RECORD OF PROCEEDINGS

IN THE MATTER OF: XXXXXXXXXXXXX

DOCKET NUMBER: BC-2020-01433

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He receives Health Professions Special and Incentive (HPS&I) Pay for his recent deployment and 2019 Inactive Duty Training (IDT) periods authorized in the Fiscal Year 2019 (FY19) United States Air Force Reserve (AFR) HPS&I Pay Plan and Title 37, United States Code, Sections 204 and 206 (37 USC, §§204 and 206).

APPLICANT'S CONTENTIONS

Air Force, AFR and Air National Guard (ANG) Health Professions Officers (HPOs) are entitled to HPS&I based on specialty and board certification. However, he was denied HPS&I for his most recent deployment because the National Guard Bureau (NGB) did not finalize a pay plan for FY19, wherein they published a change in the application process.

On 3 Jan 19, AFRC/SG distributed the AFR FY19 HPS&I Pay Plan to NGB and AFR HPOs. However, NGB and AFRC did not distribute the pay play to ANG HPOs. Per conversations with both NGB and ARPC/DPAMM, NGB was supposed to develop its own version for FY19 and FY20. Incentive Pay and Board-Certified Pay (IP/BCP) are the applicable components of HPS&I after completion of 30 days or more on Title 10, orders in accordance with (IAW) 37 USC, §204. In 2008, he deployed to Kandahar, Afghanistan and upon his return, he applied for and was paid IP/BCP.

After his deployment in 2019, he followed the same protocol and filed for IP/BCP; however, his payment was denied because he failed to sign an agreement prior to the deployment. Unbeknownst to him, in the interim between deployments NGB changed procedures but failed to notify deploying HPOs. NGB personnel stated they had consulted with the Judge Advocate General (JAG) in developing the ANG HPS&I Pay Plan and was told the agreements needed to be signed prior to, or during the month of deployment for payment. Because of the JAGs opinion, ARPC/DPAMM could not authorize retroactive payments, so he was informed he needed to seek relief through the Air Force Board for Correction of Military Records (AFBCMR).

Subsequently, he requested NGB provide a form letter admitting they failed to notify ANG HPOs of the policy change; however, NGB stated they did not have a form letter, as they were focused on trying to finalize an HPS&I Pay Plan.

The FY19 AFR HPS&I Pay Plan provides policy and operational guidance for managing payment of HPS&I. The two types that are applicable to his request are IP/BCP. For ANGs with multiple Air Force Specialty Codes (AFSCs), ARPC/DPAMM uses the highest paying AFSC to calculate IP, as noted by past precedence. Therefore, he is owed $8,666.67 from the FY19 AFR HPS&I Pay Plan.

IP/BCP are governed by 37 USC §335, which states "HPOs qualify for IP/BCP when receiving basic pay under 37 USC §§204 and 206. ANG HPOs special tours, annual tours, AFTP, paid inactive duty all qualify for IDT under 37 USC §206. Since he received basic pay for 202 IDT periods in 2019, he is owed $36,472.33.

Had he been aware of the procedural change based on the JAGs opinion, he would have signed the agreements prior to his deployment (2019). Both NGB and ARPC/DPAMM have his signed agreements for his 2019 deployment, upcoming deployment in April, and IDT days for 2019 and 2020.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an ANG lieutenant colonel (O-5).

Per Special Order XX-XXX, dated 11 Oct 16, the applicant was appointed a Lt Col in the ANG, effective 17 Jul 16.

According to DD Form 214, *Certificate of Release from Discharge or Active Duty*, the applicant was on active duty in support of Operation INHERENT RESOLVE (ISIS) IAW 10 USC, §12301 (D) in Afghanistan from 4 Oct 18 to 18 Nov 18.

According to the Fiscal Year (FY) AFR HPS&I Pay Plan, the pay plan applies to AFR HPOs when not on active duty for greater than 30 days. AFR HPOs on active duty greater than 30 days are covered by the Active Component HPS&I pay plan for their specialty.

To be eligible for IP, a Reserve Component (RC) HPO must:

(a). Serve in the specialty for which IP is being paid, unless terminated.

(b). Execute a written agreement to remain in SELRES for a period of not less than one year.

(c). Be entitled to basic pay under 37 USC, § 204 or compensation under 37 USC § 206.
To be eligible for BCP, a RC HPO must:

(a). Be entitled to basic pay under 37 USC, § 204 or compensation under 37 USC, § 206.

(b). Have a post-baccalaureate degree in a clinical specialty or acceptable post-master's degree.

(c). Be certified by professional board in a designated health profession clinical specialty as identified in the respective AC HPS&I Pay Plan,

(d). Serve in an active status in the specialty of the board certification.

(e). Complete a certification of eligibility which shall apply for one year from the date of the member's signature.

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

AIR FORCE EVALUATION

NGB/SGXP, recommends partially granting the application, indicating that based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice regarding the applicant's 13 Oct 19 thru 29 Nov 19, Title 10 period of performance. Specifically, the applicant is entitled to IP/BCP payment ($8, 666.67) for his 48-day deployment. However, any IDT periods are not authorized IP/BCP payments.

The ANG Medical Service (ANGMS) has not had an approved Title 10 HPO Pay Plan until 19 Mar 20. Prior to this, ARPC processed all Title 10 HPOs from the ANGMS utilizing the AFR Pay Plan. The applicant was deployed on Title 10 orders from 13 Oct 19 thru 29 Nov 19 but was never instructed on the proper steps/guidelines in order to file for IP/BCP.

On 15 Feb19, the OASD (HA) published a memorandum entitled "DoD Reserve Component (RC) Special and Incentive Pay – Payments During Periods of Military Duty Other than Mobilization," which states, "Retroactive payments of these incentives pays are not authorized." However, ARPC did not implement the OASD (HA) memorandum for no retroactive IP/BCP payments until 27 Feb 20. It was not until Mar 20, that NGB notified the field of the no retroactive payment of IP/BCP and the requirement to have a completed application prior to their orders.

AFRC began paying their members for IDT periods in May 18; however, the applicant is a member of the ANGMS and not entitled to IP/BCP for the 202 IDT periods he believes he is entitled. The Air National Guard Readiness Center (ANGRC) leadership only authorizes payments for the following HPOs: (1) HPOs on 31 or more consecutive days of Title 10 orders, (2) HPOs on 31 or more consecutive days of AGR orders, or (3) HPOs on 31 or more consecutive days of USC 32, §502(f)(2) orders for COVID-19 response. As a result, the applicant is not entitled to $36,472.33 of IP for the IDTs he performed.
ANGRC leadership has not approved ANG HPOs to receive IP/BCP for IDT periods and as a result, the applicant would not be eligible for the medical special pay totaling $36,472.33. ANGRC is well aware that AFRC pays their HPOs for IDT periods; however, the ANG still has not approved ANG HPOs to receive these medical special pays.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 Nov 20 for comment (Exhibit D) but has received no response.

ADDITIONAL AIR FORCE EVALUATION

On 23 Nov 20, the Board staff requested NGB/SGXP provide and additional advisory to address the below questions/concerns:

1. NGB/SGXP states "there is evidence of an error or injustice for the applicant's 13 Oct 19 – 29 Nov 10, Title 10 period of performance." However, SGXP does not specifically state what the error or injustice is and how to correct the applicant's record, should the Board agree with the proposed recommendation.

2. The advisory opinion is silent on the applicant's request for IP/BCP for IDT period in 2019. Specifically, the applicant states IP/BCP are governed by 37 USC, §335, which states "HPOs qualify for IP/BCP when receiving basic pay under 37 USC §§204 and 206. ANG HPOs Special Tour, AT, AFTP, Paid Inactive Duty qualify as IDT under 37 USC, §206. He received basic pay for 202 IDT periods and therefore is owed HPS&I pay.

3. The applicant contends ANG HPOs with multiple AFSCs, ARPC/DPAMM uses the highest paying AFSC to calculate IP and that this is well-established past precedence, therefore, he is owed $8,666,67 using the AFR HPS&I Pay Plan, FY19.

4. The applicant contends precedence has been established that IDT periods for AFR HPOs qualifies for HPS&I IAW 37 USC, §§204 and 206, the same applies for ANG HPOs. Therefore, he is owed $36,472.23 for 202 IDT period in 2019.

On 1 Dec 20 and 28 Apr 21, in response to the above aforementioned questions, NGB/SGX provided the following responses:

1. The Air National Guard Medical Service (ANGMS) agrees there was an error in our IP/BCP process when it came to properly notifying HPOs before Title 10 deployments; therefore, this member suffered an injustice in not being paid IP/BCP when they were entitled to it. As a result, we agree the member would qualify to receive IP/BCP for his Title 10 deployment from 13 Oct 19 – 29 Nov 19 since he never received proper steps/deadlines on when to file his IP/BCP application.

2. The ANGMS has never paid HPOs for IDT when performing on a drill weekend or anytime for that matter. Even though AFRC) began paying their members for IDT periods in May 18, the applicant is a member of the ANGMS and is not entitled to IP/BCP for the 202 IDT periods he believes he is entitled to. Currently, ANGRC leadership only authorizes IP/BCP payments for the following HPOs: (1) HPOs on 31 or more consecutive days of Title 10 orders, (2) HPOs on 31 or more consecutive days of AGR orders, or (3) HPOs on 31 or more consecutive days of Title 32

§502(f)(2) orders for COVID response. As a result, the applicant is not entitled to the $36K of IP for the IDTs he performed.

3. ARPC/DPAMM determines IP rates based off the HPOs clinical specialty and if two AFSCs are listed/identified (usually a Flight Doc [48R] and their clinical specialty – since there is not an IP amount for 48Rs], ARPC will pay at the clinical specialty rate. As a result, the amounts he lists for IP/BCP of $8,666.67 for his 48-day, Title 10 deployment are accurate and would be the amount he would receive if/when his BCMR is approved.

4. As noted above, ANGRC leadership has not approved ANG HPOs to receive IP/BCP for IDT periods and as a result, the applicant would not be eligible for the medical special pay totaling $36,472.23. ANGRC leadership is well aware the AFRC pays their HPOs for IDT periods; however, they still have not approved ANG HPOs to receive these medical special pays.

The complete advisory opinion is at Exhibit E.

APLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the additional advisory opinion to the applicant on 8 May 21 but has received no response. Subsequently, on 28 Mar 23, the applicant responded that he agreed with the rationale and recommendation of the NGB/SGPX advisory opinion signed on 28 Apr 21 (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 the NGB/SGXP, advisory opinion dated 28 Apr 21 and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the Board noted the applicant never received proper step/deadlines on when to file his IP/BCP application. In addition, NGB/SGXP miscalculated the entitlement to Incentive Pay/Board Certified Pay (IP/BCP) based off the 2019 pay plan when it should have calculated from 2020 approved plan, which is sufficient to justify granting the applicant's request to award him IP/BCP for the period 13 Oct19 – 29 Nov 19. 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. Therefore, the Board recommends correcting the applicant's records as indicated below.

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 he be allowed to submit his Incentive Pay (IP)/Board Certified Pay (BCP) application for payment for the 48-day deployment in 2019.

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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2020-01433 in Executive Session on 17 Dec 20 and 9 Jun 21:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 20 Feb 20.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, NGB/SGXP, w/atchs, dated 9 Nov 20.
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 13 Nov 20.
Exhibit E: Advisory opinion, Corrected, w/atchs, dated 28 Apr 21.
Exhibit F: Email, Notification of advisory, SAF/MRBC to applicant w/atchs, dated 8 May 21.
Exhibit G: Email, Applicant's Response to Rebuttal, dated 28 Mar 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.12.9.