



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00145

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

- 1) Her Medical Continuation (MEDCON) orders be backdated to the 1 Dec 22 date of her injury.
- 2) Her Line of Duty (LOD) include her injury to her left shoulder.
- 3) Her "Under Other Than Honorable Conditions" (UOTHC) discharge status be reconsidered.

APPLICANT'S CONTENTIONS

In Dec 22, she was injured while on an Annual Tour (AT). Despite her injury being found in the line of duty (ILOD) and even after multiple requests, she did not receive her MEDCON orders until 4 Apr 23, five months after her injury. Due to her unit's negligence, she was forced to pay for her surgery on 4 Feb 23 and because she waited so long for medical care her condition significantly worsened. Furthermore, her unit did not include the injury she sustained to her left shoulder in her line of duty (LOD). Her injuries and lack of care/MEDCON orders caused her to lose her civilian job because she could not walk for almost a year or work until after recovery.

In an additional letter to the Board, the applicant also requested the Board review her discharge status and related actions taken by her unit, which she believes have been unjust and have significantly impacted her life and well-being. The applicant reiterates the lack of support and refusal of MEDCON orders and argues that despite her medical condition, which was directly linked to her service, her unit has proceeded to force her out of the military with a UOTHC discharge. The circumstances leading to this discharge were beyond her control, and she has been left in a vulnerable position without adequate support from the Air Force.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve (AFR) Airman First Class (A1C/E-3).

According to the documents provided by the applicant:

AFBCMR Docket Number BC-2024-00145

Work-Product

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On 21 Nov 22, Reserve Order [Work-Product] was approved and placed the applicant on Inactive Duty Training (IDT) status from 28 Nov 22 through 3 Dec 22 in conjunction with her AT from 4 Dec 22 through 18 Dec 22.

On 15 Dec 22, the applicant's military primary care provider at the 56th Medical Group, Luke Air Force Base (AFB), indicates the applicant was seen to update her medical profile due to a recent fall on 1 Dec 22 which caused left knee and shoulder pain. The "Assessment/Plan" shows pain in left knee, tear of articular cartilage of left knee, unspecified internal derangement of left knee, and pain in shoulder. The plan indicates surgery for the knee scheduled for 9 Jan 23. In regards, to the left shoulder the applicant was to follow up if pain continues after 8-10 weeks of consistent physical therapy for further evaluation.

On 20 Dec 22, AF Form 348, *Line of Duty Determination*, was initiated for an injury to her left knee (Internal Derangement, left Knee; Tear of articular cartilage of left knee). The LOD states the applicant had a pre-existing injury to her knee when she fell down the stairs at Basic Military Training (BMT) and reinjured her knee while performing a Physical Training (PT) test on 1 Dec 22.

On 12 Jan 23, the applicant consulted an Orthopaedic Surgeon in Mildenhall, United Kingdom (UK) and on 3 Feb 23, a medical note from the Orthopaedic Surgeon she was admitted to the hospital and underwent arthroscopic surgery of her left knee.

On 9 Feb 23, AF Form 348, *Line of Duty Determination*, shows the Military Medical Provider found the applicant's medical condition to be ILOD, on 15 Feb 23 the Appointing Authority concurred, and on 20 Mar 23, the Air Reserve Command (ARC) Approving Authority concurred finding her condition to be ILOD.

On 11 Apr 23, Reserve Order [Work-Product] was approved and placed the applicant on active duty for the purpose of "Medical Hold" from 4 Apr 23 through 13 Jun 23. The orders further show she will report to Home of Record (HOR), Cambridgeshire, UK.

According to the applicant's Report on Individual Personnel file the applicant's home address is listed as Aledo, TX.

On 16 Jan 25, Reserve Order [Work-Pro...], reflects the applicant was discharged from the AFR with a service characterization of "General" in accordance with DAFI 36-3211, *Military Separations*, Paragraph 13.9.2. Unsatisfactory Participation.

According to the applicant's Point Credit Accounting and Reporting System (PCARS) report, for Reserve and Retirement (R/R) year 29 May 23 through 28 May 24, the applicant was credited with 15 membership points, but did not perform her AT or her IDTs.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibit C and D.

APPLICABLE AUTHORITY/GUIDANCE

AFBCMR Docket Number BC-2024-00145

Work-Product

DAFI 36-3211, *Military Separations*, dated 24 Jun 22, certified current 20 Nov 23.

3.14. Authorized Types of Separation...3.14.1. Each part of this publication that authorizes separation tells whether to characterize service with the separation. Guidance on characterization is provided in DoDI 1332.14, *Enlisted Separations*, Enclosure 4. Characterization of service may be:

3.14.1.1. Honorable. The quality of the member's service generally has met DAF standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate.

3.14.1.2. General (Under Honorable Conditions). If a member's service has been honest and faithful, this characterization is warranted when negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.

3.14.1.3. Under Other Than Honorable Conditions (UOTHC). This is used when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members.

3.15. What to Consider When Characterizing Service...3.15.1. Base this on the quality of the member's service as reflected in the military record of the current enlistment or period of service including personal conduct, performance of duty, and the reason for separation. Determine the quality of service IAW standards of acceptable personal conduct and performance of duty for members. Standards can be found in the UCMJ, DAF directives and instructions, and the time-honored customs and traditions of military service. For more guidance, see paragraph 3.19.

Table 13.1, *Voluntary and Involuntary Discharge or Separation of Enlisted Personnel*, Rule 46, states If the reason for separation is unsatisfactory participation then the type of discharge can be Honorable, General, or UOTHC

Section 13D, *Involuntary Discharge or Separation*...Paragraph 13.9. Reasons for Discharge or Separation. A member may be discharged or separated for convenience of the government for the following reasons

13.9.2. Unsatisfactory Participation. A member of the reserve who fails to meet participation requirements, regardless of whether they have fulfilled an existing MSO under 10 USC § 651, may be discharged if the commander concerned also determines that the individual has no potential for useful service under conditions of full mobilization.

13.9.2.1. Unsatisfactory participation is defined in AFMAN 36-2136.

DAFMAN 36-2136, *Reserve Personnel Participation*, dated 15 Dec 23

1.4. Unsatisfactory Participation. Unsatisfactory participation is a failure to meet statutory training requirements as outlined in 10 USC §10147 and further defined in DoDI 1215.06, *Uniform Reserve, Training, and Retirement Categories for the Reserve Components*. A reservist may have

a good year for retirement (i.e., 50 points or more in retention/retirement year in accordance with DoDI 1215.07, *Service Credit for Non-Regular Retirement*) and may still be an unsatisfactory participant if they did not satisfy the FY requirement based on Reserve Section Code identifying number of AT and IDT requirements.

1.4.1. IR unsatisfactory participation. An IR who has not completed IDT and AT requirements in a FY as outlined for their applicable Reserve Section Code in Table 1.1 and who has not otherwise received appropriate command excusal or substitution for those requirements as specified in this DAFMAN is an unsatisfactory participant.

1.4.2. An IR required to perform 24 paid IDT periods per FY who has not completed scheduled AT in a FY (unless substituted or excused by the IR's unit or RIO detachment commander) is considered an unsatisfactory participant...An IR required to perform 48 paid IDT periods per FY who has not completed scheduled AT in a FY (unless substituted or excused by the IR's unit or RIO detachment commander) is considered an unsatisfactory participant.

1.4.3. Disposition of Unsatisfactory Participants. A RIO detachment commander is authorized to take the following actions:

1.4.3.4. Discharge in accordance with DAFI 36-3211, *Military Separations*.

7.3. A member placed on a Duty (DR), Mobility (MR) or Fitness (FR) restrictions via an Air Force (AF) Form 469, *Duty Limiting Condition Report*, issued by any Air Reserve Component (ARC) or active duty (AD) medical squadron **should be permitted to participate for pay and points within the restrictions outlined on the member's AF Form 469.** The commander will carefully consider the member's documented physical limitations, safety (to include travel to and from duty location) and mission requirements and allow the member to participate within the restrictions outlined on the member's AF Form 469. (T-2) **Commanders choosing to restrict a member's participation will formally notify them in writing.** (T-2) A copy of the notification letter restricting the member from participation must be sent to the servicing Force Support Squadron (FSS) who will update the member's Duty Status Code to 14 in MILPDS. (T-2) The commander must formally notify the FSS in writing when a member's previous restriction is removed or finalized. (T-2) **Additionally, any IDT which is missed due to medical limitations will be considered excused by the unit.** (T-2) If the commander determines a member may safely perform any duties, a letter outlining these duties and restrictions must be presented to and acknowledged by the member. (T-2) When applicable, the MILPDS will be updated by the unit to reflect the member as excused. (T-2) See Attachment 6, Attachment 7 and Attachment 8 for sample memos.

4.14. Reservist Nonparticipation.

4.14.1. For TRs, the commander or designated representative must exercise sound judgment in authorizing excusal, ET, or rescheduling actions. (T-3) A commander or supervisor needs to consider the impact on training readiness and mission effectiveness when considering requests for excusals.

4.14.2. If for any reason the reservist fails to notify their unit commander or supervisor of the circumstances regarding the absence, the reservist's commander or supervisor will contact the reservist, documenting such effort with a memorandum for record or electronic mail. (T-2) Every effort is made to make personal contact during the IDT period (or at least the first period if multiple IDTs are scheduled) but no later than the end of the IDT period(s). If contact is made anytime during the IDT period(s), the commander may excuse, unexcused, or authorize other training as appropriate based upon the merits of the case. AFR unit or RIO detachment commanders may deem the absence as excused based on the reservist's submission of adequate justification within 30 calendar days of the missed IDT(s). Do not authorize excusals outside that 30-day period. An unexcused absence for a fourth IDT period will generate an automated participation status report. (T-2) The AFR unit or RIO detachment commander has 30 calendar days from the date of the unexcused absence for a ninth IDT period to excuse an absence, authorize ET, retain as a mobilization resource, initiate involuntary reassignment in accordance with DAFI 36-2110, *Total Force Assignments* or administrative discharge in accordance with DAFI 36-3211. Note: It is possible to retain reservists as a mobilization resource only under the conditions authorized by DAFI 36-2110.

AIR FORCE EVALUATION

AFPC/DPFA recommends partially granting the applicant's request for additional MEDCON orders. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice to justify authorizing MEDCON orders beginning on 10 Feb 23. Once the applicant's LOD was signed by her immediate commander on 10 Feb 23 with an ILOD recommendation, she met all eligibility criteria including a valid interim LOD, a mobility restricting profile, and a valid restorative medical treatment plan. Unfortunately, delays at the unit level led to the MEDCON application not being submitted for nearly eight weeks. It appears this delay was due at least in part to waiting for the immediate commander to sign the Letter of Acknowledgement. Additionally, it should be noted there were 54 days between the initiation of applicant's LOD and the ILOD recommendation by the immediate commander. However, according to the documentation provided or available, the applicant initially deferred surgery to take a contract job in the UK and would have not been MEDCON eligible while otherwise employed. Additionally, after encountering difficulty accessing care at the overseas Medical Treatment Facility, she opted to seek care in the civilian sector. She then made the voluntary decision to proceed with her non-emergent surgery prior to receiving a decision regarding her LOD finding.

The complete advisory opinion is at Exhibit C.

AFRC/SGP, recommends denying the applicant's request for Pre-MEDCON orders and the request to have the shoulder injury added to the LOD. Per DAFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay* dated 3 Sep 21, paragraph 6.5. Pre-MEDCON, states, "The purpose of Pre-MEDCON orders of up to 30 days is to allow additional time for ARC members on and, the MTF, RMU or GMU to: 1) ascertain whether the medical condition renders the member unable to perform military duties or unable to meet retention and mobility standards in accordance with DAFMAN 48-123, *Medical Examinations and Standards*; and 2) provide medical documentation to support a request for

MEDCON orders with approval from the member, members' commander (either current commander or reporting commander), the using MAJCOM (who is funding the requirement) and the orders issuing authority." From review of the AFPC/DPFA opinion it appears there may have been complicating circumstances regarding the applicant's eligibility for MEDCON or Pre-MEDCON if the member deferred surgery to take a contract job in the UK. In this regard, if the applicant did take a contract job after the end of her AT (28 Nov 22 – 18 Dec 22) and her 1 Dec 22 injury, then she would not have met criteria to be on military Pre-MEDCON or MEDCON orders at the end of her tour.

In regard to adding her left shoulder injury to the LOD AFRC/SGP also recommends deny. According to a clinical note, on 15 Dec 22, the applicant reported she injured her left shoulder during the 1 Dec 22 incident that occurred with her left knee. There was a normal x-ray done on her left shoulder on 15 Dec 22 and the medical record documents "left shoulder pain." Per DAFI 36-2910, personnel are subject to LOD determinations when "1.2.2. ARC members who die, incur or aggravate an illness, injury or disease while in any duty status." As such, there must be a specific illness, injury or disease documented to meet criteria for a LOD. "Pain" is not a specific illness, injury or disease and therefore would not be subject to LOD determination.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 17 Jan 25 for comment (Exhibit E), and the applicant replied on 28 Jan 25. In her response, the applicant contended her injury involving her shoulder was documented as involving bruising and reduced mobility, making it a clear visible injury and not simply "pain" as characterized by the OPR advisory. It is important to note the Department of Veterans Affairs has acknowledged the severity of this injury, granting her a 40 percent disability rating as the injury has not healed correctly. Excluding this injury from her LOD determination is an oversight and an injustice, especially given her condition persists due to improper and insufficient treatment resulting from her unit's failure to properly address.

Furthermore, the assertion that she "deferred surgery due to taking an overseas job" is false. Her unit denied interim MEDCON orders, leaving her without the necessary support. At the time, she was residing in England and without MEDCON orders, she was forced to return there. From December to July, she was unable to work due to her injuries, leading to the loss of her job, home, car, and stability. She was ultimately deported back to the United States in dire circumstances. She repeatedly sought MEDCON orders, submitting all necessary documentation and requests, but was consistently denied with no help from her unit. She would like to note this is the second LOD she has for this injury. The first is dated back to 2021. The same exact injury, two LODs, and both times her unit failed to support her and has ultimately led to her now permanent disability.

As for her discharge, the applicant states that despite being unable to travel due to the documented injuries and surgeries included in her LOD, her discharge was processed administratively rather than being characterized as a medical discharge, which is both inaccurate and unjust. The mishandling of her LOD determinations and her discharge has not only had severe personal consequences but has also undermined the recognition of her service and the injuries sustained in

the line of duty.

The applicant's complete response is at Exhibit F.

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 AFPC/DPFA and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided evidence indicating her commander signed her LOD determination on 10 Feb 24, which is sufficient to justify granting the applicant's request for MEDCON orders. However, the Board finds the applicant's employment status has not been confirmed, and the fact remains the applicant should have been placed on pre-MEDCON orders while her LOD was being processed. In addition, the Board notes there were lengthy delays with the processing of her LOD which prevented her from being placed on MEDCON at an earlier date. As such, the Board finds it appropriate to place the applicant on MEDCON orders starting at the end of her Annual Training tour of duty when the injury occurred. Furthermore, the Board notes that if appropriate, DFAS will process the applicant's pay during that time based on the difference of pay she may have received from other employment and the pay provided by the MEDCON orders. 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. Specifically, in regard to the applicant's request to include her shoulder injury with her LOD, the Board agrees with AFRC/SGP there was no specific illness, injury or disease that was documented, and the applicant has not provided sufficient evidence to show her condition warranted a LOD determination. In addition, while the medical notes from her military primary care provider indicate she should attend physical therapy for her shoulder, there is no documentation she did and no evidence of further evaluation into the underlying cause for her shoulder pain. Furthermore, after the applicant received her LOD for her knee and noticed it did not include her shoulder injury, she could have requested an additional LOD for her shoulder but has provided no evidence such a request was made. Finally, the applicant requests that her UOTHC status be reconsidered; however, the Board notes the applicant has since been discharged but received a General (Under Honorable Conditions) discharge due to "Unsatisfactory Participation." As such, if the applicant is seeking to have the discharge characterization upgraded, then she must exhaust all administrative remedies by first appealing to the Air Force Discharge Review Board (AFDRB). Otherwise, the Board does not find the evidence sufficient to justify returning the applicant to duty as she has provided no additional evidence to contend why she did not participate during her R/R year 29 May 23 through 28 May 24. In accordance with DAFI 36-3211, Table 13.1 and Paragraph 13.9., "Unsatisfactory Participation" is listed as a reason for involuntary discharge and the type of discharge may be characterized as General. Absent evidence to the contrary the Board finds the discharge action was within the commander's authority and finds no reason to reverse the action that was taken. Therefore, the Board recommends correcting the applicant's records as indicated below.

Work-Product

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 on 19 December 2022 through 3 April 2023, the applicant was placed on Medical Continuation orders, and she receive all related pay, benefits, entitlements and points for the period of active duty service.

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-2024-00145 in Executive Session on 11 Feb 25:

Work-Product

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

Exhibit A: Application, DD Form 149, w/atchs, dated 2 Jan 24.

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

Exhibit C: Advisory opinion, AFPC/DPFA, dated 5 Mar 24.

Exhibit D: Advisory opinion, AFRC/SGP, dated 4 Nov 24.

Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 17 Jan 25.

Exhibit F: Applicant's response, dated 28 Jan 25.

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.

3/25/2025

Work-Product

AFBCMR Docket Number BC-2024-00145

Work-Product