

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2024-00006

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

His official military personnel records be amended to reflect approval of his request for incapacitation (INCAP) pay in the amount of \$330,689.04.

### APPLICANT'S CONTENTIONS

His is requesting payment of his entitlement of INCAP pay of \$330,689.04. Everyone in his chain of command acknowledges he is entitled to the INCAP pay but they cannot pay him because he is retired. He was injured on active duty and released from active duty pending his Medical Evaluation Board (MEB) and entitled to INCAP pay. He was medically retired after 36 years of continuous service, active/reserve Army enlisted/Air Force officer. Due to COVID, administrative permanent change of station, and other issues, it never got paid. Finally, when sent for payment, the applicant was medically retired and told they cannot pay retirees and to submit to the Air Force Board for Correction of Military Records (AFBCMR) for payment. There is no dispute on anything.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 16 Jan 19, according to AF Form 348, *Line of Duty Determination*, the applicant's condition of Anxiety Disorder – unspecified, was treated on 26 Dec 17. On 26 Nov 19, the condition was found to be Not in the Line of Duty (NILOD) – Not Due to Own Misconduct, Existed Prior to Service (EPTS).

In Jan 19, according to AFRC/SGO advisory opinion, the applicant was placed in code 37 [medical defect/condition requires MEB or PEB processing in accordance with Air Force instruction (AFI) 41-210, *TRICARE Operations and Patient Administration Functions*], and he was sent for an Initial Review in Lieu of (IRILO).

On 12 Jun 19, according to an AFRC/SG memorandum, Subject: Report of Medical Evaluation, the applicant was Returned to Duty (RTD), with an Assignment Limitation Code (ALC) and an indefinite expiration date.

On 10 Feb 20, according to a Commander, XXXX Aerospace Medicine Squadron (XXXX AMDS/CC) memorandum, Subject: Notification of Determination of Not in Line of Duty under AFI 36-2910, the applicant was notified his Anxiety Disorder occurred NILOD. In an undated response, the applicant appealed this finding of NILOD.

On 26 May 20, according to an HQ AFRC/CV memorandum, Subject: Line of Duty Determination Appeal Decision, the applicant's appeal request was approved, and he was granted a determination of in the Line of Duty (ILOD).

On 3 Apr 21, according to AF Form 469, *Duty Limiting Condition Report*, the applicant was not cleared for duty/participation, and placed in code 37 [medical defect/condition requires MEB or PEB processing in accordance with AFI 41-210].

On 30 Apr 21, according to an AFRC/SG memorandum, Subject: Review in Lieu of (RILO) Disqualification, the applicant was determined to be medically disqualified for continued military duty and is eligible for processing through the MEB and the Air Force Integrated Disability Evaluation System (IDES).

On 9 May 21, according to AF Form 1185, *Commander's Impact Statement for Medical Evaluation Board*, the applicant acknowledged the commander's 30 Apr 21 recommendation to Do Not Retain.

On 23 May 21, according to a *Legacy DES Election Statement Memorandum*, the applicant requested entry into the Legacy DES (LDES).

On 17 Jun 21, according to AF IMT 618, *Medical Board Report*, the applicant was diagnosed with Generalized Anxiety Disorder (GAD) and referred to the informal Physical Evaluation Board (IPEB).

On 24 Jun 21, according to an *Impartial Medical Review (IMR) and Rebuttal Election Form*, the applicant agreed with his MEB results and will not submit a request for an IMR or rebuttal.

On 9 Jul 21, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant's medical condition prevents him from reasonably performing duties of his office, grade, rank, or rating. He was diagnosed with the following:

- Category I – Unfitting Conditions:

- GAD with Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD); Is this condition compensable: Yes; Veterans Administration Schedule for Rating Disabilities (VASRD) Code: 9400; Disability Rating: 70 percent; Condition is combat related as defined in Title 26, United States Code § 104 (26 USC § 104): No; Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): No; Condition is permanent and stable: No.

The IPEB recommended temporary retirement with a combined compensable percentage of 70 percent.

On 19 Jul 21, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the IPEB and waived his rights for any further appeal. He did not request a one-time reconsideration of the Department of Veterans Affairs (DVA) disability ratings for the conditions found unfitting by the IPEB.

On 29 Jul 21, according to Special Order Number XXXX, the applicant was relieved from active duty, organization and station of assignment, effective 14 Aug 21. On 15 Aug 21, he was placed on the Temporary Disability Retired List (TDRL) with a compensable percentage for physical disability of 70 percent.

On 11 Dec 21, according to AF Forms 1971, *Certification for Incapacitation Pay*, provided by the applicant, he submitted requests, and his commander recommended approval, for extensions for INCAP pay for the following periods:

- 1 Jul 18 – 31 Dec 18
- 1 Jan 19 – 30 Jun 19
- 1 Jul 19 – 31 Dec 19
- 1 Jan 20 – 30 Jun 20
- 1 Jul 20 – 31 Dec 20
- 1 Jan 21 – 30 Jun 21
- 1 Jul 21 – 14 Aug 21

On 28 Jun 22, according to a XXX FSS/FSPS memorandum, Subject: Incapacitation Pay [applicant] Earned Wages, provided by the applicant, they received an employment verification letter from the applicant's employer regarding his earned civilian income. The company provided his annual income as follows: 2018 - \$97,086.00; 2019 - \$99,757.00; 2020 - \$34,960. The applicant provided a statement of earned civilian income for the period 1 Jul 18 – 31 Dec 18 for \$48,543, which was used as his earned civilian income for his initial INCAP pay request.

Additionally, the applicant provided a copy of his Form W-2, *Wage and Tax Statement* for 2021 reflecting earned wages of \$692.01.

On 27 Dec 22, according to AF Form 356, the applicant's condition was essentially unchanged and has effectively stabilized. The applicant was diagnosed with:

- Category I – Unfitting Conditions:
  - GAD with PTSD and MDD; Is this condition compensable: Yes; VASRD Code: 9400-9411; Disability Rating: 70 percent; Condition is combat related as defined in 26 USC § 104: No; Disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008, Sec 1646): No; Condition is permanent and stable: Yes.

The IPEB recommended TDRL to permanent retirement with a combined compensable percentage of 70 percent.

On 18 Jan 23, according to AF Form 1180, the applicant agreed with the findings and recommended disposition of the IPEB and waived his rights for any further appeal. On this same day, according to an AFPC/DPPD memorandum, Subject: Temporary Disability Retired List (TDRL) Evaluation, the Secretary of the Air Force directed the applicant's name be removed from the TDRL and permanently retired under the provisions of 10 USC § 1201 with a compensable percentage for physical disability of 70 percent.

On 8 Mar 23, according to Special Order Number XXXX, dated 16 Feb 23, the applicant was removed from the TDRL and retired with a compensable percentage of 70 percent for physical disability.

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

## **APPLICABLE AUTHORITY**

AFI 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, Chapter 6 – *Incapacitation (INCAP) Pay for ARC Members*, dated 8 Oct 15:

6.1. *Purpose.* The purpose of INCAP Pay is to authorize pay and allowances (less any civilian earned income) to those members who are not able to perform military duties because of an injury, illness or disease incurred or aggravated in the line of duty; or to provide pay and allowances to those members who are able to perform military duties (see para. 6.2.2) but experience a loss of earned income as a result of an injury, illness or disease incurred or aggravated in the line of duty (37 U.S.C. § 204). (T-0)

6.2. *Eligibility and Qualification Determination.* INCAP Pay eligibility requires an LOD determination of ILOD and a finding by a credentialed military medical provider that the member has 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. (T-1)

6.2.1. *Unable to Perform Military Duties.* A member, who is unable to perform military duties (unable to meet retention or mobility standards IAW AFI 48-123), as determined by a military medical authority and the member's immediate commander, due to an injury, illness or disease incurred or aggravated in the line of duty, is entitled to full pay and allowances (including all incentives and special pays to which entitled, if otherwise eligible) IAW para. 6.2.3, less any civilian earned income. (T-1)

6.2.1.2. The member shall not be allowed to attend IDT periods or to acquire retirement points for performing IDTs while receiving INCAP Pay. (T-0)

6.2.2. *Able to Perform Military Duties.* A member who is able to perform military duties (see para. 6.5.1.3), as validated by the medical authority and determined by the immediate commander, but demonstrates a loss of civilian earned income as a result of an injury, illness or disease incurred or aggravated in the line of duty, is entitled to pay and allowance, including incentive and special pay, but not to exceed the amount of the demonstrated loss of civilian earned income or the maximum pay entitlement (see para. 6.2.3), whichever is less. (T-1)

6.2.4. *Duration of Entitlements.* Pay and allowances under this instruction shall be paid only during the period a member remains unable to perform military duties or is able to perform military duty but demonstrates a loss of civilian earned income as a result of an injury, illness or disease incurred or aggravated in the line of duty. (T-0) Payment in any particular case may not be made for more than a 6-month period without review of the case by SAF/MR or delegated authority IAW Table 6.1 to ensure that continuation of military pay and allowances is warranted under this instruction and to determine whether the member should be referred to the DES. Such a review shall be made every 6 months. (T-1)

6.3. *Roles and Responsibilities.*

6.3.1. *Member.*

6.3.1.1. Provides the INCAP Pay Program Manager (PM) with all required documentation every 30 days while applying/receiving INCAP Pay. (T-1)

6.3.1.1.1. Submits medical treatment plan.

6.3.1.1.2. Submits copies of all medical treatment received to the RMU or GMU.

6.3.1.1.3. Submits monthly pay documentation if claiming loss of civilian earned income to Wing Finance Office or Reserve Pay Office (RPO).

6.3.1.1.4. Submits employer or self-employment information.

6.3.1.1.5. Reports all changes in medical and/or financial status immediately to the unit commander to prevent possible recoupment of overpayment.

6.3.1.2. Complies with Wing RMU or GMU requests for medical information and documentation. (T-1)

6.3.1.2.2. Any request for INCAP Pay that is not initiated within 30 days of when the injury, illness or disease was incurred or aggravated will require the member to submit a written explanation, endorsed by the immediate commander, or the untimely reporting.

## **AIR FORCE EVALUATION**

AFRC/SGO recommends denying the application. Based on the submitted information and review of the medical record, there is no evidence of an error or injustice. The applicant was found to have an ILOD condition in May 20 but had already been RTD while the appeal was being processed in Jun 19. The applicant would only be eligible for INCAP pay beginning 26 May 20 if there was evidence of a loss of civilian income due to the ILOD condition. The records submitted do not clearly show there was any loss of civilian income.

The submitted records show the applicant was placed on a code 31 [illness or injury will be resolved within 31-365 days], 31 Jan 18, and changed to a code 37 [medical defect/condition requires MEB or PEB processing in accordance with AFI 41-210], in Jan 19. On 16 Jan 19, the LOD was initiated and found NILOD on 29 Nov 19. On 27 Mar 19, an IRILO was initiated, and the applicant was RTD with an Assignment Limitation Code (ALC) on 12 Jun 19, due to renew 30 Apr 20.

The applicant did not request a LOD in a timely fashion as required by AFI 36-2910. The initial LOD was determined to be NILOD in Nov 19. The applicant's appeal was approved, making the condition ILOD on 26 May 20. The applicant was not eligible for INCAP pay until 26 May 20.

AFI 36-2910, dated 8 Oct 15, states:

1.7.4. *ARC only.* After release from active duty or IDT, members have 180 days to ensure any illness, injury or disease that was incurred or aggravated while in a duty status is reported for LOD determination consideration. When the member does not report his/her illness, injury or disease, the member is presumed to be able to perform military duties, does not require treatment and has no unresolved health condition rendering the member unable to meet retention or mobility standards IAW AFI 48-123, *Medical Examinations and Standards*. The only avenue for addressing previously unreported illness, injury or disease is through the VA.

AFI 36-2910 also states the INCAP pay should be initiated within 30 days of when the injury, illness or disease was incurred or aggravated. Based on this, the applicant should have requested INCAP and a LOD in 2017 or early 2018:

6.3.1.2.2. Any request for INCAP pay that is not initiated within 30 days of when the injury, illness or disease was incurred or aggravated will require the member to submit a written explanation, endorsed by the immediate commander, for the untimely reporting.

An IRILO was initiated, and the applicant was returned to duty with an assignment limitation code 12 Jun 19:

6.2. *Eligibility and Qualification Determination.* INCAP pay eligibility requires an LOD determination of ILOD and a finding by a credentialed military medical provider that the member has 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. (T-1)

6.2.4. *Duration of Entitlements.* Pay and allowances under this instruction shall be paid only during the period a member remains unable to perform military duties or is able to perform

military duty but demonstrates a loss of civilian earned income as a result of an injury, illness or disease incurred or aggravated in the line of duty. (T-0)

6.5.1. *Mandatory Termination of INCAP Pay.* (T-1)

6.5.1.2. The member's LOD determination was found to be NILOD-Due to Member's Misconduct or NILOD-Not Due to Member's Misconduct;

6.5.1.3. For members who were unable to perform military duty, the member is able to perform military duties as determined by the immediate commander and meets the specific retention and mobility standards for the original injury, illness or disease condition as validated by the medical authority;

6.5.1.5. The member is discharged/retired, or medically separated or retired, as a result of a DES determination.

The applicant was RTD and therefore, considered fit for duty in 2019. Based on AFI 36-2910, INCAP pay entitlements would then only be based on a shown loss of civilian income due to the ILOD condition and its effect on civilian pay. This would have required a medical review at the Regional Medical Unit which was not submitted with this application; therefore, AFRC/SG is unable to determine if the applicant was able to perform civilian duties. The records submitted show the applicant received a civilian income. The INCAP pay request should be used for loss of civilian income, not gained income by being on full-time orders.

If at some point, the applicant could show he was no longer able to perform his civilian job and there was a loss of civilian income, this period would then be eligible for INCAP pay from the date of ILOD finding on 26 May 20 until 14 Aug 21.

The complete advisory opinion is at Exhibit C.

AFRC/A1KK recommends partially granting the application. Based on the documentation available, there is evidence of an error or injustice. The INCAP pay extension request submitted in Sep 22 should have been processed in accordance with Department of the Air Force Instruction (DAFI) 36-2910, *Line of Duty (LOD) Determination, Medical Continuation (MEDCON), and Incapacitation (INCAP) Pay*, dated 3 Sep 21. However, while an extension may be granted for an additional period, it should not exceed one year (1 Jul 18 – 31 Dec 18), in accordance with DAFI 36-2910.

In Jan 19, an LOD was initiated and found NILOD in Nov 19. The applicant was RTD with an ALC in Jun 19. The applicant participated in a points-only capacity without military pay. In May 20, an LOD appeal was initiated and approved as ILOD. In 2021, the applicant submitted an initial INCAP pay request for the period from 1 Jan 18 to 30 Jun 18, which was approved on 16 Nov 21 by his wing commander.

In accordance with DAFI 36-2910:

7.2.4. *Duration of Entitlements.* INCAP pay will not exceed six months. (T-1). If resolution of the injury, illness or disease has not been reached by the end of six months, an evaluation for a potential extension may be conducted by ARC LOD Board. A final LOD determination will be needed to request an extension (T-1). An extension may be granted for an additional period of time, but not to exceed one year. (T-0). After one year, the member will either be returned to duty, separated or referred to the DES. (T-0).

In Aug 21, the applicant was medically retired. In Sep 22, a six-month extension request package was submitted by the unit to Headquarters, Air Reserve Personnel Center. However, the package was rejected due to the applicant's return to participation in 2019 (points only).

Additionally, the extension was submitted after the applicant's medical retirement; therefore, the AFBCMR was the most appropriate process to seek resolution.

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 9 Aug 24 for comment (Exhibit E), and the applicant replied on 21 Aug 24. In his response, the applicant contended the advisory opinion referenced DAFI 36-2910, paragraph 7.2.4, where it states, "After one year, the member will either be returned to duty, separated or referred to the DES." As indicated in the correspondence from his commander, the applicant was neither RTD, separated, nor referred to the DES within the required timeframe of one year. AFRC/SG made flawed decisions on multiple occasions regarding his case, which took time to correct, and were corrected in the applicant's favor. These incorrect decisions, along with COVID, were both outside his control and led to massive delays in his case being referred to an MEB/DES for determination. He was medically retired from the Air Force and his wing commander provided a statement and authorized and approved all of his INCAP continuations based upon these facts.

The applicant concurs he was wronged, and his records need corrected. He does acknowledge the limited reading of the AFI and respectfully requests a broader reading and understanding of the intent of the AFI. Specifically:

*7.5. Termination of INCAP Pay.* Termination of INCAP pay will be coordinated through the member's immediate commander, INCAP Pay Manager, Reserve Pay Officer or ANG Wing Finance and the ARC CMD (if applicable).

It further states in part 7.5.1. *Mandatory Termination of INCAP Pay.* INCAP pay shall be terminated on the earliest date when one of the following actions occurs:

7.5.1.5. The member is discharged/retired, or medically separated or retired, as a result of a DES determination.

The applicant suggests to the Board the intent of the AFI is to ensure airmen are not unduly hurt financially by duty-related illness/injury. That is the intent of the AFI and INCAP pay. It is true that within one year he should have been processed and medically retired. It says the member "will be" but the applicant was not. Since he was not properly cared for and none of the "will be" actions were accomplished, the Board should rely on the intent of the AFI. Paragraph 7.5.1. states, in part, INCAP pay shall be terminated when the member is retired. It does not say INCAP pay has any limitations except it shall be terminated when medically retired and directs INCAP pay to be paid up until the effective date of the medical retirement.

Additionally, the AFI leaves much to the discretion of the squadron and wing commander regarding approval. Both commanders recommended he be made whole and compensated from the date of injury/illness until medical retirement. The Air Force Reserve Command Finance office concurred with these payments but stated they could not make them since the applicant was retired by the time the wing processed the claims and referred the applicant to the AFBCMR to receive his just compensation.

There were extraordinary circumstances and the AFI does allow for full payment to ensure the applicant is not permanently and unduly financially harmed as a result of a duty-related injury/illness. The applicant lost his home due to these losses of income. He was abandoned by the military he faithfully served for 36 years and was left in financial ruin. He is only seeking what is rightfully to be done and to have these financial resources to rebuild his life.

The applicant's complete response is at Exhibit F.

## **AMENDED AIR FORCE EVALUATION**

In an amended advisory, AFRC/A1KK recommends partially granting the application. There is evidence the applicant was determined unable to perform military duties and would have been eligible for an INCAP pay extension to the initial INCAP pay granted. There is evidence the applicant was returned to duty in Jun 19 but no evidence the applicant demonstrated a loss of civilian income covering the periods after 31 Dec 18. Therefore, it is recommended the INCAP pay extension of 1 Jul 18 – 31 Dec 18 be granted and any subsequent requests denied unless additional evidence clearly demonstrating a loss of civilian income is provided with leadership approval/concurrence in accordance with DAFI 36-2910.

In Jan 19, an LOD determination was initiated. In Jun 19, the applicant was returned to duty with an assignment limitation code. In Nov 19, the LOD was found NILOD. The applicant stated he participated in a points-only capacity without military pay. The applicant did not provide any documentation to show any points-only activity. In May 20, the applicant submitted an LOD appeal and received an approved ILOD determination. The LOD finding determines whether the illness, injury, or disease was incurred in a qualified duty status or EPTS and was service-aggravated or not service-aggravated as outlined in DAFI 36-2910. Members have up to 180 days after completion of their current duty status to report their medical conditions for a LOD determination, absent special circumstances. Immediate/ARC Unit Commanders are responsible for notifying members of interim or final LOD disposition and possible entitlements to INCAP pay and refer members to the INCAP Pay Program Manager. The initial request for INCAP pay eligibility requires, at a minimum, an interim LOD for the initial request for up to six months. An extension beyond six months requires a final LOD determination of ILOD.

In 2021, the applicant submitted an initial INCAP pay request for the period from 1 Jan 18 to 30 Jun 18, which was approved on 16 Nov 21 by his commander. It appears the delay in processing was a result of the applicant's medical disqualification and inability to access the base upon a determination of him being a possible threat to himself and others, as expressed in the commander's memorandum to the applicant's representative, provided by the applicant. For an INCAP pay extension request, eligible members should initiate the request at least 60 days prior to expiration of any INCAP pay period to avoid delays or interruption of pay and allowances. An INCAP pay extension request was submitted to the Air Reserve Personnel Center (ARPC) in Sep 22 after the applicant's medical retirement in Aug 21. After a delay in processing at ARPC due to system issues, the package was rejected for missing documentation and participation status.

After reviewing the applicant's participation summary, there is evidence the applicant performed military duty in a pay/points status during the INCAP pay extension request timeframe of 1 Jul 18 – 31 Dec 18. However, based on the AF Forms 469, dated 16 Jan 19 – 9 Sep 20 and then 3 Apr 21 – 3 Apr 22, the applicant's duty restrictions stated, "member not cleared for duty/participation." Additionally, the AF Forms 1971, Part III, Section 9.d, reflect "member is unable to perform military duties in accordance with AFI 48-123" and signed in part VII by the wing commander<sup>1</sup>. Which is evidence the applicant should not have performed military duty in a pay/points status during the requested timeframe.

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<sup>1</sup> The AF Forms 1971 submitted by the applicant were not signed in Part VII. Wing Commander or Equivalent. They were signed in Part IV. Immediate Commander.

Per the AFRC/SG advisory, dated 4 Jun 24, the applicant was returned to duty with an ALC on 12 Jun 19. Based on the applicant's participation summary, there is evidence he performed military duty in a pay/points status after 12 Jun 19. Therefore, if the applicant was returned to duty, performed military duties, and demonstrated a loss of civilian income, in accordance with DAFI 36-2910, paragraph 6.2.2, the applicant may be eligible for INCAP pay. However, there is no evidence of an approved AF Form 1971 requesting INCAP pay for the period after 31 Dec 18 that reflects the applicant's return to duty and demonstrates a loss of civilian income.

The complete advisory opinion is at Exhibit G.

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

The Board sent a copy of the amended advisory opinion to the applicant on 6 Nov 24 for comment (Exhibit H), and the applicant replied on 12 Nov 24. In his response, the applicant contended he provided a letter signed by his commander and the wing support staff with his initial application. This letter verified his income, and that the income was in truth and fact certified by his employer at the time. The applicant added his W-2 earnings statement from his employer for the year 2021 as verification and certification of his income for that year. Per the applicant, these documents should serve as the additional evidence necessary to complete a total review and payment for his incapacitation for the period of 1 Jul 18 through 21 Aug 21.

As a point of clarification, AFI 36-2910, Chapter 6, MEDCON for ARC Members, states in part that at his consent, he should be continued on MEDCON orders (active duty) pending the resolution of his medical condition. Per the applicant, he did in fact request to his commander to remain on orders pending this resolution; however, the commander chose to ignore the AFI and allowed the applicant's orders to end. The applicant then immediately, in Dec 17, requested INCAP pay which the commander also chose to ignore. Thankfully for others, that commander was investigated and removed from his command. The applicant contended he served in the military in various capacities honorably for 36 years, receiving accelerated promotion, recommendations for command, and for advancement to colonel. Once injured on duty, the commander chose to disregard the AFIs and core values of the Air Force family and toss the applicant aside. The commander and AFRC/SG violated the AFIs and made arbitrary decisions which were promptly overturned by higher authority. The new command structure attempted to correct the wrongs of the previous leadership and that is evidenced by their willingness to support the applicant's incapacitation for the entire period.

Per the applicant, for over a decade, he supported the United States Air Force Academy (USAFA) as a liaison officer and oversaw various programs at the local level in a non-pay, points-only manner. During the period the AFRC/SG was arbitrarily denying his medical condition, the USAFA commander requested his assistance in the transition of these programs, and yet again, despite the ill affects to himself, the applicant chose service over self and assisted to ensure a continuation of the programs for the benefit of future Air Force leaders wanting to enter USAFA. The applicant thanks the Board and the tireless work of the staff in assisting him to receive what he is entitled to and for helping rebuild his life. The applicant concurs that he was wronged and this needs to be corrected.

The applicant's complete response is at Exhibit I.

## **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 the victim of an error or injustice. While the Board notes the recommendations and rationales of AFRC/SGO and AFRC/A1KK, the Board finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided the proof of civilian income required to meet the eligibility requirements of AFI 36-2910 for the period 1 Jul 18 – 12 Oct 18. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request.

The applicant's Point Credit Accounting and Reporting System (PCARS) summary shows the applicant performed inactive duty for training (IDT) for pay and points during the period 13 Oct 18 through 9 Dec 18. As he was able to perform military duty, he would have needed to demonstrate a loss of civilian earned income to qualify for INCAP pay in accordance with AFI 36-2910. The documentation provided by the applicant reflects he was paid \$97,086.00 in 2018 but does not clarify if this amount reflected a loss of income due to his ILOD condition. Similarly, the applicant's PCARS summary reflects a combination of IDT performed for pay and points and points only during the period 12 Jan 19 through 8 Oct 20, without evidence of a demonstrated loss of civilian earned income for the same period. There is evidence the applicant was RTD effective 12 Jun 19. AFI 36-2910 specifically details the proof of income requirements for INCAP pay depending upon the individual's duty status. If the applicant was unable to perform military duty, he was required to provide proof of all civilian earned income, from his employer, to offset any INCAP pay entitlements. Additionally, if the applicant performed military duty for pay/points, and was still entitled to INCAP pay due to his medical condition, he was required to provide proof of lost civilian income, from his employer. Ideally, this proof would contain the amounts of civilian earned income lost for specific dates, in monthly increments, as required by AFI 36-2910.

The applicant was not disqualified from participation/performing duty and referred to the IDES until 30 Apr 21. At that time, the applicant may have been entitled to INCAP pay equal to full pay and allowances, less any civilian earned income. However, there is no evidence the applicant complied with the requirements outlined in AFI 36-2910 addressing member's responsibilities for providing medical and employment documentation or that he initiated his INCAP pay requests within the timelines established by that guidance. Neither did the applicant provide a written explanation, endorsed by his immediate commander, reporting the reason for the untimeliness as required. Furthermore, the applicant did not provide a complete accounting of all civilian earned income. A single IRS Form W-2 for 2021, from a single employer, does not provide the specific information required by AFI 36-2910 as it does not necessarily reflect all civilian income earned from all sources, or the actual dates, other than the year, civilian income was earned. Finally, while the applicant contends his immediate commander recommended approval of his multiple INCAP pay extensions, the approval authority for his extension requests resides with Chief of Air Force Reserve or higher, depending on the total length of the extensions requested. To summarize, while the Board does not dispute the applicant's eligibility for INCAP pay based upon his medical condition, the applicant did not comply with the supporting documentation requirements, based upon his duty status for each period requested, in accordance with AFI 36-2910, when submitting his applications for INCAP pay. Should the applicant correct this oversight, the Board may reconsider his request for relief. 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 is entitled to receive INCAP pay from 1 Jul 18 through 12 Oct 18.

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 DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-00006 in Executive Session on 16 Oct 24 and 18 Dec 24:

, 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 5 Dec 23.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFRC/SGO, dated 4 Jun 24.  
Exhibit D: Advisory Opinion, AFRC/A1KK, dated 8 Aug 24.  
Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Aug 24.  
Exhibit F: Applicant's Response, dated 21 Aug 24.  
Exhibit G: Amended Advisory Opinion, AFRC/A1KK, dated 4 Nov 24.  
Exhibit H: Notification of Amended Advisory, SAF/MRBC to Applicant, dated 6 Nov 24.  
Exhibit I: Applicant's Response, atchs, dated 12 Nov 24.

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.

Board Operations Manager, AFBCMR