

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02179

COUNSEL: NONE

HEARING DESIRED: NO

THE APPLICANT REQUESTS THAT:

He be entitled to medical continuation (MEDCON) for his In the Line of Duty (INLOD) injury from 11 Jun thru 22 Aug 11.

THE APPLICANT CONTENDS THAT:

He was supposed to be on orders for surgery from injuries he received during his deployment starting in Aug 10. In lieu of MEDCON, he was placed on incapacitation pay (INCAP) by mistake; however, he was never supposed to be on INCAP.

In support of his appeal, the applicant provides copies of his Leave and Earnings Statement, dated 23 Mar 12; MEDCON Authorization messages and orders for the period 22 Aug 11 thru 27 Aug 11, with extensions to 18 Jan 12; requests for incapacitation pay and Informal Line of Duty Determination.

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

STATEMENT OF FACTS:

Based on the available evidence of record and the letter provided by the Air Force Medical Operations Agency (AFMOA), the applicant was recalled to EAD during the period of 27 Aug 10 to 24 Feb 11. He was placed on MEDCON orders for the period 25 Feb 11 to 20 Jun 11 and from 22 Aug 11 to 13 Jan 12.

During the period under review, the applicant experienced medial meniscus of right knee (dislocation of the knee); also, it was later determined that he had bilateral knee pain. He was approved for INCAP for the period 11 Jun 11 through 21 Aug 11.

THE AIR FORCE EVALUATION:

AFMOA/SGHI recommends denial of the applicant's request for continued active duty from 11 Jun to 22 Aug 11.

The applicant was approved for INCAP pay; documents show a start date of 11 Jun 11 through 21 Aug 11. The requirement for MEDCON orders, at the time he was requesting an extension of his orders, is that the member must be unable to perform his military duties. In addition, they noted in accordance with the governing directive and the Secretary of the Air Force (SAF) Memorandum para 2, entitlement under this policy shall begin when the condition renders the airman unable to perform military duties; not when the injury occurred or when the airman was released from active duty. Medical documentation indicates the applicant was "doing quite well. He is still in therapy and is going to continue for another week." No further treatment was recommended. The medical provider note, dated 29 Jun 11, indicates "follow up in 6 weeks for treatment of other LOD condition." Surgery was not scheduled until 23 Aug 11 and no treatment was in progress during 11 Jun 11 through 21 Aug 11. Orders started on 22 Aug 11 to provide a preoperative day for his surgery.

The complete SGHI evaluation, with attachments, is at Exhibit C.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

The applicant reiterated his original contentions and his belief that he should have been continued on active duty versus his receipt of INCAP pay. INCAP pay denies him additional entitlements which he would have received had he remained on MEDCON orders.

In support of his appeal, the applicant submits a personal statement and a letter from his civilian medical provider.

The applicant's complete response, with attachments, is at Exhibit E.

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 error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the AFMOA and adopt its rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. In this respect, we note that since the applicant received INCAP pay for the period in question, as pointed out by SGHI, in order for a member to receive an extension to orders, the governing directives require that the member be unable to perform his military duties. The applicant has not provided sufficient evidence that supports he was unable to perform his military duties. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

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-2012-02179 in Executive Session on 7 November 2012, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 5 Apr 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFMOA/SGHI, dated 24 Aug 12, w/atchs.
- Exhibit D. Letter, SAF/MRBR, dated 28 Aug 12.
- Exhibit E. Letter, Applicant, dated 13 Sep 12, with atch.

Panel Chair

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