



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[REDACTED]
Docket No: 3540-16
FEB 22 2017

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO
FORMER MBR [REDACTED] XXX-XX-[REDACTED] USMC

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Personal statement from caregiver
(3) Vehicle accident report
(4) Medical care summary
(5) OSGLI denial ltr of 12 June 2013
(6) HQMC denial ltr of 28 April 2014
(7) TSGLI Appeals Board ltr 1770 PEB TSGLI ltr of 10 Mar 2016
(8) TSGLI claim of 21 Mar 2013

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to award him \$100,000 in Traumatic Servicemembers' Group Life Insurance (TSGLI) for loss of at least two Activities of Daily Living (ADLs) for over 120 consecutive days.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 December 2016 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the application, enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner suffered traumatic thoracic fractures when he was involved in a motor vehicle accident on 30 December 2006. He was discharged from the hospital on 4 January 2007 with a thoracolumbosacral orthosis (TSLO) brace without a requirement for surgery.

c. On 22 January 2007, Petitioner reported he was no longer taking pain medication and suffered no pain from his injuries. However, it was determined that he required surgery to correct deformities related to his fractures.

Subj: REVIEW OF NAVAL RECORD ICO

FORMER MBR [REDACTED] XXX-XX-[REDACTED] USMC

d. Petitioner underwent surgery on 26 January 2007 and was discharged with a TSLO brace and Aspen Collar on 29 January 2007 with instructions not to lift any weight greater than 10lbs. Immediately after his surgery, Petitioner was assisted by a caregiver who helped him bathe, dress, and transfer for approximately four months.

e. Petitioner filed his TSGLI claim for loss of two ADLs for over 120 days on 29 March 2013. His claim was denied on 12 June 2013 for lack of medical evidence that he required assistance to perform the claimed ADLs.

f. Petitioner filed for reconsideration on 17 April 2014 and was denied by Headquarters, U.S. Marine Corps on 28 April 2014 for lack of supporting medical evidence.

g. Petitioner appealed his previous denials to the TSGLI Appeals Board on 18 March 2015. He was denied relief on 10 March 2016 for lack of supporting medical evidence.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority ([REDACTED]) concluded that Petitioner was unable to bathe or dress independently for 30 consecutive days after his surgery and required assistance to perform those two ADLs from 26 January 2007 through 28 February 2007. The majority determined that the back surgery required to correct his traumatic injury was in itself traumatic enough to find that any reasonable person would require assistance in bathing and dressing. The fact the medical records did not specifically address a need for assistance to perform those ADLs did not convince the majority that the Petitioner did not qualify for TSGLI due to the nature and complexity of the surgery required to treat his traumatic injury. The majority determined that the 26 February 2007 medical notes that Petitioner's condition was stable combined with the 28 February 2007 medical entry showing that Petitioner "looked well" and would return in 30 days follow-up was sufficient evidence that he no longer required assistance to perform ADLs after 28 February 2007.

MAJORITY RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner qualified for \$25,000 TSGLI payment effective the date of this Board for loss of his ability to bathe or dress without required assistance from 26 January 2007 through 28 February 2007 due to a qualifying traumatic injury.

b. No other relief be granted.

c. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

MINORITY CONCLUSION:

A minority of the Board ([REDACTED]) concluded that no relief should be granted based on the belief that Petitioner failed to provide sufficient evidence to show that he required assistance

Subj: REVIEW OF NAVAL RECORD ICO

FORMER MBR [REDACTED] XXX-XX [REDACTED] USMC

to perform the two ADLs for more than 30 days. The minority felt that the lack of any medical notation showing that Petitioner was unable to perform specific ADLs supported the previous denials of Petitioner's TSGLI claim, reconsideration request, and appeal.

MINORITY RECOMMENDATION:

That Petitioner's request be denied.

4. It is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

[REDACTED]
Recorder

5. The foregoing action of the Board is submitted for your review and action.

[REDACTED]
Executive Director

[REDACTED]
Reviewed and Approved / Disapproved

3/3/17