

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-00155

XXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be retroactively paid \$16,333.33 for Consolidated Special Pay (CSP) Incentive Pay (IP) and Board Certification Pay (BCP) from 8 Jan 17 through 30 Apr 17.

APPLICANT'S CONTENTIONS

In 2016, he was recruited to join the Air Force as an officer in the medical corps. In exchange for his service, his recruiter told him that he would receive Additional Special Pay (ASP) and Incentive Special Pay (ISP), which would be paid on the anniversary of his entry to active duty (EAD). In addition, he was told that he would receive a Critically Short Wartime Specialty Accession Bonus (CSWS-AB) that would be paid at the start of his EAD. Since he was new to the Air Force, his recruiter assured him no contract signing was required and payments would be automatic.

A few months after he joined, he had not received the accession bonus and after speaking with other physicians, he was advised to contact the Medical Special Pays Office to fix the error. On 19 May 17, he contacted this office and was told that on 1 Jan 17, the same day he entered the Air Force, the medical legacy pay structure had converted into the Consolidated Specialty Pay (CSP) program and an error occurred with the processing of his bonuses. As such, he now needed to sign a contract in order to receive the new medical special pays (IP and BCP).

On 26 May 17, he signed the contracts for IP and BCP; however, he was never made aware of any of these requirements when he was recruited, nor after he entered active duty. While the Medical Special Pay Office was able to process his CSWS-AB, they could not backdate his IP and CSP and he was instructed to submit a request to the Board for retroactive bonus entitlements.

In support of his appeal, the applicant provides copies of his 26 May 17 signed CSP contracts; an e-mail from his Health Professions Recruiter, dated 12 Feb 16, informing the applicant he would receive ASP and ISP, which would be paid after he completed his first 12 months of active duty; and an e-mail dated 19 May 17, from the Medical Special Pays Office, which indicates that he was entitled to approximately \$16,333.33 from 8 Jan 17 through 30 Apr 17.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a Regular Air Force lieutenant colonel (O-5).

On 21 Oct 16, the applicant signed a *Critically Short Wartime Specialty Accession Bonus (CSWS-AB) For Fully Qualified Physician and Dental Specialists Contract Request*, to receive a four year accession bonus upon his entry into active duty.

On 1 Jan 17, the *United States Air Force Fiscal Year 2017 Medical Corps Special Pay Plan*, went into effect and Legacy Special Pays were to begin converting to the CSP program.

On 8 Jan 17, according to AF IMT 766, *Extended Active Duty Order*, with special order AH-0037, dated 10 Nov 16, the applicant entered the active duty Air Force as a medical officer.

On 26 May 17, the applicant signed *Consolidation of Special Pays (CSP) Incentive Pay (IP) Contract Request (Non-GMO)*, requesting one-year of IP effective 1 May 17 at a rate of \$43,000 paid annually in equal monthly installments.

On 26 May 17, the applicant signed *Board Certification Pay Contract Request-All Corps*, requesting BCP effective 1 May 17 at a rate of \$500 paid monthly upon execution.

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

APPLICABLE AUTHORITY

United States Air Force Fiscal Year 2017 Medical Corps Special Pay Plan

Summary of Revisions: Effective Fiscal Year 2017 (FY17), Medical Corps officers will begin converting from Legacy Special Pays to Consolidated Special Pays (CSP). Some pay types available in FY16 will no longer be available, and eligibility for pays has changed. This pay plan should be read in its entirety to determine eligibility and pay conversion.

1.4.1. Contract Requirement.

1.4.1.1. All CSP pay types require a contract to initiate pay. Details on contract durations and rates are provided later in the Pay Plan

1.4.2. Contract Effective Date

1.4.2.1. Contracts may be effective as early as the first day of the month in which the officer signed the contract (no backdating to the previous month or further) as long as:

1.4.2.1.1. The officer was eligible on the date to be used as the effective date,

1.4.2.1.2. The authorized endorser's signature is dated within 1-month of the officer's signature, and

1.4.2.1.3. The contract is submitted to myPers/received by AFPC Medical Special Pays within 2-months of the officer's signature.

AIR FORCE EVALUATION

AFPC/DP2N recommends denying the applicant's request for BCP and IP. In Jan 17, the applicant failed to sign or submit a BCP or IP contract with an 8 Jan 17 effective date. Ultimately, it is the applicant's responsibility to submit contracts on time. He submitted and started receiving pay for both BCP and IP contracts on 1 May 17.

Should the board elect to grant the request, the applicant should receive a total of \$15,244.42 (IP = \$3583.33 for 3 months, 22 days and BCP \$500 for 3 months, 22 days) from 8 Jan 17 through 30 Apr 17.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Apr 21 for comment (Exhibit E), and the applicant requested that his case be administratively closed on 26 May 21 in order to have additional time to prepare a response. On 1 Feb 22, the applicant through new representation of counsel requested that his case be reopened and provided a response to the advisory. The applicant's counsel contends he received erroneous advice from his health professions recruiter in 2016. His recruiter told the applicant he would receive BCP in the amount of \$2,500 per year,

variable Special Pay in the amount of \$5,000 per year, Incentive Pay in the amount of \$20,000 per year, and additional Special Pay in the amount of \$15,000 per year once he started active duty on 8 Jan 17. His recruiter had also informed him he would automatically receive these payments and he completed other forms documenting as such. After he entered active duty, he realized his pay was incorrect and as soon as he discovered the error he was told he needed to submit new documents; however, the harm and loss of approximately \$16,333.33 over the period between 8 Jan 17 and 30 Apr 17 had already occurred.

The applicant's counsel goes onto rebut the advisory, stating it misconstrues the facts. While the advisory states he never signed a BCP or IP contract, it omits the fact that this is because the recruiter erroneously told him to sign the AFRS Form 1431, *Estimated Medical Service Grade and Pay Computation worksheet*, which shows the Special Pays he was supposed to receive. In addition, the applicant is not requesting retroactive pay, but the pay that he was entitled to and eligible to receive if it was not for the erroneous advice of his recruiter who incorrectly processed the paperwork. Furthermore, the applicant's counsel lists several other examples of other applicant's in similarly situated circumstances that applied to the Board and were granted relief. Finally, the applicant's counsel argues that while the advisory opinion denies relief, it states that should the Board approve his request he should receive \$15,244.42 between 8 Jan 17 and 30 Apr 17; however, the applicant believes this calculation is incorrect and he should receive \$16,333.33 as calculated by the Medical Special Pays Office and which is documented by an e-mail he provides dated 19 May 17.

The evidence shows that he was brand new to the Air Force and he relied on the advice and counsel of the health professions recruiter. The recruiter advised him incorrectly and the applicant did his due diligence to correct the error and should not be punished for his recruiter's mistake.

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, the Board concludes the applicant is the victim of an error or injustice. While the Board notes the recommendation of AFPC/DP2N against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided an e-mail dated 12 Feb 16 from his recruiter, which did not provide any instruction for the applicant to submit contracts in order to begin his bonuses and indicated he would receive payment for Additional and Incentive Special Pays. In addition, at the time the applicant entered the active duty Air Force, the CSP program had just started and the Board finds it more likely than not that the applicant was unaware of the requirements to submit contracts to start payment of his BCP or IP. Notwithstanding, although counsel disputes the payment computations AFPC/DP2N provided, the Board concurs with the amount they calculated in their proposed directive. In this regard, while the applicant contends he should receive a total of \$16,333.33 for four months of Special Pays, it should be prorated for the 8 Jan 17 start date and based on 3 months and 22 days for a total payment in the of \$15,244.42. In view of the forgoing, 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 that:

a. His Board Certification Pay (BCP) Contract Request, signed 26 May 2017, was effective 8 January 2017 rather than 1 May 2017.

b. His Consolidated of Special Pays (CSP) Incentive Pay (IP) Contract Request (Non-GMO) signed 26 May 2017, was effective 8 January 2017 rather than 1 May 2017.

c. He receive back pay in the amount of \$1,866.66 for the Board Certification Pay and \$13,377.76 in Incentive Pay for a total amount of \$15,244.42.

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 (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-00155 in Executive Session on 19 May 22:

- , 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 Apr 20.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DP2N, dated 21 Apr 21.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 27 Apr 21.
- Exhibit E: Applicant's response, w/atchs, dated 1 Feb 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.