

## RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02280

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

His official military personnel records amended to reflect:

- a. Approval of incapacitation (INCAP) pay for the period 16 Aug 15 through 16 Feb 16.
- b. Medical retirement.
- c. Participation in the Air Force Wounded Warrior (AFW2) Program (**failed to exhaust administrative remedies**).

### APPLICANT'S CONTENTIONS

His Force Support Squadron (FSS) lost his approved INCAP pay package. He is now retired. His Medical Squadron was unresponsive to requests from his FSS and he is seeking completion of his approved INCAP pay package that was not completed at his base due to poor administration.

He was retired in Sep 22. He was diagnosed with leukemia in 2020 from the Veterans Administration (VA). The VA attributed the diagnosis to burn pit exposure, but the award letter is months after his retirement. The diagnosis was while he was still serving as a traditional reservist. He is seeking to have his retirement changed from reserve retirement at age 60 to a medical retirement. The injustice is that he was not medically boarded for a medical condition that originated from the burn pits and was substantiated by the VA. He opted to take a reserve retirement out of frustration with his mismanaged Medical Squadron because he was recently returned to duty (RTD) for Post-Traumatic Stress Disorder (PTSD). He would also like entrance into the AFW2 Program.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force Reserve master sergeant (E-7).

According to AF Form 938, *Request and Authorization for Active Duty Training/Active Duty Tour*, provided by the applicant, he was ordered to active duty in accordance with Title 10, United States Code, Section 12302 (10 USC 12302), involuntary partial mobilization, from 22 Feb 10 through 15 Nov 10.

On 8 Aug 11, according to AFRC IMT 348, *Informal Line of Duty Determination*, provided by the applicant, he was diagnosed and treated for a left meniscal tear of his left knee on 10 Feb 11, and his injury was found to be in the line of duty (ILOD).

On 3 Jan 20, according to an *Air Force Reserve Coordination Snowflake*, Purpose: Obtain XXXXX Consideration on Initial Incapacitation Pay Request (21 Aug 15 – 20 Feb 16), provided by the applicant, an INCAP package was prepared for submission.

On 21 Aug 20, according to an *Air Force Reserve Coordination Snowflake*, Purpose: Obtain XXXXX Consideration on Initial Incapacitation Pay Request (24 May 17 – 23 Nov 17), provided by the applicant, an INCAP package was prepared for submission.

On 22 Feb 21, according to AF Form 348, *Line of Duty Determination*, provided by the applicant, he was diagnosed and treated on 23 Jun 11, for a complex tear of medial meniscus, right knee, and complex tear of the post horn of medial meniscus, right knee, and his injury was found to be ILOD.

On 30 Sep 22, according to Reserve Order XXXXX, dated 20 Dec 22, the applicant was placed on the USAF Retired List, Retired Reserve Section ZB.

On 18 Apr 23, according to a Department of Veterans Affairs (DVA) Rating Decision letter, provided by the applicant, he was awarded service-connection for chronic lymphocytic leukemia with an evaluation of zero percent, effective 10 Aug 22.

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

### **APPLICABLE AUTHORITY**

In accordance with Air Force Instruction (AFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, dated 8 Oct 15:

#### *1.7. Additional Requirements.*

1.7.1. An LOD determination is accomplished for a single illness, injury or disease and cannot be reused to claim subsequent benefits and entitlements after a member has been returned to duty without restrictions pertaining to the original illness, injury or disease.

1.7.1.1. If there is subsequent service aggravation of the illness, injury or disease, a new LOD determination must be accomplished.

### **AIR FORCE EVALUATION**

AFRC/SG recommends denying the applicant's request for medical retirement. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice as he received due process via the initial review in lieu of (iRILO) process which resulted in RTD.

The applicant was RTD via iRILO Medical Evaluation Board (MEB) with an Assignment Limitation Code (ALC) C-2 code, effective 12 May 22, expiring 31 May 24, for chronic lymphocytic leukemia (asymptomatic), lumbar degenerative disc disease, bilateral knee osteoarthritis, and trauma-related disorder. He is not eligible for medical retirement based on being RTD.

His servicing Reserve Medical Unit (RMU) was asked for clarification/more clinical information regarding the above-mentioned conditions between 2019-2022, by AFRC/SG during various medical case evaluation processes (LOD evaluations, iRILO, etc.). The additional clinical documentation was provided and led to his being RTD. While the applicant is alleging a medical retirement is appropriate due to DVA-awarded service-connection for the diagnosis of leukemia, the presumptive service-connection falls under Title 38, which grants DVA wide berth for post-military service compensation, which is the appropriate avenue to compensation when a service member is not eligible for medical retirement.

The complete advisory opinion is at Exhibit C.

AFRC/A1KK recommends denying the applicant's request for INCAP for the period 16 Aug 15 through 16 Feb 16. Based on the documentation available, there is no evidence of an error or injustice. In accordance with AFI 36-2910, paragraph 6.2., INCAP pay eligibility requires an LOD determination of ILOD and a finding by a credentialed military medical provider that the service member had an unresolved health condition requiring treatment that renders the member unable to perform military duties or is able to perform military duties but demonstrates a loss of civilian earned income. There is no documentation that supports INCAP pay eligibility during the requested period.

The applicant was deployed to Afghanistan from Feb 10 – Nov 10. During that time, he sustained an injury to his back that subsequently led to reported knee pain for which he underwent surgery in 2011. His LOD was processed in Jan 20 and finalized as ILOD in Feb 21. The ILOD covers his right knee for which he underwent right knee arthroscopic meniscectomy in Nov 11. He submitted an INCAP pay package on 10 Apr 21 claiming he was unable to work in his civilian job as a self-employed cinematographer and actively drill from Aug 15 – Feb 16. There is no documentation (i.e. ILOD, orders, AF Form 469 medical profile, non-participation notes, etc.) covering the period requested for INCAP pay. No ILOD nor findings by a credentialed military medical provider of an unresolved health condition for the period requested was provided in accordance with AFI 36-2910.

The FSS INCAP Pay Program Manager stated the applicant's initial INCAP pay package was misplaced and had to be recreated. The package was recreated twice, it was routed to the RMU for review, but no further coordination was completed. Finally, the applicant's INCAP pay package was not completed prior to his decision to retire.

The complete advisory opinion is at Exhibit D.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent copies of the advisory opinions to the applicant on 12 Dec 23 for comment (Exhibit E), and the applicant replied on 18 Dec 23. In his response, the applicant provided a copy of the AFRC/A1KK advisory opinion and cover letter, an *Air Force Reserve Coordination Snowflake*, Purpose: Request for Initial Incapacitation Pay, for the period 16 Aug 15 – 16 Feb 16, and a copy of an unsigned memorandum from the commander, 452nd Mission Support Group to the commander, XXXXX, Subject: Incapacitation Pay Request – Late Submission Approval.

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, to include the applicant's rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationales and recommendations of AFRC/A1KK and AFRC/SG and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant was returned to, and performed, military duty following surgery to address the 2011 injury to his knees covered by his original ILOD finding. Subsequent re-injury or service aggravation would require a new LOD determination be accomplished. Additionally, a finding by a credentialed military medical provider that states the applicant was unable to perform military duties or was able to perform military duties but demonstrated a loss of civilian earned income is also required. There is no

such documentation to support the period for which INCAP pay was requested. Further, the applicant's medical conditions were reviewed, and he was returned to duty via iRILO MEB, effective 12 May 22, and not eligible for a medical retirement. Finally, while the DVA granted service-connection for the applicant's diagnosis of chronic lymphocytic leukemia, presumptive service connection falls under Title 38 which grants the DVA wide berth for post-military service compensation, which is the appropriate avenue for compensation when a service member is not eligible for medical retirement. Therefore, the Board recommends against correcting the applicant's records.

## 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-2023-02280 in Executive Session on 17 Apr 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 12 Jul 23.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFRC/SG, dated 4 Dec 23.  
Exhibit D: Advisory Opinion, AFRC/A1KK, dated 5 Dec 23.  
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Dec 23.  
Exhibit F: Applicant's Response, w/atchs, dated 18 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

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Board Operations Manager, AFBCMR