

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 19 April 2024

DOCKET NUMBER: AR20230009025

APPLICANT REQUESTS: reconsideration of his previous request for Incapacitation (INCAP) pay for the period January – October 2018.

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

- DD Form 149 (Application for Correction of Military Record)
- Email Correspondence

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200008567 on 15 March 2021.

2. The applicant states, in pertinent part, he is seeking reconsideration in his claim identified in ABCMR Docket Number AR20200008567.

a. He recently received results from the board outlining a secondary review completed by the U.S. Army Reserve Command (USARC) G-1 stating his INCAP pay claim was denied. No explanation was provided at all for the denial. He asks for reconsideration in this due to it being unjust. At the time the Board made its decision an INCAP review board had not been convened and he still does not believe one was ever convened to make a determination. From the memo sent it just states USARC conducted a secondary review.

b. He disagrees with this because they have disagreed from the start and done nothing. Which is exactly why he had to apply to the Board. He had to get a congressional representative involved just for medical care and pay. He attached new emails that were not received by the Board showing that all of the documents required for the INCAP pay to be processed from January of 2018 to October of 2018 were provided, and that his command and the battalion did nothing. They also discuss that the battalion had all documentation required.

c. He simply asks that the Board to correct a wrong and unjust decision by USARC

G-1 to deny his INCAP pay claim. There really is no justification for what they put him and his family through, and this can only be rectified through the Board. He does not believe he should have to file a claim in the United States Federal Claims Court under the Tucker Act in order to receive pay that should have already been received, especially with all of the supporting documentation that was presented to the Board.

3. A review of the applicant's available service record reflects the following:

- a. On 13 October 2016, the applicant enlisted in the USAR.
- b. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), dated 15 July 2019 shows he extended his enlistment with the USAR for a period of 1 year.
- c. On 8 October 2019, a Physical Evaluation Board (PEB) convened and the PEB found the applicant physically unfit and recommended a rating of 40 percent and his disposition be permanent disability retirement.
- d. On 22 October 2019, the U.S. Army Physical Disability Agency issued Orders Number D 295-39 retiring the applicant from the USAR by reason of permanent physical disability.
- e. The applicant's records are void of a DD Form 261 (Report of Investigation Line of Duty and Misconduct Status) and of orders ordering the applicant to a period of active duty or active duty for training.
- f. ABCMR Docket Number AR20200008567 decided on 15 March 2021, wherein he requested INCAP pay for the period January – October 2018. The Board determined the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing he submitted a request for INCAP pay in a timely manner before placement on the permanent disability retired list; the request was accepted by the appropriate USAR Command office, and; the USAR will conduct a review and convene an Incapacitation Review Board as required to review his claim and make a final determination. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains changing granting INCAP pay for the requested period without adjudication by the Incapacitation Review Board. On 8 November 2022, the applicant was informed the Board determined, after receiving a secondary advisory opinion from the USARC, G-1, the claim is without warrant and was denied.

4. The applicant provides email correspondence with the immediate commander of the 354th Military Police Company regarding documentation for submission of INCAP pay for January - October 2018.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and advisory from the U.S. Army Reserve Command's G-1 concerning the applicant's eligibility for INCAP pay and determined, contrary to the advisory opinion, that the applicant was entitled to INCAP pay for the period January through October 2018. The Board noted the applicant had been receiving INCAP pay for the period before the requested period and after the requested period. The Board determined, by a preponderance of the evidence, that the applicant should have been entitled to receive INCAP pay during the period requested and unanimously voted to grant relief of the applicant's request for reconsideration of AR20200008567.

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 amendment of the ABCMR decision in Docket Number AR20200008567 on 15 March 2021. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing the applicant timely submitted the appropriate request/form for INCAP pay (at the appropriate rate) for the period January through October 2018 and that his request was approved.

█

█ █

█

█

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

REFERENCE:

Army Regulation 135-381 (Incapacitation of Reserve Component Soldiers):

a. Paragraph 1-4m states Regional Readiness Commands may approve claims up to 180 days for the Army Reserve.

b. Paragraph 1-4n states unit commanders will ensure a Line of Duty (LOD) investigation is conducted expeditiously on injury or illness likely to result in a claim against the Government for compensation.

c. Paragraph 1-6 (Entitlement) states a member of the Reserve Component incurring or aggravating any injury, illness, or disease in the LOD is entitled to INCAP pay, in accordance with Title 37, United States Code, section 204. If the resulting incapacitation cannot be materially improved by further hospitalization or treatment, the case will be processed and finalized through the Disability Evaluation System (DES) when eligible for disability processing.

c. Paragraph 1-8 (Members unable to perform military duties) states a member who is unable to perform military duties because of incapacitation under the circumstance described in paragraph 1-6 is entitled to full pay and allowances, including all incentive pay to which entitled, less any civilian earned income for the same period the member receives INCAP pay.

d. Paragraph 1-11 (Duration of INCAP pay) states INCAP 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. Payment in any particular case may not be made for more than 6 months without review of the case by appropriate headquarters as outlined in paragraph 3-6. To insure that continuation of INCAP pay is warranted under this regulation, a review will be made every 6 months. INCAP pay will continue as long as the conditions warranting the INCAP pay exist and the approving authority determines that it is in the interest of fairness and equity to continue the payment. When incapacitation lasts for over a year, the case should be processed through the DES for disability separation or retirement. INCAP pay will end upon retirement.

e. Paragraph 2-1 (Duty status) states a Soldier in an active duty status such as active duty for training at the time of injury, illness, or disease is critical in determining entitlement to incapacitation compensation. Active duty status is verified by appropriate orders.

//NOTHING FOLLOWS//