

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01474

XXXXXXXXXX

COUNSEL: XXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He receive Incapacitation (INCAP) Pay.

APPLICANT'S CONTENTIONS

His unit refuses to pay him INCAP Pay as he was forced to resign from his civilian job due to chronic injuries to his arm and back sustained while on deployment. He has become very ill with a nervous system disorder, postural orthostatic tachycardia syndrome (POTS), and he was taken off Medical Continuation (MEDCON) orders due to this new illness and his injury Line Of Duty (LOD) expiring. He was previously on MEDCON orders for an arm injury that is still not resolved and he cannot continue treatment because he cannot afford to drive to the doctor or pay medical bills. Additionally, he is suffering from chronic depression and anxiety. He has filed a Department of Veterans Affairs (VA) claim but it is taking too long. He is very sick and cannot work. He needs financial and medical help now. He has two children, ages two months and one and a half years old, and his wife cannot take care of him and the children and work to pay the bills.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard technical sergeant (E-6).

From 15 Mar 20 to 25 Dec 20, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was on active duty, in accordance with Title 10 USC 12302, in support of Operation FREEDOM SENTINAL.

According to documents provided by the applicant:

On 12 Apr 21, according to a signed memorandum, *Line of Duty Determination/Incapacitation Pay*, Case # XXXXXXXX his LOD determination for pain in the right arm, unspecified mononeuropathy of upper limb, was approved. The memorandum instructed the applicant to contact his local Force Support Squadron (FSS) and Medical Group (MDG) Point of Contacts (POC) for information regarding eligibility and instruction/guidance for submitting MEDCON or INCAP Pay Request. Further, it states that any request for INCAP Pay cannot be processed until all required documentation is received and that any INCAP Pay request not initiated by the applicant within 60 days of the LOD approval day will be considered untimely and will be disapproved.

On 1 Oct 21, according to signed memorandum, *Order to Receive Mandatory COVID-19 Vaccine*, he was ordered by his commander to receive an initial COVID-19 vaccine dose and

provide proof no later than 16 Oct 21. Additionally, he was ordered to receive a second dose of the same vaccine and provide proof no later than 7 Nov 21.

On 27 Oct 21, according to a signed memorandum, *Line of Duty Determination/Incapacitation Pay, Case # XXXXXXXXXX*, his LOD was determined to be In the Line of Duty (ILOD), and he became eligible for health care for the diagnosis of radiation into his right hip. It states that he may be eligible for benefits including MEDCON or INCAP Pay and to contact his local FSS and MDG POCs for information on eligibility and instructions/guidance for submitting a MEDCON or INCAP Pay request.

On 9 Dec 21, according to signed letter from his employer, dated 6 Sep 22, the applicant resigned effective that day due to attempting to recover from surgery for injuries sustained during his deployment along with other medical conditions.

On 22 Apr 22, according to an email from his commander, he was updated on the status of his cases and his INCAP request. LOD 1 and LOD 2 were complete and LOD 3 was pending at NGB. As for his INCAP request, even though his current condition had been diagnosed, it had yet been linked to any type of duty. He was advised to work with his provider to make the connection at which point they could submit a new LOD determination request. Additionally, he was informed he would not be entitled to full-time INCAP Pay as he is not a full-time employee as he voluntarily left his civilian employer while he was on MEDCON days.

On 5 May 22, according to a letter from his civilian medical provider, he was diagnosed with POTS and dysautonomia as a result of post-COVID infection and vaccination. He is unable to sustain any remunerative type of work nor in the future due to the severity of his neurological symptoms.

On 14 Jun 22, according to AF Form 348, *Line of Duty Determination, Case #XXXXXXX*, initiated 10 Dec 21, he was determined to be ILOD for major depressive disorder, recurrent, mild: Chronic pain.

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

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Instruction (DAFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, Chapter 7, INCAP Pay For ARC Members:

Paragraph 7.1.1, states the purpose of INCAP Pay is to authorize pay and allowances to those members who are not able to perform military duties to include light duties not associated with their Air Force specialty code, because of an injury, illness or disease incurred in the LOD; or to provide pay and allowances to those members who are able to perform military duties but experience a loss of earned income as a result of an injury, illness or disease incurred in the LOD.

Paragraph 7.2, the initial request for INCAP Pay eligibility requires at a minimum an interim LOD for the initial request for up to 6 months. An extension beyond 6 months requires a final LOD determination of ILOD. In addition, a treatment plan by a credentialed military medical provider that annotates the member is unable to perform their military duties, or if member is able to perform military duties, member must demonstrate a loss of civilian earned income. For ARC cases, when there is evidence to believe the LOD determination appears to be contrary to the evidence, the information will be shared with the wing commander for consideration. When

appropriate, the wing commander should change the determination. When a determination is changed from ILOD to NILOD, INCAP Pay requests shall be suspended or denied.

Paragraph 7.2.1. Unable to Perform Military Duties. A member, who is unable to perform military duties including light duties outside the member's Air Force Specialty Code, as determined by a military medical authority and the member's immediate commander, due to an injury, illness or disease incurred or aggravated ILOD, is eligible for full pay and allowances (including incentives and special pays to which entitled, if otherwise eligible) in accordance with paragraph 7.2, and less any civilian earned income the member has, regardless of type of duty status. If there is no civilian income, there is no offset of monies and member is entitled to full INCAP Pay.

Paragraph 7.5.1.7. Voluntary leave of absence, voluntary (resignation), and involuntary termination (due to negative performance, etc) of employment from civilian employment does not constitute a loss of civilian earned income that qualifies under this program.

AIR FORCE EVALUATION

NGB/A1PS recommends denying the applicant's request for INCAP Pay and closing the case for the reason of non-viability. While the applicant references his INCAP Pay request in his application to the Board, he did not provide any of the INCAP Pay documentation, as required by DAFI 36-2910, Chapter 7, paragraph 7.4, which states that the member may request INCAP Pay through the servicing FSS (Force Support Squadron), for initial INCAP Pay and Extension Requests, submit the following required documentation:

- AF Form 1768, *Staff Summary Sheet* requesting Initial INCAP Pay signed by the immediate commander or INCAP Pay Extension signed by the wing commander;
- A copy of the member's order or documentation indicating the member's duty status covering the period during which the injury, illness or disease was incurred or aggravated; For ANG, use ANG Form 105S, *Individual Inactive Duty Training Authorization/Certification*, or IDT participation system;
- Final AF Form 348 and DD Form 261, *Investigation, Report of - Line of Duty and Misconduct Status*;
- A completed AF Form 469, *Duty Limiting Condition Report*;
- A medical evaluation conducted by a credentialed military medical provider within the last 30 days that substantiates an unresolved health condition and details occupational limitations associated with it;
- Updated medical information;
- An individual medical treatment plan approved by a credentialed military medical provider based on occupational medicine guidelines and peer-reviewed recovery timelines that includes the expected duration of the impairment;
- Signed DD 2870, *Authorization for Disclosure of Medical or Dental Information*;
- Completed and member-signed AF Form 1971, *Certification for Incapacitation Pay*;
- Personnel briefing;
- Medical entitlements briefing;

- Financial entitlements briefing;
- If applicable, immediate commander's (for Initial INCAP Pay) or wing commander's (for IN CAP Pay Extension) explanation of delayed INCAP Pay request; and
- If the member is claiming loss of earned income: employer/employee release statement and Statement from Civilian Employer (on Company Letterhead); if employed, pay statement (i.e., pay stub, pay statement or civilian leave and earning statement) from civilian employer; if self-employed, self-employed/unemployment statement, and income protection statement.
- If applicable, member's memorandum endorsed by the immediate commander, for the untimely reporting.

As such, based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. Furthermore, NGB/A1PS recommends the applicant submit the required supporting documentation, and the case then be reopened.

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 11 Jul 22 for comment (Exhibit D), and on 11 Jul 22 the applicant responded that he was unable to open the file. On 25 Aug 22, the Board resent a copy of the advisory opinion to the applicant and reset the applicant's authorized 30 day window to respond to the Air Force evaluation and on 8 Sep 22, the applicant replied. In his response, the applicant clarified his situation. He was on MEDCON orders after his 2020 deployment due to injuries to his right arm and lower back. After a year of going to doctors and physical therapy, he had surgery on his right arm in Oct 21. During his recovery from surgery, he was ordered to receive the COVID-19 vaccine and after his second dose (Moderna) on 3 Dec 21, he became very ill with a nervous system disorder which was finally diagnosed on 23 Mar 22 as Postural Orthostatic Tachycardia (POTS), a form of dysautonomia. He is still very sick with the symptoms from this and cannot work. Before his MEDCON was cancelled on 28 Jan 22, he pleaded with his MEDCON representative that he was very sick, could not stand up, and was unable to provide for his family but they decided to cancel his MEDCON anyway. He then asked his unit command for INCAP Pay, as he has clearly been incapacitated from a direct order given by his commander but was refused as he had already resigned from his civilian job in Dec 21. He has been waiting for his Department of Veterans Affairs (VA) claim, but they are slow and he needs to provide for his family.

The paperwork for his current LOD for dysautonomia is still being processed by NGB.

The applicant's complete response is at Exhibit E.

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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of NGB/A1PS and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant

failed to provide the required supporting documentation, therefore, the Board is unable to grant his request at this time. As noted by NGB/A1PS, the applicant is encouraged to submit the required supporting documentation in accordance with DAFI 36-2910, paragraph 7.4, for INCAP Pay through his servicing Force Support Squadron. 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 Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.2, considered Docket Number BC-2022-01474 in Executive Session on 21 Sep 22:

- , Panel Chair
- , Panel Member
- , Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 25 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/A1PS, dated 8 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Jul 22.
- Exhibit E: Applicant's Response to Advisory, w/atchs, dated 8 Sep 22.

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.

X

Board Operations Manager, AFBCMR