

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01630

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her records be corrected to reflect she received Incapacitation (INCAP) Pay prior to her medical retirement.

APPLICANT'S CONTENTIONS

She was medically retired due to post-traumatic stress disorder (PTSD). She was informed she could be paid for time missed from work during the Medical Evaluation Board (MEB) process. She asked her unit about the payment, but they didn't know about it. She is sure she didn't say "INCAP", but the words spoken indicated INCAP pay. Had her unit been forthcoming about the pay when she inquired about it, she would have applied for it earlier. She was put in a No Pay No Points (NPNP) status when her MEB process started. Due to a DFAS/administrative error and being put in an NPNP status, she accumulated a \$20K debt and she needs the INCAP pay to assist in payment of the debt and other related bills.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve major (O-4).

On 9 Mar 23, according to Special Order XXXX, dated 21 Feb 23, the applicant was permanently disability retired with compensable percentage for physical disability of 70 percent.

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

AIR FORCE EVALUATION

AFRC/A1KK recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. In accordance with DAFI 36-2910, *Line of Duty (Lod) Determination, Medical Continuation (MEDCON), And Incapacitation (INCAP) Pay*, Chapter 7, paragraph 7.1.1, 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. Further, paragraph 7.2 states 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 reserve 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. Finally, paragraph 7.3.1.1.6 states a member will initiate the AF Form 1971, *Certification for Incapacitation Pay*, within 30 calendar days of the requested INCAP period. The member will acknowledge personnel, financial entitlements, and medical briefings. In this case, the applicant received a rating decision from the Department of Veteran Affairs (DVA) on 17 Jan 23. She was medically retired effective 9 Mar 23. She did not provide any supporting documentation to show that she was ever placed in an NPNP status prior to retirement that would have prevented her from performing military duty and participating in pay/point gaining activities. Lastly, the applicant did not provide any documentation to show loss of civilian earned income because of an interim or formal LOD. There is no evidence to show she would have been eligible for INCAP pay.

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 7 Nov 23 for comment (Exhibit D), and the applicant replied on 5 Dec 23. In her response, the applicant provided email communication with a military medical facility, Commander's Impact Statement for MEB, and medical documentation from a civilian provider.

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 AFRC/A1KK and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant did not provide evidence she met the eligibility requirements for INCAP pay in accordance with AFI 36-2910, to include evidence of loss of civilian employment income. 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-2023-01630 in Executive Session on 21 Feb 24:

, 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 16 May 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFRC/A1KK, dated 2 Nov 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Nov 23.

Exhibit E: Applicant's Response, w/atchs, dated 5 Dec 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.

X

Board Operations Manager, AFBCMR