entitlement to all back pay, Retention/Retirement (R/R) points, and benefits.

APPLICANT'S CONTENTIONS

In Aug 20, when he returned to his home station for in-processing after being on Title 10 Active Duty orders in support of Operation FREEDOM SENTINEL, he reported an injury to his lower back. A Line of Duty (LOD) determination was initiated and he was told to seek treatment and was diagnosed with "bone to bone" on his L5-S1 vertebra, which would require surgery. He used his civilian medical co-insurance and TRICARE to pay for his treatment and the required surgery to fuse his spine at the L5-S1. After his surgery, he was notified on 20 Jan 21 his LOD determination was found Not In Line of Duty (NILOD). He submitted an appeal to the LOD program manager, but they failed to forward it to the appropriate authority. He applied to the AFBCMR who granted his request to allow him to appeal the NILOD determination. On 9 Aug 23, the Air National Guard Readiness Center Commander (ANGRC/CC) granted his appeal request and granted a LOD determination of In Line of Duty (ILOD).

According to Department of the Air Force Instruction (DAFI) 36-2910, dated 23 May 23, paragraph 1.1.1, "ARC members must affirmatively be placed into official military status as a prerequisite to an LOD findings." Further, paragraph 6.2, Eligibility, states, "MEDCON eligibility requires an LOD determination and 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 AFI 48-123." In addition, according to paragraph 6.8, Requesting MEDCON orders, "The AFBCMR, Secretary of the Air Force, or other authority may order correction of a separated members record to provide retroactive MEDCON orders...shall work expediently to approve MEDCON orders pursuant to any AFBCMR direction to do so." Finally, paragraph 6.9.3.2 states, "If the member is not currently on an order of any kind, the MEDCON order will start the day the member was approved for MEDCON." Although he is currently pending a Medical Evaluation Board (MEB) for the L5-S1 back fusion and a cancer diagnosis, he is requesting that MEDCON orders be backdated to 6 Oct 20 – 14 Jun 21 as this covers the dates from his diagnosis, scheduling of surgery, and surgery and recovery time until he was released to normal duty.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard master sergeant (E-7).

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

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On 7 Dec 19, according to Order Number [REDACTED] dated 24 Sep 19, amended 20 Aug 20, provided by applicant, he was ordered to active duty, in accordance with 10 USC 12302, in support of Operation FREEDOM SENTINEL, for the period of 7 Dec 19 – 6 Oct 20¹.

On 6 Jan 21, according to memorandum, *Notification of Determination of Not in Line of Duty, Case # [REDACTED]*, dated 20 Jan 21, provided by applicant, he was informed his acute exacerbation left lumbar radiculopathy was found NILOD.

On 12 Jul 22, according to *AFBCMR Record of Proceeding for Docket BC-2022 [REDACTED]* the Board granted the applicant's request to be allowed to appeal the NILOD determination.

On 9 Aug 23, according to memorandum, *Line of Duty Determination Appeal Decision – <applicant>, Case # [REDACTED]* provided by applicant, the ANGRC/CC approved the applicant's appeal and granted a LOD determination of ILOD.

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 (AFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP)*, 8 Oct 15:

5.5.1. Initial MEDCON Order. Submit the following required documentation:

5.5.1.1. A copy of the member's order or documentation indicating the member's duty status covering the period during which the injury, illness or disease was incurred or aggravated;

5.5.1.4. 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*);

5.5.1.5. A completed AF Form 469;

5.5.1.6. A medical evaluation conducted by a credentialed military or civilian medical provider within the last 30 days and certified by a credentialed military medical provider that describes why the member is unable to meet retention or mobility standards IAW AFI 48-123;

5.5.1.7. Medical documentation, including individual medical treatment plan that incorporates occupational medicine guidelines, peer-reviewed recovery timeline with expected duration of the impairment and certified by a credentialed military medical provider; and Note: Medical documentation, including individual medical treatment plan, will be reviewed by the ARC CMD to ensure consistency with occupational medicine guidelines and peer-reviewed recovery timelines.

DoDI 1241.01, *Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements*, paragraph 3.a.(2): When an RC Service member is on active duty (AD) or full-time National Guard duty (FTNGD) for a period of more than 30 days and, at the scheduled end of that period, has an unresolved in-LOD condition that may render

¹ Active Duty dates verified by applicant's DD Form 214, dated 6 Oct 20.

the member unfit for duty under the Disability Evaluation System (DES), but this has not yet been determined by the DES, the member: (a) Will, with his or her consent, be retained on AD or FTNGD until: 1. Outstanding in-LOD conditions are resolved; or 2. He or she is either found fit for duty, separated, or retired as a result of a DES finding.

AIR FORCE EVALUATION

AFPC/DPFA, recommends partially granting the request. Based on documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice and recommends granting MEDCON for the period of 4 Jan 21 – 14 Jun 21. Based on his successful LOD appeal, his MEDCON eligibility could have begun on 6 Oct 20, however, at that time he met only three of the five MEDCON eligibility criteria: copies of orders covering the period during which the injury occurred; interim or finalized LOD; and a medical evaluation conducted by a credentialed military provider. On 7 Nov 20, he met the fourth MEDCON eligibility criteria when he was placed on a mobility restricting profile, and on 4 Jan 21, the date of surgery, he finally met all the MEDCON eligibility criteria as that is the date he finally had an individual treatment plan approved by a credentialed military provider based on occupational medicine guidelines.

For medical validation of cases, the MEDCON program typically requires actual treatment notes, including both physician notes and documentation from ancillary providers such as physical therapists, and this documentation was not provided. Based on two memorandums from his civilian medical provider, he was under the care of his surgeon beginning on 22 Sep 20, underwent surgery on 4 Jan 21, and was seen in follow-up on 4 May 21. Unfortunately, other than the memorandum from his treating provider stating the applicant was under his care, there was no other documentation of active medical treatment that might qualify for MEDCON prior to the date of surgery. Should the applicant have additional documentation of medical care during the pre-operative phase of his care, it should be submitted so the case may again be reviewed.

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 22 Jan 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. While we note the recommendation of the AFPC/DPFA for a partial grant to backdate the applicant's MEDCON start date to 4 Jan 21, the date he finally met all MEDCON eligibility requirements, Board determines the governing directive, DoDI 1241.01, prevails. As such, the Board finds had the applicant's LOD been appropriately processed in a timely manner at the onset, then he should have remained on active duty and placed in a medical plan of care until his in-LOD conditions were resolved or until he was either found fit for duty, separated, or retired as a result of a Disability Evaluation System finding. Although the applicant is requesting his MEDCON orders be backdated to reflect a 6 Oct 20 start date, since he was released from active duty on that

same date, the Board determines that his MEDCON start date will be the following day, 7 Oct 20 and his MEDCON end date to be 14 Jun 21 when he was released for normal duty. Therefore, the Board recommends correcting the applicant's record 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 for the period 7 Oct 20 through 14 Jun 21, he was placed on active duty, for the purposes of medical continuation in accordance with Title 10, U.S.C. §12301(h).

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-2023-03901 in Executive Session on 9 Jul 24 and 30 May 25:

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| Work-Product | Panel Chair |
| Work-Product | Panel Member |
| Work-Product | Panel Member |

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 23 Nov 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPFA, dated 19 Jan 24.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, 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.

6/23/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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