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## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### THIRD ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2014-03057-6

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COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

The Board reconsider her request for incapacitation (INCAP) pay.

### RESUME OF THE CASE

The applicant is a former Air Force Reserve senior airman (E-4) who was honorably discharged on 28 Jan 14 with severance pay.

On 12 Nov 15, the Board considered and denied her request to change her discharge with severance pay (DWSP) decision to a returned to duty, be promoted to staff sergeant (E-5), and remain on active duty until her Disability Evaluation System (DES) process was concluded. Relevant to her current case, she contended she should have received travel or active duty pay while undergoing the Medical Evaluation Board (MEB) process. The AFBCMR Medical Consultant in this case opined payment of the applicant, if not done, while undergoing the MEB process warrants consideration. The advisory from AFPC/DPFA recommended a denial for medical continuation (MEDCON) orders but did not offer an opinion on her eligibility for INCAP pay. The Board took notice of the applicant's complete submission, to include the rebuttal responses, in judging the merits of the case; however, agreed with the opinion and recommendation of the Air Force offices of primary responsibility (OPR) and the AFBCMR Medical Consultant and adopted their rationale as the basis for their conclusion finding the applicant has not been the victim of an error of injustice. While the Board noted the applicant believed she was fit to be returned to duty, it was determined her condition could not endure the physical rigors of the military environment. Furthermore, the Board found no evidence an error or injustice occurred during the disability processing or that she met the criteria for promotion to staff sergeant.

On 6 Sep 18, the Board reconsidered and denied her request for her medical discharge to be removed and she be returned to duty. The AFBCMR Medical Advisor noted from the date her AF Form 469, *Duty Limiting Condition Report*, was initiated on 23 Oct 12, until her date of discharge, consideration should be made for either INCAP pay or MEDCON orders. However, the applicant would need to provide documentation from her civilian employer to depict a reduction in pay during the requested period and the results from the limitations imposed by her knee impairment to support INCAP pay and further noted there was no documentation showing the applicant qualified for, submitted, or completed an application for INCAP pay.

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On 28 Jun 19, the applicant was sent a non-viable letter along with a copy of her previous case decision made on 6 Sep 18 stating reconsideration is authorized only where the applicant presents evidence that was not considered by the original Board. Additionally, the reiteration of facts previously addressed by the Board, uncorroborated personal observations, or additional arguments on the evidence of record are also not grounds for re-opening a case.

On 11 Sep 20, the Board reconsidered and denied her request for INCAP pay stating the applicant did not provide any new and/or relevant evidence in support of her request. In this case, the applicant also asked for the issuance of a DD Form 214, *Certificate of Release or Discharge from Active Duty*; however, the Board concurred with the rationale and recommendation of ARPC/DPTS and found the applicant did not meet eligibility criteria for issuance of a DD Form 214 reflecting her disability separation.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the previous case files at Exhibits K, O, and U.

On 10 Feb 23, the applicant requested reconsideration of her request for INCAP pay. She again contends as per the recommendation by the medical examiner on 18 Jun 18, from her previous case, she never received benefits even though she submitted the documentation to her unit. She previously submitted this request but the AFBCMR never considered the evidence. She submitted all of her certified INCAP forms from her medical doctor and the email correspondences showing her request to process her applications which were approved by her unit.

In support of her reconsideration request, the applicant submitted the following new evidence: (1) her INCAP pay applications (AF Form 1971, *Certification for Incapacitation Pay*) for the periods of 11 Sep 11 thru 1 Mar 12, 2 Mar 12 thru 3 Sep 12, 4 Sep 12 thru 4 Mar 13, and 5 Mar 13 thru 5 Sep 13 all signed and dated by the applicant on 25 Sep 13; (2) statements of earned income; (3) signed acknowledgement briefings regarding INCAP pay; (4) and copies of email correspondences.

The applicant's complete submission is at Exhibit V.

## **AIR FORCE EVALUATION**

AFRC/A1KK recommends denying the application finding no evidence of an error or injustice. The applicant was provided information to officially request incapacitation pay via an email dated 25 Sep 13, which outlined the documents required to apply for incapacitation pay which stated a request for incapacitation pay cannot be processed until all the required documentation was received. The applicant provided three different AF Forms 1971, however there is no evidence to suggest the full package with correct supporting documentation was provided to the responsible office for processing nor does the applicant provide this documentation.

The complete advisory opinion is at Exhibit W.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 31 Oct 23 for comment (Exhibit X), 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 remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale and recommendation of AFRC/A1KK and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specially, the Board finds the applicant did not submit all the required documentation for INCAP pay eligibility. Applicants have the burden of proof for providing evidence in support of their claim and she was informed via an email dated 25 Sep 13, of the required documents needed to process her request which include income statements of loss wages from her civilian employer certifying whether she was unable to perform her duties due to her injury and if she was receiving income through sick leave, additional pay documents outlined in the email, her military orders, and other medical documents pertaining to the injury. If the applicant provides this additional documentation, the Board may reconsider her application. 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-2014-03057-6 in Executive Session on 30 Nov 23:

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Panel Chair

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Panel Member

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Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit K: Record of Proceedings, w/ Exhibits A-J, dated 12 Nov 15.

Exhibit O: Addendum to Record of Proceedings, w/ Exhibits L-N, dated 6 Sep 18.

Exhibit U: Second Addendum to Record of Proceedings, w/ Exhibits Q-T,

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dated 11 Sep 20.

Exhibit V: Application, DD Form 149, w/atchs, dated 10 Feb 23.

Exhibit W: Advisory Opinion, AFPC/A1KK, dated 31 Oct 23.

Exhibit X: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Oct 23.

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.

		12/22/2023
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Board Operations Manager, AFBCMR		
Signed by: USAF		

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