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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01803

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Incapacitation (INCAP) pay extension request for the period of 25 Jan 18 – 16 May 18 be approved.

APPLICANT'S CONTENTIONS

He incurred an injury while deployed in Jun 17 and he reported the injury while deployed and upon his return in Jul 18. He qualified for INCAP pay from 17 Jul 17 to 16 May 18 and the initial INCAP was routed through 24 Jan 18. An INCAP pay extension for the period of 25 Jan 18 – 16 May 18 was initiated on 8 Jun 18 and was signed off by the wing vice commander and forwarded to NGB/A1PS, but was returned without actions due to no fault of his own. He was placed on Medical Continuation (MEDCON) orders starting 17 May 18.

He has been affected financially and mentally while waiting for his MEDCON orders to begin during this process. He has two dependents that rely upon him financially. He followed the directions provided every step of the way and this has turned into a six plus year journey that could have been resolved long ago if it were made a priority.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard staff sergeant (E-5).

From 26 Apr 17 – 21 Jul 17, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant served on active duty in support of Operation FREEDOM SENTINEL in accordance with 10 USC 12302 (d). In addition, it reflects he was deployed to Ali Al Salem Air Base, Kuwait for the period of 2 May 17 – 4 Jul 17.

On 12 Sep 17, according to AF Form 348, *Line of Duty (LOD) Determination*, provided by applicant, an LOD was initiated for an injury initially treated on 8 Jun 17 for "Pain in left shoulder with radiation to hand." Section 12, *Details of Death, Injury, Illness or History of Disease*, states "Pain in left shoulder started during deployment, was not related to a specific injury, but was reported during an appointment on 8 Jun 17. Service Member (SM) associates it either with manual labor he did or from sleeping on an uncomfortable cot. SM denies any shoulder injury or pain prior to deployment. He was not seen specifically for the shoulder during the deployment but mentioned it during the June 8 appointment as well as during the post deployment medical interview. He was seen by his PCP [primary care physician] on 21 Jul 17 and OrthoCarolina on 16 Aug 17. OrthoCarolina initiated physical therapy for 6 weeks, after which he will return to them for follow-up."

AFBCMR Docket Number BC-2024-01803

Work-Product

Work-Product

On 10 Oct 17, the LOD determination was found to be Interim In Line of Duty (ILOD) by his immediate commander. On that same date, it was determined to be ILOD by the appointing authority.

On 1 Feb 18, according to OrthoCarolina medical note, he underwent surgery for “Left Arthroscopic Rotator Cup Repair and subacronial decompression.”

On 15 Mar 18, according to AF Form 1971, Certification for Incapacitation Pay, provided by the applicant, he applied for initial INCAP pay for the period of 24 Jul 17 to 24 Jan 18. On 11 May 18, his wing commander approved his request.

From 17 May 18 – 5 Oct 18, according to DD Form 214, he served on active duty for Medical Hold (MEDCON) in accordance with 10 USC 12301(h) and AFI 10-402.

On 8 Jun 18, according to DD Form 1971, provided by the applicant, he applied for [INCAP pay] Extension Number 1 for the period of 25 Jan 18 – 16 May 18. The form reflects it was signed by his immediate commander on 22 Jun 18, and the ANG Wing Financial Management Office Certifying Official on 28 Jun 18, however it was not signed by the wing commander.

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

APPLICABLE AUTHORITY

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

5.1. Overview. The purpose of MEDCON is to authorize medical and dental care for members who incur or aggravate an injury, illness or disease ILOD and to provide pay and allowances while they are being evaluated, treated for or recovering from a service-connected injury, illness or disease. ARC members may be entitled to MEDCON when they are unable to perform military duties due to an injury, illness or disease incurred or aggravated while serving in a duty status.

5.1.1. MEDCON orders shall begin when the condition renders the member unable to perform military duties (not necessarily when the injury or illness occurred, when the disease was diagnosed or when the member was released from active duty).

5.2. Eligibility. MEDCON eligibility requires an LOD determination 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 meet retention or mobility standards IAW AFI 48-123.

5.2.1.1. Members who decline or are found ineligible for MEDCON orders may be eligible for and elect INCAP Pay IAW Chapter 6.

5.2.1.2. Members eligible for MEDCON shall not be directed to accept INCAP Pay in lieu of MEDCON. (T-1)

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)

6.2.1. 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)

6.2.1.1. If the member is unable to perform military duties and is eligible for MEDCON but declines MEDCON, the member is still entitled to INCAP Pay minus any civilian earned income.

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.

AIR FORCE EVALUATION

AFPC/DPFA, recommends partially granting the request. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice, thereby partially granting his request and be issued MEDCON orders from 1 Feb 19, his date of surgery, to 17 May 18, the date his initial MEDCON orders started. Evidence has been presented that proves a delay in his MEDCON application submission due to his unit's and his commander's inaction. Additionally, there is evidence that his Wing Commander approved INCAP pay for the period of 31 Jan 18 to 17 Mar 18, but the INCAP pay request was not processed.

The applicant has provided evidence that he would have met all MEDCON eligibility criteria from 1 Feb 18 to 17 May 18. Since he cannot collect both INCAP pay and MEDCON benefits for the same period, therefore, it is recommended the Board simply correct the applicant's MEDCON orders to include the dates from 1 Feb 18 to 17 May 18.

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 25 Jun 24 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 AFPC/DPFA and finds a preponderance of the evidence substantiates the applicant's contentions in part. While the applicant requests INCAP pay for the period of 25 Jan 18 to 16 May 18, the Board determines the evidence presented shows that he met all MEDCON eligibility criteria for the period of 1 Feb 18 to 17 May 18. Since he cannot collect both INCAP pay and MEDCON benefits for the same period, and as MEDCON provides pay, benefits, entitlements and point credit for active duty days, the Board finds that it is in the applicant's best interest that he be placed on MEDCON orders for the period of 1 Feb 18 – 17 May 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. Therefore, the Board recommends correcting the applicant's records as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show he was placed on active duty orders, for the purpose of medical continuation in accordance with Title 10, U.S.C. §12301(h), from 1 Feb 18 through 17 May 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 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-2024-01803 in Executive Session on 19 Feb 25:

Work-Product	, Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 8 Jan 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPFA, dated 7 Jun 24.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 25 Jun 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.

2/28/2025

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