

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240002100

APPLICANT REQUESTS: Incapacitation Pay (INCAP) for the period of 12 September through 30 November 2023.

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

- DD Form 149 (Application for Correction of Military Record)
- National Guard Bureau (NGB) Memorandum, Subject: Line of Duty (LOD) Determination (V-, H-, Specialist) (the applicant), dated 28 November 2023 states:
  - LOD was found to be in the line of duty – existed prior to service-service aggravated for his injury to his right knee anterior cruciate ligament tear and meniscus tear that occurred during Annual Training (AT)
- Texas Army National Guard (TXARNG) Orders Number 7094945
- TXARNG Orders Number 7094962
- United States Senate letter dated 26 January 2024 provided the applicant the NGB response to his congressional inquiry for INCAP which stated:
  - The applicant was asked to extend his enlistment contract to be covered medically and financially while completing his surgery and the duration of recovery
  - He may be eligible for INCAP but only for the period of 12 September through 29 November 2023
  - He would not be eligible to receive compensation past his contract end date
  - Due to his separation from the ARNG, he must submit an application to the Army Board for Correction of Military Records

FACTS:

1. The applicant states:

- During his June 2023 AT, he sustained a right knee – Anterior Cruciate Ligament and Meniscus tear which required surgery

- His employer would not pay him for his recovery period because he was injured while in a military paid status
- He was unable to work during the surgery and recovery period
- He should be eligible for INCAP because the injury was sustained while he was in a military paid status and was unable to work during the recovery period
- The INCAP packet he submitted was rejected by the state and he was directed to submit a request for Reserve Component Managed Care-Mobilization (RCMC) orders
- RCMC orders would have required him to extend his enlistment, but he made it clear he would not extend his enlistment due to conflicts with work/life/family balance
- Though his recovery period was several weeks past the end of his enlistment contract, he is only requested INCAP until the end of his enlistment, therefore there was no reason for him to extend his enlistment
- If his request is approved, it would provide him some financial relief

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

- On 30 November 2017, he enlisted in the TXARNG for a period of 6-years
- On 3 June 2023, he was ordered to AT for a period of 15-days at Camp Swift, TX by Orders Number 46-136-0438 dated 16 May 2023
- On 29 November 2023, he was honorably released from the ARNG and assigned to the U.S. Army Reserve (USAR) Control Group (Reinforcement) due to expiration of active status commitment in the Selected Reserve
- NGB Form 23a (ARNG Current Annual Statement) dated 30 November 2023 shows he earned:
  - Active duty other points for the period of 3 through 17 June 2023 for a total of 15 retirement points
  - Inactive duty points for the period of 6 through 9 November 2023 for a total of 8 retirement points
- On 29 November 2023, he was voluntarily assigned to a Satellite Communication System position in his unit by Orders Number 7094945 dated 26 January 2024
- On 30 November 2023, he was assigned to the USAR Control Group (Reinforcement) by Orders Number 7094962 dated 26 January 2024
- DA Form 5016 (Retirement Accounting Statement) dated 27 January 2024 shows he earned:
  - In Retirement Year Ending 29 November 2023 – 44 inactive duty training points, 15 membership points and 15 active duty training points for a total of 74 creditable points

- 15 points for the period of 3 through 17 June 2023 for AT
- Enlisted Record Brief shows his expiration of term of service as 29 November 2023

3. On 28 August 2024, the Army Review Boards Agency (ARBA), Case Management Division (CMD), requested the applicant to provide a copy of his DA Form 7574 (INCAP Pay Monthly Claim Form), DA Form 7574-1 (Military Physician's Statement of Soldier's Incapacitation/Fitness for Duty), and DA Form 7574-2 (Soldier's Acknowledgement of INCAP Pay Counseling) for the period of concern. His case was placed on hold for 30-days. The applicant did not respond to this request.

4. On 23 October 2024, in the processing of this case, the NGB provided an advisory opinion regarding the applicant's request for INCAP for the period of 12 September through 30 November 2023 due to his inability to work during this period. The advisory official recommended a partial approval of his request. A review of the applicant's records and coordination with the TXANRG it was determined he was eligible to apply for INCAP for the period of 12 September through 29 November 2023. His LOD was initiated on 5 September 2023 and submitted to the State on 17 November 2023 with a determination in the line of duty on 29 November 2023; however, he was separated from the ARNG on 30 November 2023 due to his expiration term of service. The applicant was unable to apply for INCAP pay during his contract because his LOD was approved one day prior to separation. He should be able to apply for INCAP for the period of 12 September through 29 November 2023 and upon a board's decision that he met the requirements on INCAP, he should be paid.

5. On 24 October 2024, the ARBA CMD provided the applicant the advisory opinion for review and comment. The applicant did not respond.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board concurred with the National Guard Bureau's advisory official finding the applicant is entitled to INCAP for the period of 12 September through 29 November 2023. However, the applicant was separated from the ARNG on 30 November 2023, therefore this day should be excluded from payment.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>
--------------	--------------	--------------

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial 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:

- determining the applicant met all requirements for INCAP for the period of 12 September 2023 through 29 November 2023
- awarding appropriate pay for 12 September 2023 through 29 November 2023

2. 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 to any other requested relief not mentioned above.

X //signed//

CHAIRPERSON

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.

**REFERENCES:**

1. Army Regulation (AR) 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 (RC) Soldiers.
  - a. Paragraph 2-2 (Entitlement), a member of the RC incurring or aggravating any injury, illness, or disease in the line of duty is entitled to medical and dental care, incapacitation pay, and travel and transportation incident to medical and/or dental care, in accordance with 37 USC 204 and 37 USC 206. The amount of incapacitation pay for the member will be determined in accordance with Department of Defense Financial Management Regulation (DoDFMR) 7000.14-R, Volume 7A.
  - b. Paragraph 2-3 (Types of incapacitation pay), a. Tier I payment. An RC member who is unable to perform military duties due to In Line of Duty (ILD) condition as determined by a military physician:
    - Authorized INCAP pay, under 37 USC 204(g)
    - Authorized full military pay and allowances, less gross non-military earned income, in accordance with DoDFMR 7000.14-R, Volume 7A
    - Will not participate in any active or inactive duty status throughout the duration of the INCAP period, however, the member may earn retirement points in order to satisfy the requirements for a qualifying year of service by completing approved correspondence courses
    - RC members who are students may be authorized incapacitation compensation
  - c. Tier II payment.
    - An RC member who is able to perform military duties and demonstrates a loss of non-military earned income as a result of ILD condition, will be compensated for lost nonmilitary earned income
    - Authorized INCAP pay under 37 USC 204(h)
    - Maximum reimbursement of demonstrated non-military lost income or full military pay and allowances; whichever is less (amounts will not exceed the lost non-military income outlined in DOD 7000.14-R, Vol. 7A, Table 57-3)
    - RC members able to perform military duties may participate in active or inactive duty and earn retirement points for a qualifying year of service
    - RC members must be employed to receive tier II INCAP pay, INCAP pay will be discontinued due to voluntary termination of employment; reasons for involuntary termination of employment must be documented by employer before any consideration to continue INCAP pay

- RC members who are self-employed must provide appropriate documentation (for example, Internal Revenue Service Form W-2 (Wage and Tax Statement)) to validate their certified or registered business
- RC members who are students may be authorized incapacitation compensation if employed at the time of the ILD condition

d. Paragraph 2-4 (Compensation),

- RC members are entitled to all or a portion of the same monthly pay and allowances as are members of the Regular Army with corresponding grade, length of service, marital status, and dependent status
- RC members will not be issued Active Duty (AD) orders in place of INCAP pay as a means of providing benefits to which they might otherwise not be entitled
  - Entitlement to INCAP pay does not place the member on AD, and therefore no leave accrual is authorized.
  - Because no leave accrual is authorized, no lump sum payments may be made for unused leave, except leave accrued prior to incapacitation.
- Payment of INCAP pay will not be made by any finance and accounting officer without a certificate of authorization from CNGB or DCS, G-1
- Eligibility for INCAP pay is determined case by case and depends on whether an RC member is unable to perform military duties or demonstrates a loss of non-military earned income
- All ARNG INCAP payments and travel funds will be charged to the open allotment cited in the Defense Finance and Accounting Service-Indianapolis Manual 37-100
- An RC member may be paid INCAP pay for more than 6-months, only with the approval of the Secretary of the Army or a designee
- Regardless of the amount of lost income claimed by an RC member, the maximum amount of military pay and allowances payable to an RC member is limited to the amount otherwise due an RC member serving on AD with the same grade and years of service at the time of incapacitation
- RC members may receive both INCAP pay and Department of Veterans Affairs (VA) benefits, VA benefits are not taxable and do not meet the definition of earned income, As a result, INCAP pay will not be offset by VA benefits received
- RC members who receive military compensation for duty performed must file a notice of waiver with their regional VA office, The RC member is responsible for coordinating with the servicing VA representative, or regional office, for over-payment disputes

- Active or inactive duty training pay cannot legally be paid concurrently with VA disability compensation or pension benefits, Failing to notify the VA and choose the appropriate compensation may spur future debt collection or recoupment action
- RC members receiving INCAP payments, who are also receiving income from an income supplemental program must report this as earned income, Incapacitation pay is not affected by Social Security disability payments, which is not considered earned income when calculating INCAP pay
- RC members receiving income from non-military employment, including self-employment, must report all (gross) normal wages, salaries, professional fees, and tips, Other reportable income includes other compensation for personal services actually rendered, as well as income from income protection plans, vacation pays, and sick leave that the RC member elects to receive
- RC members receiving VA benefits may elect to receive either military pay or VA pay under DOD 7000.14-R, Volume 7A
- RC members can receive both welfare payments and INCAP pay at the same time

e. Paragraph 2-5 (Duration and limits of incapacitation pay), a. As established by law, entitlement for pay and allowances for the purpose of INCAP pay may not exceed 6 months, unless authorized by the Secretary of the Army or a designee (para 2-2b). b. Incapacitation pay will be paid only during the period an RC member is unable to perform military duty or demonstrates a loss of nonmilitary earned income as a result of the ILD condition:

- Retirement
- Separation
- Separation for physical disability or death (In the case of death, INCAP pay beyond the date of death is not authorized nor included in pay and allowances owed to the Soldier's estate)
- Determination by military physician that the member has recovered sufficiently to perform military duties.
- Member returns to military duty (return to military duty status applies to tier I only)
- Additional reason for termination of INCAP pay:
  - The final ILD determination finds that the condition was not incurred ILD
  - Failing to adhere to prescribed physical profile or medical treatment plan
  - A fit for duty determination, except in tier II cases
  - Member no longer demonstrates a loss of earned income
  - Member is noncompliant with the IDES process
  - Member performs military duty

- Member made a false claim
- The designated approving authority determines it is no longer fair and equitable to continue pay and allowances
- Incapacitation pay requests do not have to be for consecutive periods; however, they must meet all entitlement requirements
- No INCAP pay is due when the non-military earned income exceeds the maximum military pay and allowances
- Unemployed RC members are not authorized tier II compensation

f. Paragraph 26 (Duty status), troop program unit or mobilization-day duty status. An RC member must be in a valid duty status at the time the injury, illness, or disease was incurred or aggravated to be eligible for medical treatment, dental treatment, INCAP pay, travel entitlements, or transportation entitlements.

2. DoD FMR 7000.14-R, Volume 7A, paragraph 570604A 2a, (Incapacitation Pay/Disability Entitlement for RC Service Members), in the case of a member who receives earned income from non-military employment or self-employment performed in any month in which the member is otherwise entitled to pay and allowances under subparagraph 570604.A.1, the total pay and allowances shall be reduced by the amount of such income. In calculating such earned income, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.

//NOTHING FOLLOWS//