



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

█  
Docket No. 1997-21  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 8 August 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, to include the entirety of your application for Traumatic Servicemembers' Group Life Insurance (TSGLI) and all stages of its review, and the 27 June 2022 advisory opinion (AO) from the Director, Secretary of the Navy, Council of Review Boards (CORB). A copy of the AO was provided to you for comment but you chose not to provide a response.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows that you enlisted in the Navy and commenced active duty on 7 September 2011. On 15 April 2016, you were in a motorcycle accident, which you assert caused you the inability to perform at least two activities of daily living (ADLs) for a period of at least 90 days. On 28 April 2018, you were discharged from the Navy due to disability with severance pay. Your available service records do not contain reports of medical or physical evaluation boards that resulted in your discharge, and the materials you provided do not include information relating to the background of your discharge.

On 30 April 2018, you submitted a claim for TSGLI. On 27 June 2018, Commander, Navy Personnel Command (CNPC) denied your claim for TSGLI. According to CNPC the “medical documentation provided does not indicate the member's loss met the TSGLI minimum standard.” On 9 July 2018, you sought reconsideration of the claim. On 18 November 2018, the Chief, Bureau of Medicine and Surgery, made a memorandum for the record relating to your claim, as follows:

Upon review of the case, there is insufficient evidence to support the member's claim for femoral neck fracture, based on the TSGLI governing regulations. There is no medical evidence that clearly identifies that claimed cause of the injury other than the service member's statement. Secondly, the loss presented within these documents does not meet the TSGLI medical standard for ADL medical necessity. The TSGLI submission indicates a femoral neck fracture, surgically repaired and released following physical therapy. The appeal documents the femoral neck fracture, but also alleges Traumatic Brain Injury, and complications of the femoral neck repair, specifically malalignment and site necrosis, which required extended period of ADL impact including use of a wheelchair. There are no documents within the appeal submission which confirm these findings.

Thereafter, on 14 March 2019, CNPC denied your request for reconsideration, explaining to you as follows:

The claim for ADL losses was not approved because your loss did not meet the TSGLI criteria. There was insufficient medical documentation provided to indicate you had a medical necessity for assistance. Under the laws and regulations governing the TSGLI program 38 U.S.C. 1980A(b)(1)(H), (b)(2)(D), and 38 CFR 9.20(d), (e)(6)(vi), (f)(17) and (f)(20)), medical evidence must demonstrate your inability to independently perform at least two of the six ADL (eating, bathing, dressing, toileting, transferring, and continence). You did not provide a timeline of treatment, starting with the initial evaluation by physical therapy, nor supporting documentation to show the medical necessity for assistance until you were released back to full duty.

On 25 March 2019, you appealed this denial to the TSGLI Appeals Board, which again denied your claim for TSGLI.

In your current petition, you seek review of the decision of the TSGLI Appeals Board, and a granting of a change in its decision granting you benefits for the inability to perform at least two ADLs for more than 90 days continuously due to Other Traumatic Injury (OTI). In your petition, you contend that the decisions to date have discounted or ignored medical records favorable to approval.

In order to assist it in reviewing your claim, the Board obtained the 27 June 2022 AO. According to the AO:

In this case, the record shows that no ADL support was required for any 30-day period following the applicant's accident. Although the applicant and an independent nurse reviewer opine that it was difficult for him to perform ADLs for an extended period, treatment notes annotated in his record proximate to the time of his accident indicate that no such assistance was required.

The AO, also specifically considered your contentions, as follows:

The applicant's attorney opines that there was a failure to consider physical and standby assistance for all ADLs claimed; however, that was not the case. While the evidence does include conflicting arguments as to whether or not the applicant required assistance to perform ADLs, the mere existence of these arguments does not automatically accord them all the same weight.

When faced with the conflicting arguments in the record, the Board members weighted the temporally proximate notes that were annotated in the applicant's health record, along with their own, objective, professional expertise. When the Board weighted the evidence in this manner, the preponderance of the evidence clearly supported the Board's decision. Said another way, this was a matter of quality versus quantity. More importantly, the weighted evidence did not indicate that the member required assistance to perform at least two of the six activities of daily living. That being the case, the Board denied the applicant's claim in accordance with TSGLI loss code 3, which states that applicants should not receive compensation if, 'documentation provided does not indicate the member's loss met the minimum TSGLI standard.'

The AO concluded, "resolving all doubt to the applicant's benefit, the evidence does not support the assertion that the applicant required assistance to perform at least two of the six activities of daily living for 30 days continuously, and for that reason, he does not merit TSGLI compensation per reference (b)." As noted above, you were provided a copy of the AO and provided a period of 30 days to respond, but you did not provide a response in rebuttal to the AO.

In reviewing your request, the Board carefully considered the evidence that you provided and your arguments in support of your claim, including the 27 April 2018 opinion letter from a medical professional that you provided at an earlier review of your claim. After review of the evidence that you provided, as well as all of the interim reviews and decisions relating to your TSGLI claim, the Board disagreed with your rationale for relief and substantially concurred with the AO. The Board observed that the interim reviews and denials of your claims all noted the lack of supporting contemporaneous medical information, and none of the materials that you provided included the information that, as previously explained to you, would be required for a favorable determination. As a result, the Board concluded that you did not meet the criteria to be eligible for the TSGLI program. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

8/23/2022

█

Executive Director

Signed by █