

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02455

XXXXXXXXXXXX

COUNSEL: XX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He receive incentive pay (IP) and board certification pay (BCP) for his Title 32 (T32) orders in support of COVID-19 response for the period of 11 Jan 21 – 18 Apr 21.

APPLICANT'S CONTENTIONS

He was activated under T32 502 (f) orders for more than 31 days, from 11 Jan 21 – 18 Apr 21, supporting COVID-19 operations. Upon his active duty Air Force retirement, he joined the Air National Guard (ANG) via the indispensability program. When he joined the ANG, he was informed by his wing's Retention Office Manager that he was ineligible for any bonuses. This was confirmed by the ANG Medical Service Director, who in an email response to the applicant on 9 Feb 21, stated "502(f) is not eligible for specialty pay now." However, recently he read the ANG Medical Service Director's Mar 21 edition of "Heads Up" and discovered circumstances had changed. On page 21, the Chief of Manpower, Logistics and Operations Branch advised "just a friendly reminder to all ANG Health Professions Officers to submit your Incentive Pay (IP) and/or Board Certified Pay (BCP) application as soon as you receive your T32 502(f) orders for COVID-19 support." Further, it stated "we anticipate the ANG Health Professions Special and Incentive (HP&I) Pay Plan being released later this year." Based upon this, on 1 Apr 21 he called the Chief of Manpower, Logistics and Operations Branch and was informed that he should file an application with the Air Force Board for Correction of Military Records.

He understands the Office of the Assistant Secretary of Defense Health Affairs Memorandum, *Department of Defense Reserve Component Special Pay and Incentive Pay – Payments during Periods of Military Duty other than Mobilization*, dated 15 Feb 19, states that "retroactive payments of these incentive pays are not authorized"; however, given the seemingly unjust consequences of unintentionally inaccurate guidance regarding special pay(s) for ANG physicians, he requests that this correction be granted.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard (ANG) colonel (O-6).

From 11 Jan 21 – 18 Apr 21, per Order Number XXXXXX dated 24 Mar 21, document provided by the applicant, he was placed on full time national guard duty, operational support, in accordance with 32 USC 502 (f)(2)(A).

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

APPLICABLE AUTHORITY/GUIDANCE

Per Title 37 USC 302(f)(b)(1), a reserve health care officer on active duty (other than for training) under a call or order to active duty for a period of more than 30 days but less than one year is entitled to receive medical special pays.

On 15 Feb 19, the Principal Deputy Assistant Secretary of Defense (Health Affairs), published a *Department of Defense Reserve Component Special and Incentive Pay-Payments During Periods of Military Duty Other than Mobilization* memorandum. This memorandum authorized Health Professional Officers to receive prorated Board Certification Pay (BCP) and Incentive Pay (IP) during periods of military duty other than mobilization.

Per Title 32 USC 502(f)(2)(A) – (f) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may be ordered to perform training or other duty in addition to that prescribed under subsections (a). (2) The training or duty ordered to be performed under paragraph (1) may include, (A) support of operations or missions undertaken by the member’s unit at the request of the President of Secretary of Defense.

While official guidance is still waiting to be released, according to a myPers article regarding the FY21 Program Update. “ANG HPOs currently on Title 32 502f orders (i.e., COVID-19 operations, full-time providers in a Guard Medical Unit, or serving as a Physician Assistant on a Civil Support Team) are authorized to apply for both IP/BCP.”

AIR FORCE EVALUATION

NGB/SGXP recommends granting the applicant’s request for IP/BCP the period of 11 Jan 21 – 18 Apr 21. The member was on Title 32 502f orders from 11 Jan 21- 18 Apr 21 supporting COVID mission. The Air National Guard Medical Service (ANGMS) does not have a published plan in place at this time. The guidance is pending concurrence from other agencies. Due to this lack of guidance, the member was not aware of the requirement to submit for IP/BCP prior to the start of orders. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice to the applicant. The applicant is entitled to IP/BCP in the following amounts: IP: \$11,705.56 and BCP: \$1,633.33.

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 5 Jul 22 for comment (Exhibit D), 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 concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of NGB/SGXP and finds a preponderance of the evidence substantiates the applicant’s contentions. In this respect, the Board notes the applicant was not properly counseled regarding his entitlement to IP/BCP for their Title 32 orders and the delay in processing his IP/BCP application was due to no fault of

their own. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show he submitted a timely application, and the application was approved to receive Incentive Pay (IP) and Board Certification Pay (BCP) for the period of 11 Jan 21 to 18 Apr 21.

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-2021-02455 in Executive Session on 10 Jan 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 16 May 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, NGB/SGXP, dated 28 Jun 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 5 Jul 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.

X

Board Operations Manager, AFBCMR