Work-Product

UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF: Work-Product

DOCKET NUMBER: BC-2024-00679

Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel records be amended to reflect:

1. Reinstatement of Medical Continuation (MEDCON) orders, with retroactive active duty pay, from 1 Apr 22[1] through 31 Dec 23; or in the alternative;
2. Incapacitation (INCAP) pay, at the full rate for an active duty airman, for the same period.

APPLICANT'S CONTENTIONS

According to applicant's counsel, in 2020, the applicant began experiencing health concerns that later led to his hospitalization and diagnosis of Crohn's Disease. He was placed on MEDCON orders while he underwent treatment, but during this time, the applicant's line of duty (LOD) determination was reviewed and overturned resulting in the disapproval of his request for MEDCON orders, and the abrupt termination of his medical treatment. While the applicant was able to successfully appeal his LOD determination, no action was taken to address the erroneous and unjust removal from MEDCON orders because the Air Force claimed the applicant did not meet certain requirements that, in fact, did not exist. Because the applicant followed all guidance concerning LODs, met the requirements for MEDCON orders, and has maintained an exemplary service record, his case merits review by the Board.

The applicant was on active duty Title 32 orders from 7 Jan 20 through 30 Sep 20. He was on active duty Title 10 orders from 1 Oct 20 through 31 Oct 21. The applicant was then placed on MEDCON orders from 1 Nov 21 until 1 Apr 22. The applicant's MEDCON orders were not extended beyond 1 Apr 22, so his unit placed him on annual training orders for two weeks in an attempt to help the applicant financially, and give him time to file an appeal, which was ultimately denied.

In 2020, the applicant began experiencing symptoms common to Crohn's Disease, fatigue, dizziness, shortness of breath, and decreased exercise tolerance. The applicant first presented to a medical treatment facility on 2 Feb 21 and reported symptoms of gastritis to his primary care provider on 9 Feb 21 for which he was prescribed omeprazole. On 27 Feb 21, the applicant was admitted to inpatient care due to abdominal pain and underwent an esophagogastroduodenoscopy (EGD)/colonoscopy. He was diagnosed with Crohn's Disease in Mar 21. He continued treatment

[1] Applicant's DD Form 149, *Application for Correction of Military Records,* requests reinstatement of MEDCON orders as of 1 Apr 20 to present, whereas counsel's brief requests reinstatement as of 1 Apr 22. Upon review of the supporting documentation, the date on the DD Form 149 appears to be an error.

and was prescribed Humira on 26 Apr 21. The applicant had many appointments, including telemedicine, MRIs, and emergency department visits. The provider notes regarding the applicant's struggle with this disease are extensive and express the need to the applicant to have ongoing care.

The applicant was contacted via email by a MEDCON Regional Case Manager on 14 Dec 21 explaining communication would be crucial during MEDCON to ensure uninterrupted care and benefits. The applicant responded via email the next day, disclosing in detail his course of treatment. As he wrote in his signed affidavit, the applicant was contacted by Air Reserve Component Case Management Division (ARC CMD) during his time on MEDCON to explain the duties and responsibilities he had while on the program and he followed their guidance.

On 31 Jan 22, the applicant emailed the MEDCON Regional Case Manager informing them that as part of his ongoing treatment, his Gastroenterologist was referring the applicant to Physical Therapy a minimum of two times per week because his Crohn's disease was degrading his muscle mass. The applicant stated he would send clinical notes from each visit. The treatment plan detailed manual therapy, neuromuscular reeducation, therapeutic exercise, and therapeutic activities at a frequency of 12 visits over the course of 6 weeks, at which point they would re-assess the applicant's treatment plan. The applicant also emailed the MEDCON Regional Case Manager on 7 Feb 22. The very next day, the applicant's case was reassigned. The applicant had a telephone conversation with the new Case Manager on 9 Feb 22, and on 15 Feb 22, the applicant received a notice that his MEDCON orders were to end within 45 days, and he was responsible for requesting an extension. The applicant immediately responded with a request for an extension and completed the required checklist within one week. The applicant emailed the new Case Manager on 15 Mar 22 and 28 Mar 22 to inquire about the extension request for his MEDCON orders.

On 9 Mar 22, the Appointing Authority recommended the LOD determination be in the line of duty (ILOD); however, the ARC LOD Determination Board did not concur. The board did acknowledge the applicant's duty status was greater than 30 days. On 6 Jul 22, the Approving Authority sided with the board, finding not ILOD (NILOD), not due to member's misconduct. The Approving Authority did not refer the applicant to the Integrated Disability Evaluation System (IDES) for processing, as the ARC LOD Determination Board had done.

On 15 Apr 22, the applicant received an email from ARC CMD informing him his request for MEDCON orders was disapproved. The email acknowledged per Air Force Instruction (AFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, a servicemember may be eligible for MEDCON orders when they suffer a LOD-related impairment that requires treatment and renders the servicemember unable to perform military duties. However, the email also indicated the applicant's disease did not have an active, restorative treatment plan, the condition was not listed on his "469" and the applicant was not keeping two or more appointments per week in accordance with AFI 36-2910, and as such, they were denying the applicant's request. They applicant could reapply should those facts change.

In response to the applicant's appeal, on 31 Jan 23, he was granted a determination of ILOD.

The applicant's orders were unjustly terminated either because his condition was improperly designated as NILOD or because the reviewing officials did not understand the connection between the applicant's appointments and his Crohn's disease. While the LOD issue was resolved, there was no action taken with respect to the applicant's MEDCON request, and he suffered medically, financially, and emotionally as a result.

AFI 36-2910 and Department of Defense Instruction (DoDI) 1241.1[2], *Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements*, should be applied to the applicant's case in light of the LOD determination made on 31 Jan 23. The applicant's disease was both incurred and aggravated ILOD. His circumstances were clearly within the scope of AFI 36-2910, paragraph 5.1 and he was on an active medical treatment plan while under MEDCON orders. In addition to the more obvious requirements of medication, follow-up testing, etc., the applicant was required to undergo physical therapy to address the secondary effects of his Crohn's disease. Similar to AFI 36-2910, DoDI 1240.1[3] states which reserve component servicemembers who are dealing with an unresolved ILOD condition are to be retained on active duty. The applicant was removed from MEDCON orders in violation of this instruction.

DoD policy requires that ARC members serving on active duty for greater than 30 days are retained until the ILOD conditions are resolved or the IDES process is completed, whether that results in a return to duty, separation with severance, or a medical disability retirement. In the applicant's case, his IDES process was stopped at the point of the Initial Review in Lieu of (IRILO), and as such, his situation fell squarely into this provision. The applicant's orders placed him in an active duty status for more than 30 days. At the end of his orders, the applicant's ILOD condition remained unresolved and was being managed by an active treatment plan. While a servicemember may elect to be released from active duty before resolution of the conditions or completion of the IDES process, the applicant did not so elect.

Had the ILOD determination been properly addressed in its initial review or the appeal acted on promptly, the applicant most likely would not have been released from MEDCON orders. Unfortunately, through no fault of his own, the process of the applicant's ILOD determination was slow. The applicant was diagnosed in Mar 21. The final determination for his LOD was not issued until Jan 23. As a result of this, the applicant was denied continued access to medical treatment for his condition.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving [State] Air National Guard lieutenant colonel (O-5).

On 9 Feb 21, according to AF Form 348, *Line of Duty Determination*, dated 27 Aug 21, provided by the applicant, he was treated for Crohn's disease of both the small and large intestine with intestinal obstruction.

According to Order Number Work-Product dated 4 Dec 21, provided by the applicant, he was placed on MEDCON for the period 1 Nov 21 – 1 Apr 22.

On 9 Mar 22, according to AF Form 348, dated 27 Aug 21, provided by the applicant, the Appointing Authority determined the condition to be ILOD.

On 15 Apr 22, according to myPERS email from AFPC/DPFA (ARC CMD), Subject: MEDCON Disapproval, provided by the applicant, his request for MEDCON orders was disapproved.

[2] Department of Defense Instruction (DoDI) 1241.01, *Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements*
[3] Ibid.

On 28 Jun 22, according to AF Form 348, dated 27 Aug 21, provided by the applicant, upon ARC LOD Determination Board Review, the Medical Review Representative non-concurred with the Appointing Authority and determined the condition to be NILOD-Not due to member's misconduct; Existed Prior to Service (EPTS) [Not Service Aggravated (NSA)].

On 6 Jul 22, according to AF Form 348, dated 27 Aug 21, provided by the applicant, the Approving Authority Final LOD Determination was NILOD-Not due to member's misconduct.

On 5 Sep 22, according to applicant's counsel's letter, Subject: [Applicant] – Request for Reconsideration and/or Appeal of NILOD Determination, provided by the applicant, he appealed the finding of NILOD.

On 21 Nov 22, according to AFPC/DPFA (ARC CMD) advisory opinion, dated 14 Mar 24, the applicant was returned to duty (RTD) with Assignment Limitation Code (ALC) 2.

On 31 Jan 23, according to ANGRC/CC memorandum, Subject: Line of Duty Determination Appeal Decision – [Applicant], provided by the applicant, his appeal request was approved, and he was granted a determination of ILOD.

On 15 Mar 23, according to AF Form 1185, *Commander's Impact Statement for Medical Evaluation Board*, provided by the applicant, the commander recommended Do Not Retain.

On 23 Mar 23, according to *Medical Evaluation Board Narrative Summary*, provided by the applicant, the applicant's diagnosed condition of Crohn's disease of large intestine with intestinal obstruction will not improve enough in the next 12 months for the member to perform all AFSC [Air Force Specialty Code] duties for his rank/position.

On 11 Apr 23, according to *DAWG RILO Cover Sheet/Checklist*, provided by the applicant, the Initial Review in Lieu Of (IRILO) process was initiated.

On 12 Apr 23, according to AF Form 469, *Duty Limiting Condition Report*, provided by the applicant, he was placed on mobility and fitness restrictions pending MEB.

On 3 Aug 23, according to AF Form 422, *Notification of Air Force Members Qualification Status*, the applicant was found fit and RTD with ALC C-2 (Post-IRILO), with expiration date of 31 Jul 24.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay,* Chapter 6 – *Incapacitation (INCAP) Pay for ARC Members:*

6.1. *Purpose*. The purpose of INCAP Pay is to authorize pay and allowances (less any civilian earned income) to those members who are not able to perform military duties because of an injury, illness or disease incurred or aggravated in the line of duty; or to provide pay and allowances to those members who are able to perform military duties (see para. 6.2.2) but experience a loss of earned income as a result of an injury, illness or disease incurred or aggravated in the line of duty (37 U.S.C. § 204). (T-0)

6.2. *Eligibility and Qualification Determination*. INCAP Pay eligibility requires an LOD determination of ILOD 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 perform military duties, or is able to perform military duties but demonstrates a loss of civilian earned income. (T-1)

6.2.1. *Unable to Perform Military Duties*. A member, who is unable to perform military duties (unable to meet retention or mobility standards IAW AFI 48-123), as determined by a military medical authority and the member's immediate commander, due to an injury, illness or disease incurred or aggravated in the line of duty, is entitled to full pay and allowances (including all incentives and special pays to which entitled, if otherwise eligible) IAW para. 6.2.3, less any civilian earned income. (T-1)

6.2.1.2. The member shall not be allowed to attend IDT periods or to acquire retirement points for performing IDTs while receiving INCAP Pay. (T-0)

6.2.2. *Able to Perform Military Duties*. A member who is able to perform military duties (see para. 6.5.1.3), as validated by the medical authority and determined by the immediate commander, but demonstrates a loss of civilian earned income as a result of an injury, illness or disease incurred or aggravated in the line of duty, is entitled to pay and allowance, including incentive and special pay, but not to exceed the amount of the demonstrated loss of civilian earned income or the maximum pay entitlement (see para. 6.2.3), whichever is less. (T-1)

6.2.4. *Duration of Entitlements*. Pay and allowances under this instruction shall be paid only during the period a member remains unable to perform military duties or is able to perform military duty but demonstrates a loss of civilian earned income as a result of an injury, illness or disease incurred or aggravated in the line of duty. (T-0) Payment in any particular case may not be made for more than a 6-month period without review of the case by SAF/MR or delegated authority IAW Table 6.1 to ensure that continuation of military pay and allowances is warranted under this instruction and to determine whether the member should be referred to the DES. Such a review shall be made every 6 months. (T-1)

6.3. *Roles and Responsibilities*.

6.3.1. *Member*.

6.3.1.1. Provides the INCAP Pay Program Manager (PM) with all required documentation every 30 days while applying/receiving INCAP Pay. (T-1)

6.3.1.1.1. Submits medical treatment plan.

6.3.1.1.2. Submits copies of all medical treatment received to the RMU or GMU.

6.3.1.1.3. Submits monthly pay documentation if claiming loss of civilian earned income to Wing Finance Office or Reserve Pay Office (RPO).

6.3.1.1.4. Submits employer or self-employment information.

6.3.1.1.5. Reports all changes in medical and/or financial status immediately to the unit commander to prevent possible recoupment of overpayment.

6.3.1.2. Complies with Wing RMU or GMU requests for medical information and documentation. (T-1)

6.3.1.2.2. Any request for INCAP Pay that is not initiated within 30 days of when the injury, illness or disease was incurred or aggravated will require the member to submit a written explanation, endorsed by the immediate commander, or the untimely reporting.

DoDI 1241.01, *Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements*

3. *POLICY*. It is DoD policy that:

c. The in-LOD determination will be used to authorize appropriate medical and dental treatment for the covered condition for not longer than 1 year from diagnosis without being identified for referral to the DES. An RC Service member will be referred to the DES when the criteria for referral are met in accordance with DoDI 1332.18.

Enclosure 3 – *In-LOD Determination for Medical and Dental Treatment*

4. *DURATION OF MEDICAL AND DENTAL TREATMENT ENTITLEMENT*

a. Medical, dental, or behavioral health care authorized by an in-LOD determination in accordance with section 1074a of Reference (e) will be provided until:

(1) The in-LOD injury, illness or disease is satisfactorily resolved or the resulting disability cannot be materially improved by further hospitalization or treatment;

(2) The RC Service member is identified for referral to the DES in accordance with Reference (g) within 1 year of the diagnosis of the condition for which he or she received an in-LOD finding and the member receives a final determination of fit for duty, separated, or retired; or

(3) One year has transpired since the date of the initial diagnosis and neither of the actions referred to in paragraphs 4a(1) or (2) of this enclosure has occurred.

(4) The in-LOD determination is terminated due to circumstances described in paragraph 3.c. of this enclosure.

Department of the Air Force Manual (DAFMAN) 48-108, *Physical Evaluation Board Liaison Officer (PEBLO) Functions: Pre-Disability Evaluation System (DES) and Medical Evaluation Board (MEB) Processing*, dated 5 Aug 21:

Chapter 2 – *PRE-IDES SCREENING REVIEW*

2.2. *Entrance into the IDES*. The IDES process integrates the Air Force DES with the VA, and delivers the advantage of single-sourced disability ratings that are accepted by both the DoD and the VA, so the member will receive VA benefits shortly after separation or retirement.

2.2.1. One purpose of the IDES is to carefully screen service members for potentially unfitting conditions, so they are appropriately referred into the DES to determine if a return to duty adjudication is appropriate.

2.2.2. In order to minimize inappropriate referrals, there is a two-step DES pre-screening process for all potential MEB cases. The first step is a preliminary AMRO Board review, in which the AMRO Board may determine an initial review in lieu of (IRILO). The second step, if required, is accomplished by AFPC/DP2NP or the appropriate ARC SG's Office (for ARC members). Cases that AFPC/DP2NP or ARC/SG direct for a MEB are referred into the DES. AFPC/DP2NP or ARC SG's disposition may result in a return to duty decision. AFPC/DP2NP or ARC SG's office is the final disposition authority on return to duty determinations in the DES pre-screening process. For referral of ARC members due to non-duty related condition(s), refer to AFI 36-3212.

Chapter 4 - *ADMINISTRATION FOR AIR RESERVE COMPONENT (ARC) SERVICE MEMBERS*

(Excerpt) 4.1.2. Determining Eligibility and pre-MEB Case Processing. MEB initiation or case processing cannot begin for any ARC service member without a properly completed line of duty determination on an AF Form 348, *Line of Duty Determination*, DD Form 261, *Report of Investigation Line of Duty and Misconduct Status,* or appropriate administrative LOD. A service member's line of duty must be finalized prior to referral into the DES. This includes any member-initiated appeal of a line of duty determination under AFI 36-2910.

AIR FORCE EVALUATION

AFPC/DPFA recommends denying the applicant's request for MEDCON. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice.

The applicant would have to meet the specified criteria in accordance with AFI 36-2910:

(1) A copy of the airman's orders covering the period during which the injury, illness, or disease was incurred or aggravated; (Met) Note: Applicant was on a qualifying Military Personnel Appropriation order when the ILOD diagnosis was made;

(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*); (Not Met) Note: The initial diagnosis of the applicant's LOD condition was made on 2 Mar 21; therefore, after 2 Mar 22, the applicant's LOD could no longer be utilized to authorize MEDCON without a referral to the DES, in accordance with DoDI 1241.01, dated 19 Apr 16: 3. *POLICY*. It is DoD policy that: c. The in-LOD determination will be used to authorize appropriate medical and dental treatment for the covered condition for not longer than 1 year from diagnosis without being identified for referral to the DES;

(3) A completed AF Form 469, *Duty Limiting Condition Report*; (Partially Met) Note: The applicant's profile qualified for MEDCON until he was returned to duty via ALC-2 on 21 Nov 22;

(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; (Partially Met) Note: See above;

(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; (Not Met) Note: See previous MEDCON appeal.

Although not included in the reasoning for the MEDCON disapproval on 15 Apr 22, or in the reasoning for denial of the applicant's appeal of this decision, the LOD cannot be utilized to authorize MEDCON beyond one year from initial diagnosis of the LOD condition in accordance with DoDI 1241.01 without a referral to the DES. As the applicant was never referred to the DES, he did not meet MEDCON eligibility following his release on 1 Apr 22. Additionally, the applicant would also not qualify for MEDCON following a "return to duty" via ALC-2, which according to the Aeromedical Services Information Management System (ASIMS), occurred on 21 Nov 22. This date can be confirmed with the FL-4 which was not included in this package.

The complete advisory opinion is at Exhibit C.

NGB/A1PS recommends denying the applicant's request for INCAP pay. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice.

Review of the submitted documentation finds:

1. Counsel's representation of the applicant to the Air Force Board for Correction of Military Records (AFBCMR), dated 16 Feb 24.

2. Pre-MEDCON request to NGB/A1PS, dated 12 Oct 21 requesting 30 days starting 1 Nov 21.

3. Modified MEDCON orders, dated 4 Dec 21, for the period of 1 Nov 21 to 1 Apr 22 (total 152 calendar-days); Original dates for the period of 1 Nov 21 to 30 Nov 21 (Pre-MEDCON).

4. MyPERS MEDCON Disapproval, dated 15 Apr 22, with reason as follows: "…the documentation submitted for this request does not support MEDCON eligibility. Specifically, SM has 1 LOD condition that does NOT have an active, restorative treatment plan."

5. LOD ECT Case Work-Product Reported on 27 Aug 21, for orders within 1 Oct 20 to 31 Mar 21, and treatment date on 9 Feb 21, for a disease diagnosis of Crohn's disease of both small and large intestinal obstruction, adjudicated as NILOD on 6 Jul 22.

6. Applicant appealed Case Work-Product through the appellate authority process and the appellate authority was granted as ILOD on 31 Jan 23.

Per AFI 36-2910, the approval authority for MEDCON is ARC CMD. NGB/A1PS concurs with ARC CMD assessment provided via advisory opinion. NGB/A1PS considered the claim for INCAP pay but pertinent documentation was not provided for the applicant's loss of income and any valid inclusive dates, and therefore, recommends denial for INCAP pay.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 3 Apr 24 for comment (Exhibit E), and the applicant replied on 3 May 24. In her response, applicant's counsel contended the advisory opinions fail to address the primary thrust of the application – that the applicant was unjustly penalized by the Air Force's delay in his DES processing and their imposition of an additional step prior to the standard processing required by DoD policy.

Counsel contests the advisory opinion statement regarding MEDCON not being issued based upon an LOD determination more than one year beyond its issuance unless the member is referred to the DES. Counsel reiterates their reference to DoDI 1241.01 regarding retention on active duty until the LOD condition is resolved or the member is found fit for duty, separated, or retired as a result of a DES finding. Further, counsel contended the advisory opinion's reference to referral to the DES within one year was outside the applicant's control. He attempted to keep the process moving and was thwarted at each turn.

Per counsel, the applicant was RTD through the IRILO process. This is an added step implemented by the Air Force to attempt to resolve cases without full DES processing. This does not mean the applicant was not identified for referral to the DES but rather the Air Force chose not to follow DoD policy and instead routed the applicant's case to this additional preliminary step. The Air Force's decision to add steps to the process and delay the overall processing of the case cannot then be used as a justification to deny the applicant the benefits otherwise earned. Additionally, while the advisory opinion indicates the applicant was RTD, this was in name only, as he was not permitted to perform his duties until his actual waiver was processed. The decision to RTD was premature as the applicant was not cleared for flight duties. To continue to deny the applicant the ability to work through continued MEDCON orders, then further deny him the opportunity to receive INCAP pay for the same time period under the guise that he was RTD is disingenuous and downright unethical. None of these choices were made by the applicant. He fought to stay on orders on each and every turn. The Air Force is thereby gaining a windfall by not having to pay the applicant for the time lost while simultaneously preventing him from earning pay and points for such an extended period of time. For these reasons, the AFPC/DPFA advisory opinion should be disregarded in its entirety.

The NGB/A1PS advisory opinion focuses its analysis wholly on the belief the applicant did not have an active, restorative treatment plan. First, this disregards the fact that the applicant was under an active treatment plan that was ultimately misunderstood, which is why his MEDCON was disapproved. Because of the impact the applicant's Crohn's disease had on his entire system, he was required to undergo physical therapy to attempt to regain his strength. This was unjustly terminated when his MEDCON was disapproved as he no longer had medical coverage for treatment. Second, the advisory opinion fails to take into account the active, restorative treatment plan is not required by the DoDI. While the branches are free to afford members additional rights and benefits, they are not able to impose additional restrictions that interfere with a member's ability to receive those benefits afforded to them by the DoD. The Air Force has continuously harmed its members, including the applicant, by removing them from orders due to a misunderstanding of his treatment plan, thereby denying both continued treatment and financial compensation while continuing to work toward recovery.

The advisory opinion references lack of evidence concerning lost income; however, the applicant was denied the opportunity for INCAP pay before he ever had a chance to provide proof of lost income. The applicant had to relocate for a job opportunity after he was released from active duty orders. This position netted him less than $40,000 in 2022, which was not sufficient to support his family, so in 2023, the applicant started his own company and earned $60,000. Had the applicant remained on MEDCON orders, he would have earned an additional $119,000 in 2022, and $184,000 in 2023. Because of his unjust removal, the applicant was unable to maintain employment on par with his military position and his family suffered as a result. For these reasons, should the Board find MEDCON inappropriate for all, or a portion, of the time between the applicant's MEDCON disapproval and his return to an active duty status, request the NGB/A1PS advisory opinion be disregarded and INCAP pay directed for the remaining period.

In a supplemental response, counsel contended the applicant was RTD via the IRILO process, but he was incapable of performing his duties. This was reflected in the Commander's Impact Statement, the AF Form 469, and the MEB Narrative Summary. Specifically, the Commander's Impact Statement reported the applicant was in a Duty Not Including Flying (DNIF) status due to his medical conditions and was unable to obtain a Class 1 flight physical, was on a profile, and was unable to complete the fitness assessment. More importantly, the applicant could not perform his assigned duties, and per the commander, the MEDCON orders were ended incorrectly due to admin oversight. The commander recommended the applicant not be retained. The AF Form 469, dated 12 Apr 23, notes the applicant was in an MEB and was subject to both mobility and fitness restrictions. The applicant was noted as requiring specialty medical care and frequent monitoring by healthcare providers. The end date for these restrictions was when the applicant's MEB was supposed to be completed, one year later. This is another example of the timeliness of the processes being outside the applicant's control, while the applicant's requirements and limitations were well known, documented, and directly impeded the performance of his duties.

The Narrative Summary indicated the applicant's condition was disqualifying for "retention, all flying class status, and GBO." It also stated the applicant required specialty care and frequent monitoring. The Narrative Summary also provided detailed medical information regarding the applicant's condition and care. The applicant's physical strength was greatly diminished by his condition, so he was actively undergoing physical therapy. The disapproval of his MEDCON orders forced the applicant to discontinue this therapy due to financial hardship and instability. Given the Narrative Summary's findings, there was no reason for the applicant's MEB to be delayed until 2023, as all of the pertinent findings were available in 2021 and 2022. The decision to remove the applicant from MEDCON orders in 2022 was erroneous and inconsistent with his medical records.

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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationales and recommendations of AFPC/DPFA and NGB/A1PS and finds a preponderance of the evidence does not substantiate the applicant's contentions. In accordance with DoDI 1241.01, the applicant's original LOD could not be utilized to authorize MEDCON beyond one year from the date of initial diagnosis without referral to the DES. The applicant's LOD expired on 12 Mar 22. Additionally, the applicant would not qualify for MEDCON following his return to duty, which occurred on 21 Nov 22.

Furthermore, regarding counsel's contention the DES process was delayed, in accordance with DAFMAN 48-108, a service member's line of duty must be finalized prior to referral into the DES. This includes any member-initiated appeal of an LOD determination under AFI 36-2910. The applicant's ILOD appeal was not finalized until 31 Jan 23. Furthermore, counsel's contention the Air Force did not follow DoD policy when initiating an additional step in the DES process with the IRILO is without merit, as DAFMAN 48-108 identifies the IRILO is a preliminary first step in the DES pre-screening process. Counsel's contention that while service branches are "free to afford members additional rights and benefits, they are not able to impose additional restrictions" is in direct contradiction to the guidance regarding Air Force supplements to DoD issuances in accordance with AFI 33-360, *Publications and Forms Management*. Air Force implementation of DoD guidance cannot be less restrictive than the parent publication but can be more restrictive.

Finally, regarding counsel's contention the applicant was denied the opportunity for INCAP pay before providing proof of loss of income, there is no evidence the applicant ever applied for INCAP pay. If he had, the applicant would still have to meet the requirements outlined in AFI 36-2910 for approval. However, the applicant did not meet the requirements for INCAP pay in accordance with AFI 36-2910. The applicant did not apply for INCAP pay within the required timeline, did not provide supporting medical documentation, and did not provide proof of civilian employment/loss of income. Therefore, the Board recommends against correcting the applicant's records.

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 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-2024-00679 in Executive Session on 19 Feb 25:

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 6 Feb 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPFA, dated 14 Mar 24.
Exhibit D: Advisory Opinion, NGB/A1PS, w/atch, dated 22 Mar 24.
Exhibit E: Notification of Advisory, SAF/MRBC to Counsel, dated 3 Apr 24.
Exhibit F: Counsel's Response, w/atchs, dated 3 May 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.

Work-Product