

Military Entitlements

AIR NATIONAL GUARD INCAPACITATION BENEFITS

This instruction provides guidelines and establishes policy for incapacitation benefits for Air National Guard members. It implements AFD 36-30, **Military Entitlements**. This instruction is designed and should be used in conjunction with ANGI 36-2910, **Line of Duty and Misconduct Determinations**.

SUMMARY OF CHANGES

This instruction incorporates All States Log Message D94-0025, 8 May 94 and All States Message 95-112, 19 Sep 95 (Both rescinded upon receipt of this instruction), and DoD Directive 1241.1, 3 Dec 92, **Reserve Components Incapacitation Benefits**. It is designed to be used in conjunction with ANGI 36-2910, **Line of Duty and Misconduct Determinations**.

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Chapter 1

GENERAL ENTITLEMENTS

1.1. Glossary of References, Abbreviations, Acronyms, and Terms. See attachment 1.

1.2. Entitlements:

1.2.1. The objective of the reserve incapacitation benefit system is to compensate, to the extent permitted by law, members of the ANG who experience incapacitation or loss of civilian earnings as a result of illness, injury, or disease incurred or aggravated in the line of duty (LOD) and provide the required medical and dental care associated with the incapacitation.

If	and	and	Then
Member is not fit for full military duty	Incapacitation was in the LOD (See Note regarding additional instruction)	Member is able to perform civilian job; in full, part, or not at all	Member is entitled under Title 37 U.S.C. 204(g) to appropriate pay and allowances less any earned income
		Member is able to perform civilian job, but not fully, and loses income	Member is entitled under Title 37 U.S.C. 204(h) to amount of loss of income up to the amount of pay and allowances
	Incapacitation was not in the LOD		Member is not entitled to Reserve incapacitation pay
Member is fit for full military duty	Incapacitation was not in the LOD		Member is not entitled to Reserve incapacitation pay

Note: If member was on active duty for 31 days or more the member is entitled to remain on active duty status until final disposition of the case. If member was on active duty for 30 days or less the member is entitled to incapacitation pay upon the end of his or her orders.

1.2.2. Members authorized incapacitation benefits (See table 1.2.) are entitled to medical treatment in a military treatment facility for the incapacitation until qualified for return to full military duty or the resulting incapacitation cannot be materially improved by further hospitalization or treatment, and the case has been processed and finalized through the Disability Evaluation System when eligible for disability processing.

1.2.3. Members are authorized incapacitation benefits (See table 1.2.) until qualified for return to full military duty or the resulting incapacitation cannot be materially improved by further hospitalization or treatment, and the case has been processed and finalized through the Disability Evaluation System when eligible for disability processing.

1.2.4. Nothing in this instruction shall be construed to prevent emergency medical treatment at a treatment facility of a member during any period of training duty. A member presenting his or herself for emergency treatment at a military treatment facility after termination of training duty, stating that the condition is related to an illness, injury, or disease incurred during, or aggravated by, an earlier period of duty, shall be examined and provided necessary medical care. The circumstances surrounding the emergency condition will be resolved after the emergency has been stabilized. No treatment beyond that justified to stabilize the determined emergency is authorized until the service connection is validated.

1.2.5. Members incapacitated will be on orders while attending or receiving medical treatment or evaluation.

1.3. Members Unable to Perform Military Duty:

1.3.1. Incapacitation pay is adjusted only by the amount of earned income received. The civilian income of the member other than earned income received shall not be a consideration in calculating incapacitation pay under that paragraph.

1.3.2. For establishing fitness to perform military duties, a member shall be determined to be unable to perform military duties if, under the ANG procedures, the member is determined to be medically unfit for worldwide (deployable) duty, or unable to perform the assigned duties in their Air Force Specialty.

1.4. Duration of Incapacitation Pay:

1.4.1. Incapacitation pay shall be paid during the period a member remains disabled or demonstrates a loss of earned income as a result of LOD disability. See paragraph 2.4.5. for procedures on applying for Secretary of the Air Force waiver.

1.4.2. Incapacitation for periods of over one year, or permanently disabling conditions will be processed as soon as recognized through the Disability Evaluation System (DES) for separation or retirement. The period of incapacitation is determined by the treating physician in conjunction with the member's unit commander. Member must be evaluated, as a minimum, once every 30 days.

1.5. Continuation on Active Duty of Air National Guardsmen on Active Duty Orders for a Specified Period of 31 Days or More:

1.5.1. Members on active duty under orders for a period of 31 days or more, who are incapacitated/hospitalized beyond the original termination point of the orders, shall, with the member's consent, be continued on active duty for the duration of the hospitalization or final disposition of the case. Members on orders 31 days or more, who would otherwise be retained on orders due to an incapacitation, but who elect to leave active duty, shall be entitled to incapacitation pay upon the end of the orders and medical treatment in military treatment facilities, in accordance with Section 1074 of 10 U.S.C. Members treated for an illness, injury, or disease related to a LOD disability, and who later require medical treatment related to the illness, injury, or disease are authorized medical treatment at military treatment facilities in accordance with Section 1074 of 10 U.S.C. Members may be retained on active duty, or treated at a military treatment facility, under that section until qualified for return to full military duty. Treatment under Section 1074 of 10 U.S.C. should terminate when the resulting incapacitation cannot be materially improved by further hospitalization or treatment, and the case has been processed and finalized through the DES when eligible for disability processing.

*Note. Members retained on orders will report to their duty section.

1.5.2. When the member meets the criteria above (31 days or more active duty and LOD), request workdays extension of member's orders from ANG/MPPU. Include a copy of members orders, all supporting medical documentation and the NGB Form 348, *Line of Duty Determination*. Normally, member's will only be extended for 30 days at a time. If the member's illness, injury or disease is expected to take longer than 30 days to be resolved, identify this in the request and a 60-day extension may be granted. For follow-up requests, include the LOD, member's orders, and documentation which indicates that the member has been seen by a physician for follow-up treatment and evaluation.

1.6. Timely Payment for ANG Members on Active Duty Orders for 30 Days or Less and Those ANG Members in Inactive Duty Training Status Entitled to Incapacitation Pay. Members in this status shall begin to receive their incapacitation pay within 30 days of the notification of the illness, injury, or disease, provided all documentation is submitted as appropriate. (See table 2.1.)

1.7. Status of ANG Members on Orders for 30 Days or Less Who Become Incapacitated:

1.7.1. Members on inactive duty drill orders or on active duty for 30 days or less may not have orders terminated due to incapacitation alone, but shall become entitled to incapacitation pay upon the end of their orders.

RESPONSIBILITIES

Table 2.1.				
INCAPACITATION PAY APPLICATION PROCEDURES (See Note 1)	Rule			
If applicant is	1	2	3	4
requesting initial 6-month entitlement and is unfit for military duty	Yes			
requesting initial 6-month entitlement and is fit for military duty but can show lost civilian income		Yes		
requesting an extension thru ANG/FMFPM to SAF and is unfit for military duty			Yes	
requesting an extension thru ANG/FMFPM to SAF and is fit for military duty but can show lost civilian income				Yes
Then applicant must submit the following documents (when applicable) to the Career Enhancement and/or NCO Base Comptroller.				
Member's signed request for incapacitation pay and copies of all briefings.	X	X	X	X
Unit commander's recommendation and wing commander's approval.	X	X	X	X
NGB Form 348, <i>Line of Duty Determination</i> from the servicing medical facility.	X	X	X	X
Statement from treating physician that member was unable to perform civilian occupation as a direct result of LOD illness/injury/disease is required. Member is required to provide military physician with the documentation from civilian physician including diagnosis, treatment plan, statement of prognosis.		X		X
Member signed statement of all gross earnings during the incapacitation period. If member has no income, then their letters must so state and provide a reason.	X	X	X	X
Self-Employed: If member cannot perform self-employment, statement from treating physician whether inability to work is due to LOD illness/injury/disease. Member may need to provide input from civilian physician. (See Note 2)	X	X	X	X
Self-Employed: Provide profit/loss statement showing amount of monthly gross income earned prior to injury and tax records for the previous years. Must also provide proof of amount of profit/loss on income during each incapacitation pay period. (See Note 2)	X	X	X	X
Employed: Statement from civilian employer of the amount of gross earnings member would have received during the incapacitation pay period. If member is unable to work, civilian employer must certify whether member can perform full or limited civilian duties due to LOD illness/injury/disease. Must state if member is receiving income through sick leave. (See Note 2)	X	X	X	X
Interim LOD, NGB Form 348 or DD Form 261, <i>Report of Investigation, Line of Duty and Misconduct Status</i> . (See Note 3)	X	X	X	X
Physical Profile Series, AF Form 422, <i>Physical Profile Serial Report</i> .	X	X	X	X
Servicing clinic's medical status letter.			X	
Wing commander's explanation of delay when extension package is submitted late.			X	X
Documentation verifying member's status at time of illness/injury/disease.	X	X	X	X
Additional documents such as AF Form 594, <i>BAQ Allowance</i> , AF Form 918, <i>Report of Performance of Aerial Flights</i> , rent or mortgage agreement. Contact Pay for determination.	X	X	X	X

Notes:

1. How to properly utilize table 2.1. Locate the rule which best fits the member's status. Follow the column directly below the rule which applies.

2. When submitting a request for extension for incapacitation pay prior to the expiration of current entitlement, earning statement from member/employer must be estimated. Upon SAF approval, current statements may be required to compute pay entitlement.

3. An Air National Guard member incapacitated as a result of illness, injury, or disease incurred or aggravated on active duty or inactive duty training, may have an interim LOD determination issued by the Appointing Authority if an LOD determination cannot be finalized within 7 days of notification. Applies only to initial request for incapacitation pay.

2.1. Member/Commander. Members are responsible for informing their home installation medical facility or supervisor/commander immediately of any injury, illness or disease incurred in a duty status. Member's commander will monitor members status, ensure orders extensions are requested and orders generated to continue members duty status and pay entitlements. Orders should be certified by member and supervisor at the beginning and end of each tour extension and sent to military pay to support payment.

2.1.1. Provide copies of medical treatment and make request for incapacitation pay.

2.1.2. Provide documentation if claiming loss of civilian earned income.

2.1.3. Report to all scheduled medical appointments.

2.1.4. Report for duty when on orders at designated location unless on convalescent or ordinary leave status.

2.2. Base Commander:

2.2.1. Reviews individual cases sufficiently far in advance of the end of each 6-month period so as to ensure that incapacitation pay not be interrupted if it is determined that it should be continued.

2.2.2. The base commander shall institute procedures to ensure the review of cases that:

2.2.2.1. The pay is not terminated due to administrative neglect or the period of incapacitation extended because of unwarranted delays in medical treatment. This responsibility may be delegated to the base comptroller.

2.2.2.2. Will determine member's eligibility to continue incapacitation status on cases when member fails to meet scheduled medical appointments related to receiving incapacitation pay.

2.3. Base Medical Facility:

2.3.1. The medical facility will provide a letter containing pertinent information such as the diagnosis, prognosis, and the anticipated date when the individual is expected to return to normal military duty. If a Medical Evaluation Board (MEB) has recommended continuance in incapacitation status, a copy of the AF Form 618, *Medical Board Report*, should be part of the package. If no MEB has been held the letter of request should indicate when the MEB can be anticipated to be held. See paragraph 2.4.5. for reference package.

2.3.2. MEB processing in DES should be considered prior to submittal of extension request when incapacitation extends beyond initial 6-month period.

2.3.3. An informal LOD NGB Form 348 must be completed prior to extension request. Members should be seen monthly to verify treatment and medical status.

2.4. Base Comptroller. Briefs member regarding entitlements. (See attachment 2.)

2.4.1. Initiates incapacitation pay upon request of the member, in accordance with ANGI 36-2910, *Line of Duty and Misconduct Determinations* and DFAS-DA 177-373V3, *Air Reserve Forces Pay and Allowances System*, upon receipt of completed NGB Form 348 from MPF/DPMPE.

2.4.2. Discontinue incapacitation pay upon receipt of final NGB Form 348 returning member to normal military duty or DES eligibility.

2.4.3. Continue incapacitation pay, upon receipt of NGB Form 348 follow-up received from MPF/DPMPE, until member is returned to normal military duty. Payment will not continue beyond 6 months without SAF approval.

2.4.4. Disability extending beyond six months:

2.4.4.1. Discontinue incapacitation pay at the end of six months unless the SAF has approved additional payment.

2.4.5. Whenever incapacitation is expected to exceed 6 months the individual has the right to request that incapacitation pay (if eligible) be continued beyond the 6-month period. In such cases the member will prepare a letter (with medical documentation attached) to his or her commander who will endorse it to the base comptroller's office. The base comptroller's office will compile appropriate documentation (NGB Form 348, and other appropriate

documents). These documents along with the letter of request should be forwarded through the base commander, State Headquarters, and ANG/SGP to ANG/FMFPM.

2.4.6. Should an Informal LOD determination find the illness, injury, or disease was not incurred in the LOD, the unit will take the necessary action to immediately stop any incapacitation benefits or curtail orders. The base comptroller will follow established debt collection procedures in accordance with DFAS-DA 177-373V3, Chapter 32, *Air Reserve Forces and Allowances System*.

2.5. MPF/DPMPE. Refer to ANGI 36-2910, *Line of Duty and Misconduct Determinations*.

2.5.1. Briefs the member of their responsibilities during periods of incapacitation pay and extension requests beyond the initial 6-month period.

2.5.2. Coordinates extension requests with the full-time medical technician and ANGRC.

2.5.3. Retains copies of all briefings.

2.6. State Air Surgeon. Is responsible for the medical oversight of this ANGI.

2.7. ANGRC:

2.7.1. ANG/FMFPM coordinates requests for incapacitation pay (beyond initial 6 month period) with ANG/SGPS and forwards package to SAF for approval/disapproval.

2.7.2. Upon certification of the SAF action, ANG/FMFPM will forward documentation to the Air Force Accounting and Finance Center and the base comptrollers office through channels.

2.7.3. ANG/SGP processes informal LODs and monitors member's treatment and MEB actions. ANG/SGM provides guidance on LOD and medical payment procedures to unit clinics upon request.

2.7.4. ANG/MPPU receives and processes requests for workdays to extend orders for members who incur illness, injury or disease while on orders of 31 days or more. Ensures timely requests for orders extension and forwards to ANG/MPTR.

2.7.5. ANG/MPTR issues workdays to unit per direction of ANG/MPPU. Workdays will normally be received by unit within five working days after receipt of authorization from ANG/MPPU.

2.8. SAF:

2.8.1. Reviews incapacitation cases and performs the functions identified in DoD Directive 1241.8.

2.8.2. Incapacitation pay shall continue as long as the conditions warranting the incapacitation pay exist and the SAF determines that it is in the interests of the fairness and equity to continue payment.

DONALD W. SHEPPERD
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GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS

Section A--References

All States Log Letter D94-0025

DoD Directive 1241.1

Title 37 United States Code

Title 10 United State Code

DoD Pay and Allowances Manual

ANGI 36-2910, *Line of Duty and Misconduct Determinations* (Formerly ANGR 35-67)

DFAS-DA 177-373V3, *Air Reserve Forces Pay and Allowances System*

AFI 41-101, *Obtaining Civilian Medical and Dental Care*

AFI 41-115, *Authorized Health Care and Health Care Benefits in the Military Health Services System.*

Section B--Abbreviations and Acronyms

Abbreviation or Acronym	Definition
ANG	Air National Guard
DES	Disability Evaluation System
DoD	Department of Defense
EPTS	Existed Prior to Service
LOD	Line of Duty
MEB	Medical Evaluation Board
MPF	Military Personnel Flight (or CBPO)
NGB	National Guard Bureau
SAF	Secretary of the Air Force
VA	Department of Veterans Affairs
VHA	Variable Housing Allowance

Section C--Terms

Earned Income--Income from nonmilitary employment, including self-employment. It includes normal wages, salaries, professional fees, tips, or other compensation for personal services actually rendered, as well as income protection plans, vacation pays, and sick leave that the member elects to receive. It does not include rents, royalties, retirement pay, dividends or interest, welfare payments, or other nontaxable government benefits. Members who are in receipt of Department of Veterans Affairs (VA) benefits may elect to receive either military pay or VA pay under Section 80204 of the *Department of Defense (DoD) Military Pay and Allowances Entitlements Manual*. If the member is in receipt of incapacitation payments, the member may not be eligible for welfare payments. If a member receives both

incapacitation and welfare payments, the Air National Guard (ANG) member would be required to reimburse welfare payments to the welfare agency.

Incapacitation--A member is considered to be incapacitated whenever one or more of the following conditions occur:

- Physical disablement as the result of an illness, injury, or disease, and
- Member is Not Qualified For Worldwide Duty, and
- Member is unable to perform the duties required of their Air Force Specialty.

Incapacitation Pay--Entitlements include Base Pay, Basic Allowance for Quarters, Basic Allowance for Subsistence, Variable Housing Allowance, and incentive pay (if applicable). Incapacitation pay is the above mentioned pay and allowances for the period of incapacitation less the full amount of all earned income received for the period of the incapacitation/disability.

Line of Duty (LOD)--The duty status and conduct of a member at the time an illness, injury, or disease is incurred or aggravated by military service. An illness, injury, or disease occurred in the LOD if it was incurred or aggravated while performing active duty, while on authorized leave or liberty therefrom, while performing inactive duty training, other than work or study in connection with a correspondence course or attendance in an inactive status at an educational institution under the sponsorship of an Armed Force of the Public Health Service, or while traveling directly to or from such duty.

Excluded from LOD injuries, illnesses, diseases, or aggravations by military service:

Existed Prior to Service (EPTS). A previous condition that occurred prior to member's entry into periods of active duty, or

Those that are a result of member's own gross negligence or misconduct, while avoiding duty by deserting the Service, during a period of unauthorized absence, while confined under sentence of a court-martial that included an unremitted dishonorable discharge, or while confined under sentence of a nonmilitary court following conviction for an offense defined as a felony by the law of the jurisdiction where convicted.

Line of Duty Determination--In accordance with ANGI 36-2910, *Line of Duty and Misconduct Determinations*, an appropriate approving authority for an ANG member incapacitated as the result of an illness, injury, or disease incurred or aggravated on active duty (including leave and liberty therefrom), inactive duty training, or traveling directly to or from inactive duty for training, absent clear and convincing evidence to the contrary, shall issue an "in line of duty" determination within seven days of notification. This LOD is intended to ensure that incapacitation pay can be started without the delay inherent in awaiting a final approved LOD determination. Should a final LOD determination find that the illness, injury, or disease was not incurred in the LOD, the Base Comptroller will take action to immediately stop any incapacitation benefits. Member will be served due process notification.

SAMPLE FINANCIAL ENTITLEMENTS BRIEFING

1. I hereby certify that I have been briefed on my financial entitlements, which I am authorized, while receiving medical care and/or incapacitation pay. I certify that I specifically understand the following:

a. Entitlements will be paid in 15 or 30-day increments, depending on my needs and receipt of approved NGB Form 348, AF Form 422, and other appropriate documentation.

b. Incapacitation pay entitlements are base pay, BAS, BAQ, VHA and incentive pay (if applicable). A rental/mortgage agreement is required to establish VHA entitlement.

c. I understand that my monthly incapacitation pay entitlement will not exceed the total monthly pay and allowances for a regular Air Force member of corresponding grade and length of service, less any civilian income I may earn.

d. Entitlements are paid via check or direct deposit; therefore, I must report any changes in residence or bank account to my Pay Office, Base Medical Unit, and the Military Personnel Flight Customer Service office.

e. Emergency partial payment (not to exceed 80 percent of base pay ONLY) may be paid in cash. (Subject to availability.)

f. Any payments I receive based upon an interim line of duty (LOD) determination is subject to 100 percent recoupment, if the final LOD determination is not in the LOD.

g. A request for waiver of the 6-month incapacitation pay restriction must be approved by the Secretary of the Air Force. I must make application through my Career Enhancement office for waiver of the 6-month restriction 60 days prior to the expiration of the initial 6-month period to preclude undue delay in payment of monies.

h. I understand I must provide civilian employer's statement of income (when applicable).

2. Point of contact for any pay questions is _____ at extension _____.

(Member's Signature)

(Briefer's Signature)

(Date)

cc: MPF/Career Enhancement

SAMPLE MEDICAL BRIEFING

1. I may receive medical care and treatment, including hospitalization and rehospitalization, only for the specific LOD disease/illness/injury.
2. I must request approval for civilian health care from my servicing active duty medical treatment facility through my servicing unit medical facility before receiving such medical treatment. If I don't receive prior approval, I will then be responsible for payment of all bills incurred. The government may no longer be responsible for my LOD disease/illness/injury, if complications arise from obtaining unauthorized civilian medical treatment.
3. I must report any changes in residence to my servicing customer service office and servicing medical facility as soon as possible.
4. To determine my eligibility for incapacitation pay, I must first make request to my servicing medical unit. A medical physician or designee assigned to this unit will complete an NGB Form 348 for the preceding 15 or 30-day period.
5. If I don't receive prior approval, I will then be responsible for payment of all bills incurred and the government may no longer be responsible for my LOD disease/illness/injury if complications arise from obtaining civilian medical treatment.
6. I am not considered on active duty and cannot be placed on orders or have my present orders extended so I can receive military medical care, unless as outlined in ANGI 36-3001, *Air National Guard Incapacitation Benefits*, paragraph 1.4.1.
7. I am not medically qualified for military duty while I have a (4) in my physical profile and will not participate in any reserve activity for pay and point credit. When my physical profile contains any combination of 1, 2, or 3 with or without physical restrictions I will be considered medically qualified for military duty. The fact I cannot perform my special operational duties, that is, flying duties, marine diving duties, etc., has no bearing on my medical qualification for military duty.
8. I must personally report to my servicing medical unit once every 30 days, or more frequently if so directed, to keep them current on my medical status.
9. I am entitled to travel pay for all medical appointments and I must contact my unit for preparation of travel orders.
10. Point of contact is _____ at extension _____.

I acknowledge that I have been briefed on my responsibilities, while I am receiving military medical care.

(Member's Signature)

(Briefer's Signature)

(Date)

cc: MPF Career Enhancement

SAMPLE LETTER REQUEST FOR INCAPACITATION PAY

MEMORANDUM FOR _____
(Unit CC)

(Date)

FROM: _____
(Member's Grade, Name)

SUBJECT: Request for Incapacitation Pay

1. I request (initial) (extension to) incapacitation pay from _____ to _____ as a result of my line of duty (LOD) disease/injury/illness. I have indicated my current civilian employment status by checking the paragraph below that applies.

a. () I am employed. My employer is _____, my phone number: _____. I (am) (am not) able to work for my civilian employer as a direct result on my line of duty disease/illness/injury in either a full or limited capacity.

b. () I am self employed and (am) (am not) able to work as a direct result of my line of duty disease/illness/injury.

c. () I was not employed prior to my LOD disease/illness/injury and I have no other income outside of the Air National Guard.

d. () My current employment status is other than as listed. Explanation: _____

_____.

2. I swear under penalty of perjury that this information is true and accurate. I understand that filing a false claim is punishable under Article 107 of the Uniform Code of Military Justice and Title 18, Section 1001 of the United States Code. Filing a false claim for incapacitation pay or in connection with obtaining health care at a military medical facility could lead to my conviction of a felony, confinement in a federal prison for 5 years, a fine of \$10,000, and a discharge from the Air National Guard and as a Reserve of the Air Force.

(Member's Signature)

(Current Address/Phone #)