

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20250000884

APPLICANT REQUESTS: entitlement to Incapacitation (INCAP) Pay on behalf of the Service Member (SM) for the period of July-December 2020.

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

- DD Form 149 (Application for Correction of Military Record)
- Death Certificate, 6 January 2021
- Marriage Certificate, 24 April 1992
- Orders Number MM-9197-00003, 16 July 2019
- Orders Number MM-9267-00006, 24 September 2019
- Medical documents
- DA Forms 7574-1 (Military Physician's Statement of Soldier's Incapacitation/Fitness for Duty)
- DA Forms 7574 (Request and Certification for Incapacitation Pay)
- Text messages

FACTS:

1. The applicant states in pertinent part that the SM did not receive pay from July – December 2020. The applicant is the SMs spouse, and notes that he was injured on active duty while serving in Kosovo from 2018-2019. His sustained injuries prevented him working. The SM was approved for INCAP pay from July - August 2020, but was removed from the system by his unit and advised that his pay processing needed to be submitted through the Department of the Army. Prior to the SMs passing, he was enrolled in the Integrated Disability Evaluation System (IDES) and undergoing a medical board. Following his return from deployment, from July 2019 – January 2020, the SM was assigned to the Warrior Transition Unit (WTU) at Fort Benning, GA and potentially would have been medically retired, however the process changed, and he was returned to the Army National Guard (ARNG) to provide follow-up care.

2. A review of the SM available service records reflects the following:

a. On 8 February 1989, the SM enlisted in the Regular Army for 5 years with duty as a 67Y (AH-1 Attack Helicopter Repairman).

- b. On 18 June 1993, the SM reenlisted for 3 years.
- c. On 5 November 1996, Headquarters, 3rd Infantry Division (Mechanized) and Fort Stewart issued Orders Number 310-90 reassigning the SM to the transition point pending his release from active duty.
- d. On 18 December 1996, the SM enlisted in the ARNG.
- e. On 17 February 1997, the SM was honorably released from the Regular Army and transferred into the ARNG.
- f. On 17 December 2008, the SM was issued a Notification of Eligibility for Retired Pay at Age 60 (20-year letter).
- g. On 30 March 2009, the SM completed a DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate) electing to participate in the RCSBP. The SM elected option C (Immediate Annuity) – Spouse and Children coverage.
- h. On 15 August 2018, the TNARNG issued Orders Number 45-227-0054 ordering the SM to active duty in support of Operation Joint Guard for a period of 365 days, effective 9 September 2018.
- i. On 16 July 2019, Headquarters, U.S. Army Medical Command (MEDCOM) issued Orders Number MM-9197-00003 retaining the SM on active duty for a period of 60 days, effective 25 July 2019 and ending on 22 September 2019, and reassigning him to the WTU for the completion of a medical evaluation.
- j. On 24 September 2019, MEDCOM issued Orders Number MM-9267-00006 retaining the SM on active duty for a period of 179 days ending on 19 March 2020, for the completion of medical care and treatment (initial).
- k. On 21 January 2020, MEDCOM issued Orders Number MM-9267-00006A01 amending Orders Number MM-9267-00006 to reflect the SMs release from active-duty on 11 February 2020 (142 days) rather than 19 March 2020 (179 days).
- l. On 29 December 2020, the SM passed.

3. The applicant provides the following a:

- a. Medical documents reflective of the SMs healthcare received on various dates beginning in November 2019 for cervical pain. On 5 December 2019, the SMs Neurologist recommended that he not return to work full time due to a diagnosis of

recurring temporo-occipital headaches and paresthesia in his upper extremities noting that his condition would likely deteriorate if he returned to work. In January 2020, the SMs neurologist noted that his multiple diagnosis and circumstances was not conducive for his continued service in the Army. On 2 May 2020, the TNARNG determined that the SM failed to meet the retention standards for continued military service due to a medical condition incurred while in the line of duty.

b. DA Form 7574-1, reflective of the SM being found physically unfit for military duties and his civilian job (aircraft mechanic) from 16 March 2020 – 1 May 2020.

c. DA Form 7574, reflective of the SM advising that during the month of October 2020, had he been able to work, he would have earned over \$4,000.00 on his civilian job (Army Aviation Support Facility Number 1).

d. DA Form 7574-1, reflective of the SM being found physically unfit for military duties and his civilian job from 1 September 2020 – 30 November 2020. The form is incomplete and not showing the Soldier identification. He was diagnosed with cervicgia, headache disorder, and migraine with aura.

e. DA Form 7574, reflective of the SM advising that during the month of July 2020, had he been able to work, he would have earned over \$4,000.00 on his civilian job (Army Aviation Support Facility Number 1).

f. DA Form 7574-1, reflective of the SM being found physically unfit for military duties and his civilian job from 1 August 2020 – 31 August 2020.

g. DA Form 7574, reflective of the SM advising that during the month of August 2020, had he been able to work, he would have earned over \$4,000.00 on his civilian job.

h. DA Form 7574-1, reflective of the SM being found physically unfit for military duties and his civilian job from 1 September 2020 – 30 November 2020.

i. Text Messages reflective of communication concerning survivor benefit entitlements and INCAP pay on behalf of the SM. The applicant notes the concern with INCAP pay for July-August. These documents are further provided in their entirety within the supporting documents for the Board member's review.

4. On 7 December 2022, the National Guard Bureau, Chief, Special Actions Branch, provided an advisory opinion recommending approval of the applicant's request, on behalf of the SM, noting that a review of the Medical Electronic Data Care History and Readiness Tracking found a Line of Duty (LOD) for a medical injury (cervicgia) which

occurred while the SM was on active duty in support of Operation Joint Guardian. In accordance with Army Regulation (AR) 135-381(INCAP of Reserve Component Soldiers), paragraphs 2-11 and 2-12 a LOD determination is the prerequisite for INCAP pay, and that a Soldier must have an approved in the LOD condition, in a qualifying duty status, to file for, or request INCAP pay. A Soldier unable to perform military duties, as determined by a military physician, is otherwise referred to as Tier I INCAP pay. A Soldier unable to perform military duties, who can show a loss of non-military, earned income from their civilian employer is otherwise referred to as Tier II INCAP pay. The TNARNG agree with applicant that INCAP should have been approved, but due to the SMs untimely passing, and he no longer being a part of the ARNG, this process needed to be approved by the ABCMR.

5. On 13 December 2022, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments.

6. On 28 January 2025, the Defense Finance and Accounting Service (DFAS) advised that they were unable to process the recommendation as reflected on the advisory opinion due to the presence of an existing case (2022). Upon review of the DD Form 93 (Record of Emergency Data) the document is void of the SMs endorsement prior to his passing. In order to process payment, DFAS needs the Board to direct it.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. T

2. The Board carefully considered the applicant’s contentions, his military record to include documentation reflective of prior unit approval of a period of INCAP pay (July 2020), additional documentation of the SM being found physically unfit for military duties and for his civilian job between August and November 2020, the applicant’s passing in December 2020, and the applicable regulations. The Board considered the review, conclusions and recommendations of the National Guard Bureau advising official. Based on a preponderance of evidence, the Board determined that relief was warranted for the applicant’s request.

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 relief. 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 July through December 2020, that his request was approved by the proper authority and he is entitled to pay for that period of time.

[REDACTED]

[REDACTED]

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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 this case.

REFERENCES:

1. Department of Defense Instruction 1241.01 (Reserve Component (RC) Line of Duty (LOD) Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements) Section 5 (Authority to Order to Active Duty for Medical and Dental Treatment) provides that with his or her consent, an RC Service member may be ordered to Active Duty (AD) in accordance with section 12301(h) of Reference (e) when authorized by the Secretary of the Military Department concerned and, in the case of a member of the National Guard, with the consent of the Governor or other appropriate authority of the State concerned to receive authorized medical care.

a. With his or her consent, an RC Service member ordered to AD under section 12301(H) of Reference (e) may be retained on AD in accordance with that section for medical treatment for a condition associated with the study or evaluation, if his or her treatment is otherwise authorized by law and determined appropriate by the Secretary of the Military Department concerned.

b. An RC Service member who incurred a covered condition while serving on active duty for a period of 30 days or less may be ordered to or continued on orders to receive appropriate medical and dental treatment for a covered condition in accordance with section 12322 of Reference (e) if the covered condition occurred while serving on inactive duty training or traveling to/from such duty.

c. An RC Service member who has been ordered to or retained on AD in accordance with paragraphs 5a or 5b of this section, resulting in a continuous period of AD of more than 30 days, is entitled to medical and dental treatment in accordance with section 1074 of Reference (e). The RC Service member's authorized dependents are also entitled to medical and dental treatment in accordance with section 1076(a)(2)(D) of Reference (e).

2. AR 135-381 (INCAP of Reserve Component Soldiers), in effect at the time, established procedures and policies and implements statutory authorities regarding medical, dental, hospitalization, and disability benefits, incapacitation compensation, and death benefits, as well as reporting requirements on those entitlements for Reserve Component Soldiers.

a. The regulation stated in order to qualify for Army disability benefits, Soldiers must have incurred or aggravated an injury, illness, or a disease while in a duty or travel status. A finding that the injury, illness, or disease was incurred or aggravated in the line of duty was mandatory to qualify for benefits. A member of the U.S. Army Reserve who was physically able to perform military duties, but who sustained an injury, illness, or disease while in the line of duty, that prevented the member from performing his/her civilian job would receive his/her demonstrated loss of income. That loss of income would not exceed the equivalent rate of full pay and allowances for his/her rank and length of service. The regulation also stated in:

b. 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.

c. Paragraph 4-1e – Prerequisites for entitlement to INCAP pay were inability to perform normal military duties or satisfactory demonstration of loss of nonmilitary earned income. In the latter case, the burden to prove loss rest with the Soldier.

3. Memorandum, Subject: INCAP Pay Program –Army Reserve Implementation Guidance enclosure 2 states the following items are required documents to be submitted for INCAP pay:

- DA Form 2173 or DD Form 261

- Commander's memorandum
- DA Form 7574
- DA Form 7574-1
- DA Form 7574-2
- Medical documentation (DA Form 3349, Medical treatment plan (military or civilian), DES enrollment, additional medical documents (scheduled/kept appointments, physical therapy)
- Financial Documentation (Military Leave and Earnings Statements (LES), civilian LES, job description)

4. Title 10, United States Code, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Further, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

//NOTHING FOLLOWS//