

IN THE CASE OF: ██████████

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20220008876

APPLICANT REQUESTS: Incapacitation pay for the months of February 2020 through June 2020.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- NGB Form 22 (National Guard Report of Separation and Record of Service)
- Five (5) DA Forms 7574 (Incapacitation Pay Monthly Claim Form)
- Medical documents (104 pages)
- Text and email timelines
- Finance documents (8 pages)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of the case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect:

a. She fractured her ankle during basic leadership course (BLC) in January of 2020. Initially, the Urgent Care doctor believed it to be a sprain. When she returned home and had a CT scan done, it was discovered to be a fracture of the talus and bone fragments were chipped off. She had surgery in February, finished BLC on crutches, and was in a cast for several months. At the time she was in BLC, she was also enrolled in paramedic school. She had two part-time emergency medical technician (EMT) jobs, which gave her the flexibility to take time off when she needed to study and then work for several days to compensate for the time off.

b. Due to her part-time status, neither of the two jobs could give her light duty. It took five (5) months to fully recover from her injury in order for her to safely perform the roles and responsibilities required as an EMT, such as climb into/out of the ambulance

and carry heavy patients and equipment. Due to having the fracture, she could not complete her classes for her paramedic certification, thus deferring it a year.

c. Upon her return to BLC, she worked with her Medical Readiness Noncommissioned Officer (NCO) to obtain the proper paperwork for both the Line of Duty and Incapacitation Pay. Once she gathered her required documents (i.e., medical documents, paystubs, and military forms), she submitted them to the Medical Readiness NCO, who further submitted the packet. Despite having the necessary documentation, she did not receive incapacitation pay for the five (5) months she was out of work. She had to use her savings and credit cards to pay her bills. She applied for incapacitation pay for months; however, the packet was not submitted by her leadership. By the time it reached the Surgeon General's office, she was told it was too late due to being separated at the time.

3. The applicant provides:

a. NGB Form 22 shows she was honorably discharged on 7 January 2021 from the Army National Guard [REDACTED] and as a Reserve of the Army under the provisions of NGR 600-200, completion of 6 years Ready Reserve Obligation. She served 6 years of net service this period.

b. Five (5) DA Forms 7574 (Incapacitation Pay Monthly Claim Form), dated between February 2020 through June 2020.

c. Medical documents (104 pages) that include letters from [REDACTED], x-ray images, and Progress Notes.

d. Text and email timelines, dated 30 January through 22 October 2020.

e. Finance documents (8 pages) that consist of payment detail listing, W-2 Wage and Tax Statement for 2019, [REDACTED], [REDACTED] Rescue Squad, and Collection letter.

4. A review of the applicant's service record shows:

a. She enlisted in the Army National Guard on 7 January 2015 for a period of six (6) years.

b. DA Form 1059 (Service School Academic Evaluation Report) reflects the applicant attended and successfully completed the Basic Leader Course from 7 January 2020 through 28 January 2020. She attained the Commandant's List, which is limited to top 20 percent of the class, and ranked as 12 of 196.

c. The applicant was honorably discharged on 7 January 2021 from the Army National Guard [REDACTED] and as a Reserve in the Army.

d. [REDACTED] Army National Guard orders 0000917778.00, dated 6 January 2021, reflects the applicant was transferred to the Individual Ready Reserve upon completion of her 6-year Ready Reserve Obligation.

5. A request for an advisory opinion was submitted to the National Guard Bureau; however, as of the date of this writing, this agency has not received one.

6. Department of Defense Directive 1241.01 states incapacitation is a physical disability due to injury, illness, or disease that prevents the performance of military duties or which prevents the Soldier from returning to the civilian occupation in which the Soldier was employed at the time of the injury, illness, or disease. Incapacitation pay is the compensation Soldiers receive for their injuries considered in the line of duty that require further medical care.

7. Army Regulation 135-381 (Incapacitation of Reserve Component Soldiers) prescribes policies and implements statutory authorities regarding incapacitation pay and allowance and reviews requirements on these entitlements for Reserve Component Soldiers.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.

2. A majority of the Board found the evidence confirms the applicant was injured in the line of duty and could not perform the duties of her civilian occupation during her recovery period. A majority of the Board found the applicant was eligible to receive incapacitation pay and determined her record should be corrected to show she submitted timely requests for incapacitation pay and, if documentation required to substantiate her claim is missing, she should be given an opportunity to provide that documentation. She should receive all incapacitation pay she is due as a result of this correction.

3. The member in the minority determined there insufficient evidence in the available records to determine whether or not the applicant had a valid claim for incapacitation pay.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by showing she submitted timely requests for incapacitation pay and, if documentation required to substantiate her claim is missing, she should be given an opportunity to provide that documentation. Once her claims are processed, she should receive all incapacitation pay she is due.

6/25/2024

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CHAIRPERSON

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in the case.

REFERENCES:

1. Department of Defense Directive 1241.01 states incapacitation is a physical disability due to injury, illness, or disease that prevents the performance of military duties or which prevents the Soldier from returning to the civilian occupation in which the Soldier was employed at the time of the injury, illness, or disease. Incapacitation pay is the compensation Soldiers receive for their injuries considered in the line of duty that require further medical care.

a. Incapacitation pay will be paid only during the period a Reserve Component service member is unable to perform military duties or demonstrates a loss of earned income from nonmilitary employment or self-employment as a result of an in the LOD condition.

b. Incapacitation pay may not be continued for more than 6 months without review of the case by the Secretary of the Military Department concerned to ensure that continuation of incapacitation pay is warranted in accordance with applicable laws.

c. When determining whether incapacitation pay should continue beyond the initial 6 months, the Secretary of the Military Department concerned will consider if a service member has resumed her or her civilian occupation, undertaken a new position in the same occupation, or taken a position in a new occupation.

2. Army Regulation 135-381 (Incapacitation of Reserve Component Soldiers) prescribes policies and implements statutory authorities regarding incapacitation pay and allowance and reviews requirements on these entitlements for Reserve Component Soldiers.

a. The objective of the Reserve Component Incapacitation System is to compensate members of the Reserve Component who are unable to perform military duties and/or who demonstrate a loss in civilian earned income as a result of an injury, illness, or disease incurred or aggravated in the LOD.

b. Incapacitation pay will be paid only during the period a member remains unfit for military duty or demonstrates a loss of earned income as a result of the incapacitation.

c. The member's entitlement to healthcare and pay and allowances under this regulation will terminate on the date that the member is separated or retired.

3. Department of the Army Pamphlet 135-381 (Incapacitation of Reserve Component Soldiers Processing Procedures) states incapacitation pay is separated into two tiers: Tier I (Full Military Pay and Allowances) for Soldiers who are unfit to perform military duties as a result of an injury, illness, or disease caused by military service and Tier II (Lost Civilian Wages) for Soldiers who are fit to perform their military duties by a military medical physician, but are unable to perform their civilian job and can demonstrate a loss of civilian earned income.

a. In order to qualify for incapacitation pay, the Soldier's injury, illness, or disease must have occurred or been aggravated during a period of active duty and/or inactive duty of more than 30 days (or less than 30 days). Also, an in the LOD determination is necessary to demonstrate that the injury, illness, or disease incurred was military service connected.

b. Soldiers who receive incapacitation pay may be entitled to full pay and allowances, incentive pay, special pay, and medical and dental care. Incapacitation pay cannot exceed full military pay and allowances. Soldiers who receive incapacitation pay are not entitled to accrue leave or retirement points.

c. Other civilian earned income and Department of Veterans Affairs benefits will also be subject to deduction from the Soldier's incapacitation pay. This includes normal wages, salaries, professional fees, tips, or other compensation for personal services actually rendered, as well as income from income protection plans, vacation pays, and sick leave that the Soldier elects to receive.

d. Incapacitation pay shall terminate whenever the Soldier is returned to military duties and/or civilian employment, the Soldier receives a determination of not in the line of duty, the Soldier is discharged from the service, upon retirement, or upon death.

4. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//