

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01103

COUNSEL: NO

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His official records be corrected to show that:

1. He was not released from active duty in Jun 08, but was continued on Medical Continuation Orders.
2. He met a Medical Evaluation Board to establish a retirement date for his disability retirement.
3. He was re-authorized proper reconstitution leave after his medical treatment was complete.

APPLICANT CONTENDS THAT:

1. He was treated differently because he was in the Air National Guard (ANG). He was on active duty in Iraq when he sustained an injury due to being electrocuted. The Expeditionary Medical Support (EMEDS) did not have the facility or means to properly assess his injury, and refused to send him to a facility which did. EMEDS told him they would not continue with his medical evaluation because his tour of duty was almost complete and he should seek medical attention upon returning to his home. The delay caused further injury.
2. Upon returning home, he was placed in a reconstitution leave status when he should have received Medical Continuation Orders and remained on active duty for the remainder of his medical evaluation and treatment. The Medical Squadron tried to minimize medical reporting by utilizing TRICARE and having each appointment and procedure pre-authorized. His medical treatments continued after the reconstitution leave was over. Consideration of a Line of Duty (LOD) determination was an afterthought that took place in CONUS.
3. His injury was more extensive than was stated in the LOD. The descriptive narrative of his 80% VA compensatory disability rating is a more accurate description of his injuries. Because of the wording of the LOD and the regimented pre-authorization

requirement for appointments he could not receive the medical care he needed.

4. The 107th Medical Squadron's reasoning that his ability to show up for duty is a reason to restrict his medical treatment is not correct. Being physically "unable" in military terms is not the same as being incapable of performing work.

In support of his appeal, the applicant provides an expanded statement and copies correspondence from his Wing IG Letter and his DVA disability rating decision, AF Form 938, *Line of Duty (LOD) Determination*, Point Credit Accounting Summary (PCARS), and excerpts from his military records and military and civilian medical records.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant serves as a Master Sergeant in the Air National Guard.

On 7 Apr 08, while deployed to Iraq, the applicant sustained an injury to his right shoulder while pulling an electrical cable.

On 23 Jun 08, after returning from his deployment to Iraq and being released from active duty, a Line of Duty Determination found his injury to be in the line of duty.

On 28 Feb 11, according to information provided by the applicant, the DVA notified the applicant they had increased his compensatory disability rating to 30 percent for right-sided hemidiaphragmatic paralysis.

On 25 Sep 11, the applicant submitted an AF IMT 102, *Inspector General Personal and Fraud Waste & Abuse Complaint Registration*, with his wing IG office requesting proper accrediting of military duty for continuance of active duty for medical treatment, for being directed to seek medical treatment when on reconstitution leave status, for being on reconstitution leave after his medical condition was determined, and requesting medical retirement from active duty with a proper start date for disability retirement due to his LOD injury.

On 11 Feb 12, the IG responded to the applicant's complaint, stating that the applicant was not determined to be unfit for duty by the medical doctors at EMEDS in Iraq nor were any documents provided from the VA doctors to indicate he was unfit for duty. Therefore, the applicant was not placed on Incapacitation Pay. Further, since Medical Continuation Orders cannot be backdated, the IG could offer the applicant no relief

for the time period for which he believes he should have been kept on MEDCON Orders.

The remaining relevant facts pertaining to this application are described in the letters prepared by the Air Force offices of primary responsibility, which are included at Exhibits C and D.

AIR FORCE EVALUATION:

AFMOA/SGHI recommends denial, indicating there is no evidence of an error or injustice. There is no documentation to indicate that a Command Man-day Allocation System (CMAS) request was submitted for the applicant. The letter from the Wing IG indicates the applicant's LOD was completed and determined to be in-the-line of duty after the applicant was released from active duty and had returned to work at his civilian job and as a traditional Guardsman. There was no medical documentation provided or in the electronic outpatient medical record (AHLTA) to suggest the member was unable to perform duties while deployed. Further, the guidance used for MEDCON Management at the time the member was on active duty and then demobilized, is based on Incapacitation Directives such as DoDI 1241.2, dated 30 May 01, *Reserve Component Incapacitation System Management*, which indicate that a reserve component member who is able to perform military duties, as determined by the Secretary concerned, but demonstrates a loss of earned income as a result of an injury, illness, or disease incurred or aggravated in the line of duty is entitled to pay and allowances, including all incentive and special pay to which entitled, if otherwise eligible. However, as stated in the IG findings provided, the applicant returned to work both at his civilian job and as a traditional guardsman, without any loss of duty time since returning to work. If a service member is able to perform their military duties and return to their civilian jobs there is no basis to retain that member on active duty orders for MEDCON. Additionally, members are required to complete medical evaluations prior to any leave or reconstitution time.

A complete copy of the AFMOA/SGHI evaluation is at Exhibit C.

The AFBCMR Medical Consultant recommends denial, indicating there is no evidence of an error or injustice. There is no medical information available for this review regarding the date of injury, clinical assessment, treatment, duty limiting restrictions or recommended follow-up from the EMEDS treatment facility. The narrative indicates the applicant had sustained a right shoulder injury while pulling a secondary distribution cable. An LOD determination completed after redeployment to CONUS indicated throbbing pain, with pins and needles, which radiated from the right shoulder to the right hand followed the shock injury. The evidence submitted for this review fails to document any duty-limiting injury, profile restriction or other objective evidence of functional limitations. While the

narrative statements provided describe treatment provided at the Baghdad International Airport (BIAP) medical clinic, there was no medical information to review the severity of the LOD injury or whether it warranted continuance of active duty orders. Records indicate that, upon redeployment to CONUS and completion of military reconstitution leave, the applicant returned to work at his civilian job and resumed his military duties as a traditional guardsman. There was no indication of any duty or work restrictions or functional impediment to duty resulting from any potentially unfitting medical condition.

With regard to the applicant's contention he should have been continued on active duty orders, SAF/MR Memorandum, *Medical Continuation/Extensions for Reserve Component (RC) Members Serving in Support of a Contingency*, states that continuation may be warranted when an airman identified for early demobilization has a disqualifying medical issue that cannot be resolved prior to the orders demobilization date. The records submitted for review fail to provide objective evidence of an unfitting or disqualifying medical condition at or following demobilization. In fact, evidence to the contrary is substantial with resumption of normal civilian and military duties following completion of military reconstitution leave.

Medical Evaluation Boards (MEBs) are convened to identify and assess the possible existence of an unfitting or disqualifying medical condition. In this case, no unfitting condition is documented prior to the applicant resuming both normal military and civilian work responsibilities. Therefore, an MEB was not medically indicated.

Addressing the applicant's request for a medical separation/retirement, the military Disability Evaluation System (DES) can by law only offer compensation for those service incurred diseases or injuries which specifically rendered a member *unfit* for continued active service and were the cause of career termination; and then only for the degree of impairment present at the time of separation and not based on future occurrences. It could not be established that the applicant was unable to reasonably perform his military duties due to one of more medical conditions during his military service or at the time of his release from active duty orders. Moreover, under DoDI 1332.32, *Physical Disability Evaluation*, Paragraph E3.P3.3.3., *Adequate Performance Unit Referral*, it states "If the evidence establishes that the Service member adequately performed his or her duties until the time the Service member was referred for physical evaluation, the member may be considered *fit* for duty even though medical evidence indicates questionable physical ability to continue to perform duty." Based upon the supplied Service medical evidence, the Medical Consultant found no medical condition that established a cause and effect relationship with the termination of the applicant's service or as an alternative reason for his release from military service. Although the applicant was evaluated and ultimately granted compensation for a number of alleged

conditions resulting from an electrical injury by the Department of Veterans affairs (DVA), none have been shown to have been clinically present or interfered with his military service to the extent or duration that warranted placement on Medical Hold or Medical Continuation Orders for a Medical Evaluation Board and processing through the DES. Operating under a different set of laws (Title 38, United States Code) with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to its demonstrated or proven impact upon a service member's fitness for continued active service or narrative reason for release from military service; nor the intervening or transpired period since the date of separation. This is the reason why an individual can be found fit for release from active military service and yet sometime thereafter receive compensation ratings from the DVA for a condition found service-connected, but which were not proven militarily unfitting during the period of active service.

A complete copy of the AFBCMR Medical Consultant's evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant submitted copies of his DD Form 214, *Certificate of Release or Discharge from Active Duty*, and voluminous amounts of medical documentation from his medical records intended to indicate he was unit for duty.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. We took notice of the applicant's complete submission in judging the merits of the case, to include the voluminous documentation the applicant submitted in rebuttal to the Air Force advisories; however, we agree with the opinions and recommendations of the Air Force office of primary responsibility (OPR) and the AFBCMR Medical Consultant and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error of injustice. In particular, we note the statements of the Air Force OPR and AFBCMR Medical Consultant which indicate that upon redeployment to CONUS from Iraq and completion of military reconstitution leave, the applicant returned to work at his civilian job and resumed his military duties as a traditional guardsman, and there was no indication of any duty or work

restrictions or functional impediment to duty resulting from any potentially unfitting medical condition. Absent evidence of an unfitting condition, there was no basis upon which to place the applicant on medical continuation orders or medical hold for an MEB and processing through the DES. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR Docket Number BC-2012-01103 in Executive Session on 17 Jan 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 14 Mar 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFMOA/SGHI, dated 7 May 12, w/atchs.
- Exhibit D. Letter, BCMR Medical Consultant, dated 13 Dec 12.
- Exhibit E. Letter, SAF/MRBC, dated 17 Dec 12.
- Exhibit F. Letter, AFBCMR, dated 19 Dec 12.
- Exhibit G. Documentation, Applicant, undated.

Panel Chair