

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 September 2025

DOCKET NUMBER: AR20240008507

APPLICANT REQUESTS: Incapacitation Tier 2 Pay for the period while he was going through the Medical Evaluation Board (MEB) and the Integrated Disability Evaluation System (IDES) process.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2173 (Statement of Medical Examination and Duty Status) dated 30 September 2021, showing his diagnosed chronic post-traumatic stress disorder (PTSD) required extensive treatment and was found to have been incurred in line of duty
- Department of Veterans Affairs (VA) Summary of Benefits dated 17 February 2022, which shows the applicant has a combined service-connected evaluation rated 100 percent and he is considered to be totally and permanently disabled
- DA Form 3349-SG (Physical Profile Record) dated 30 March 2022, which shows the applicant was issued a P3 Physical Profile for PTSD
- Texas Army National Guard (TXARNG) Physicians Assistant Flight Surgeon Memorandum - Subject: Statement of Medical Condition and Treatment Plan, 16 December 2022
- TXARNG Company Commander Memorandum - Subject: Recommendation of INCAP Pay for [Applicant], dated 16 December 2022, showing the applicant's diagnosis and treatment plan for chronic PTSD, major depressive disorder (MDD), and dissociative disorder
- National Guard Bureau (NGB), Chief, Personnel Division Memorandum - Subject: Approval of Tier 2 INCAP for [Applicant], dated 5 July 2023, which shows:
 - The INCAP Pay for the applicant was approved for the period 1 March 2022 to 31 July 2022 for lost civilian wages only
 - In April 2003, the Statue changed the verbiage of Department of Defense Directive 1241.1 of the Reserve Component Incapacitation System; where it read the term "full military duty" was eliminated and replaced by the term "military duty"

- The change means that when a member is returned to duty after an incapacitation, the duty which returned may be any duty of which qualified, as determined by the Secretary concerned and not necessarily the specialty skill held prior to the member's incapacitation
- Headquarters, U.S. Army Physical Disability Agency (USAPDA) Memorandum - Subject: Permanent Physical Disability Retirement, dated 20 July 2023
- Order Number D 201-10, 20 July 2023, notifying the applicant that he was found to have a disability and would be permanently retired with a Department of Defense disability rating of 70 percent
- Order Number D 201-10 dated 20 July 2023, retiring the applicant effective 19 August 2023, and placing him on the permanent disability retired list (PDRL), effective 20 August 2023
- Liberty Hill Physician Associates Sacred Counseling dated 24 July 2023, wherein, the medical officials stated, the applicant has been treated for his mental health conditions since his initial diagnosis on 11 August 2021; his ongoing treatment plan will continue for the unforeseeable future, and:

As a result of his mental health condition and the necessity for on-going treatment and extensive counseling services, he was unable to perform his work tasks in his military position as an Aviator or civilian position as a Flight Crew Training Instructor August 2021 to present

- DA Form 7574 (Request and Certification for INCAP Pay) for the months January to July 2023, showing the applicant requested INCAP pay and indicated that during the months of January through July 2023, had he been able to work, he would have earned over \$8,960.00 on his civilian job (Flight Crew Training Instructor)
- DA Forms 1379-E (U.S. Army Reserve Components Unit Record of Reserve Training) for the months January - July 2023, showing the applicant's drill attendance/nonattendance and pay determination
- NGB Chief, Personnel Division Memorandum - Subject: Approval of Tier 2 INCAP Pay for [Applicant], dated 10 August 2023, which shows NGB approved INCAP Pay for the applicant for the period 1 August 2022 to 30 September 2022 for lost civilian wages only
- NGB Chief, Personnel Division Memorandum - Subject: Approval of Tier 2 INCAP Pay for [Applicant], dated 22 August 2023, which shows NGB approved INCAP Pay for the applicant for the period 1 October 2022 to 31 December 2022 for lost civilian wages only
- American Airlines employment information letter, dated 1 November 2023, stating the applicant has not been able to return to work due to continued medical issues and treatment; he had been on Military Leave of Absence since 4 June 2018; it also provides information pertaining to the applicant's salary

- TXARNG Civilian Job Description Questionnaire dated 1 November 2023, which shows the applicant's employer and position information
- Email communication dated 7 December 2023, which shows, based on no longer being a TXARNG member, the applicant was referred to the Army Board for Correction of Military Records (ABCMR) to continue his INCAP Pay request

FACTS:

1. The applicant states:

- He is requesting relief from the extreme financial hardship endured as a result of not receiving the remainder of INCAP Pay that he was eligible for and entitled to during the final 7 months of his time in service during his MEB leading up to his Military Medical Disability Retirement in August of 2023
- Because of the latency in the INCAP Pay process, only a portion of his time in which he was authorized Tier 2 INCAP Pay was awarded
- He did not begin receiving the approved portion of INCAP Pay until the month of his retirement date and did not have time to submit the INCAP Pay request packet before his retirement date
- Once he submitted this new request to his Unit, medical personnel and J1, he was notified that because he was already retired that NGB will not process his INCAP Pay because he was no longer a TXARNG Member, and to continue his INCAP request via the ABCMR
- He is still doing his best to recover from the extreme financial hardship endured during the last 2 years of his service in which he was under intensive therapy for the combat/service-related conditions which rendered him unable to perform his military duties and prevented him from returning to his civilian career as well
- These conditions have been validated, verified, agreed upon and documented by the highest echelons of both civilian and military medical personnel
- Under the same conditions he was eligible for, entitled to, authorized and approved for 10 months of INCAP Pay during the period of 17 months in which he was unable to perform his military and civilian duties, from the date his permanent profile was enacted and the MEB was initiated, leading up to his retirement date and date of resignation from my civilian career
- The only discrepancy being that due to time restrictions, he was unable to submit his request for the remainder of much needed INCAP Pay relief

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

- Having prior Army National Guard (ARNG) and Regular Army enlisted service; the applicant was appointed as a Reserve Warrant Officer and executed his oath of office on 4 April 2006

- On 15 July 2016, he was discharged from the Regular Army and was transferred to his TXARNG unit; DD Form 214 shows, in pertinent part, he was awarded the Purple Heart and Combat Action Badge; item 18 (Remarks) shows he served in Iraq from 24 April 2009 to 26 April 2010 and Afghanistan from 3 June 2011 to 31 May 2012
- On 16 July 2016:
 - The applicant was appointed as a Reserve commissioned officer and Reserve warrant officer and executed his oath office
 - He was also appointed as a chief warrant officer three in the TXARNG and executed his oath of office
- On 1 October 2020, Orders Number 275-007 promoted the applicant to the rank/grade of chief warrant officer four (CW4)/W4, effective 17 September 2020
- On 5 March 2021, Special Orders Number 55 extended Federal Recognition to the applicant for promotion to CW4, effective 8 February 2021
- On 31 March 2021, the TXARNG issued Order Number 10955458 promoting the applicant to CW4, effective 5 March 2021
- On 6 July 2023, an Informal Physical Evaluation Board (PEB) found the applicant unfit and recommended a rating of 70 percent due to PTSD with dissociative symptoms and MDD recurrent, and severe anxious distress; and the applicant's disposition be permanent disability retirement
- On 20 July 2023, Headquarters, U.S. Army Physical Disability Agency issued Order Number D 201-10, which retired the applicant, effective 19 August 2023, and place him on the PDRL, effective 20 August 2023
- On 19 August 2023, NGB Form 22 (National Guard Report of Separation and Record of Service) shows the applicant was placed on the PDRL and was transferred to the Retired Reserve, effective 19 August 2023
- On 21 August 2023, Order Number 5756156 assigned the applicant to the PDRL, effective 20 August 2023

3. On 21 May 2025, the NGB, Chief, Special Actions Branch provided an advisory opinion for this case and recommended partial approval. The NGB advisory official stated:

a. The applicant states he should receive INCAP Tier 2 pay for the 7 months he was in the MEB/IDES process. He claims he was eligible and entitled to INCAP Tier 2 pay for which he was not paid for.

(1) The applicant entered the MEB process on 13 March 2023 and completed the IDES process on 20 July 2023 when his medical retirement orders were published.

(2) The applicant additionally states the medical conditions that incapacitated him from performing his civilian job has been validated, verified, agreed upon and documented by the highest echelons of both civilian and military personnel. Therefore, he was authorized and approved for 10 months of INCAP pay during the period 17 months in which he was unable to perform his military and civilian duties.

b. The Texas Army National Guard (TXARNG) did a review of the applicant's claim and concluded that the applicant would only be authorized for two additional months of INCAP pay per Army Regulation (AR) 135-381 only the necessary documentation was provided.

c. AR 135-381 (Army National Guard and Reserve Incapacitation of Reserve Component Soldier), Chapter 1 section 1-6, Chief of National Guard Bureau will "approved the payment of benefits paid under Title 37, U.S. Coder (USC), section 204(g) and Title 37, USC, section 204(h) for more than 6 months (not to exceed 12 months).

d. A review of the applicant's Medical Electronic Data for Care History and Readiness Tracking (MEDCHART) data shows that he was paid INCAP pay from March 2022 thru December 2022, a total of ten (10) months as the applicant had stated. Additional data also shows that the applicant was denied an appeal to receive INCAP pay for the period of 1 October 2021 through 28 February 2022 due to insufficient medical documentation for the requested period.

e. AR 135-381, paragraph 2-11 states that a Soldier able to Perform military duties, who can show a loss of nonmilitary, earned income from their civilian employer is otherwise referred to as tier 2 INCAP pay. All required documents to complete a request for INCAP pay can be found in Department of the Army Pamphlet (DA PAM) 135-381.

f. DA PAM 135-135, paragraph 2-3 provides guidance on the necessary medical and financial documents needed to apply for Tier 2 INCAP pay. (1) Medical documentation pertaining to treatment received. Medical documentation must clearly indicate diagnosis, prognosis, employment limitations, and required recuperation period for recovery, as detailed in the medical treatment plan. (2) Financial documentation to support the claim period. (3) Accurate nonmilitary earned taxable income. (4) Wages, salaries, tips, or professional fees. (5) Income protection plans (privately held policy vs internal revenue service (IRS) benefits. (6) Vacation pay or sick leave pay. (7) Any net earnings from self-employment for the taxable year. (8) Insurance settlement.

g. TXARNG did a complete review of the applicant's application for Tier 2 INCAP Pay and conclude that the applicant should receive two additional months of INCAP pay. The TXARNGs decision is based on the applicant previously being approved and paid for 10 months of Tier 2 INCAP pay from March 2022 through December 2022, and

per AR 135-381 (see 3c) which approves the payment of benefits for more than 6 months not to exceed 12 months.

h. Based on the evidence reviewed, it is the recommendation of this office that the applicant's request to receive Tier 2 pay for the period while the applicant was going through the MEB, and the IDES process be partially approved granting the applicant INCAP pay for January 2022 and February 2022. TXARNG agrees that the applicant should receive two additional months of INCAP per AR 135-381 (see 3c). This recommendation is based on several factors which were reviewed.

i. The applicant requested Tier 2 INCAP pay for the period while he was going through the MEB and the IDES process which was a period of five months from 13 March 2023 through 20 July 2023. A review of the applicant's MEDCHARTS records show that the applicant has already received 10 months of Tier 2 INCAP pay. INCAP pay can only be authorized for a minimum period of six months not to exceed 12 months per AR 135-381.

j. The applicant's Informal Physical Evaluation Board found him to be physically unfit and recommended a 70 percent disability rating with permanent disability retirement due to posttraumatic stress disorder with dissociative symptoms and major depressive disorder recurrent, and severe anxious distress.

k. A prognosis by a military medical provider in the applicant's INCAP pay request form states that their review of the applicant's civilian provider notes suggest that it will take more than a year for the applicant to recover and is not expected to return to full duty. A letter from the applicant's employer American Airlines states that the applicant has not paid from 1 October 2021 till the present due to his medical illness and treatment.

l. The opinion was coordinated with the ARNG Line of Duty section, and the TXARNG.

4. On 2 June 2025, by email, the applicant responded to the NGB advisory opinion and stated, he concurs with and supports the advisory opinion given and he is extremely grateful for the approval for the 2 months of INCAP Tier 2 pay.

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 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.

Tier 2 INCAP Pay: Grant two months: Upon review of the applicant's petition, available military records, and advisory from the NGB concerning the applicant's eligibility for INCAP pay and determined the applicant was entitled to Tier 2 INCAP pay for the period January and February 2022.

Tier 2 INCAP Pay: Deny 10 months: The Board noted the applicant had already received INCAP pay for a 10-month period while going through the IDES process and was not entitled to 10 additional months in accordance with the NGB advisory opinion.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
XXX	XXX	XX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a partial approval. As a result, the Board recommends that all Army National Guard records of the individual concerned be corrected by showing the applicant timely submitted the appropriate request/form for Tier 2 INCAP pay for the period January and February 2022 and that his request was approved.

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 135-381 (Incapacitation of Reserve Component Soldiers) prescribes policies and implements statutory authorities regarding incapacitation (INCAP) pay and allowance and reviews requirements on these entitlements for Reserve Component (RC) Soldiers. Paragraph 1-6 (Chief, National Guard Bureau (CNGB)) provides that the CNGB will —

a. Approve the payment of benefits paid under Title 37, USC, sections 204(g) and 37 USC 204(h) for more than 6 months (not to exceed 12 months) to incapacitated members of the ARNG/ARNGUS. The CNGB may further delegate this authority to a division chief within the organization or execute a memorandum of understanding with the Deputy Chief of Staff, G-1 to act as the authority.

b. Exercise staff supervision and management over INCAP pay for the ARNG. Have the authority to review, approve, and terminate INCAP pay for claims up to 12 months. Exercise authority to continue paying benefits under 37 USC 204(g) and (h) for more than 6 months, not to exceed 12 months, to incapacitated members of the ARNG. Serve as the centralized approval authority and pay certification official for INCAP pay claims for up to 12 months to incapacitated members of the ARNG.

2. Title 37, USC, section 204 – Entitlement; subsection (g) provides that a member of a reserve component of a uniformed service is entitled to the pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service whenever such member is physically disabled as the result of an injury, illness, or disease incurred or aggravated in line of duty while performing active duty; or inactive-duty training.

//NOTHING FOLLOWS//