



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

█
Docket No. 3820-21
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 22 July 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), the 7 July 2022 advisory opinion (AO) from the Director, Secretary of the Navy, Council of Review Boards (CORB), and the 9 July 2022 rebuttal to the AO provided by you.

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 entered active duty in the Navy in 2001 and were discharged from active duty in 2005 with an Other Than Honorable characterization of service due to misconduct.

In your petition, you seek the award of Traumatic Servicemembers' Group Life Insurance (TSGLI). According to the contentions in your petition, on 23 July 2003, you suffered a severe traumatic brain injury (TBI) after falling out of a moving truck at a speed of approximately

30 mph. After your fall, you were transported via ambulance for emergency care, and that, on 26 July 2003, you were discharged home to the care of your former wife. Thereafter, you were readmitted to █, and discharged again on 30 July 2003.

In support of your request for TSGLI, you provided a professional opinion from a nurse, dated 23 February 2018, who opined that, from 23 July 2003 to 10 August 2003 (19 days), you were unable to independently perform the ADLs of eating, bathing, dressing, toileting, and transferring due to your severe TBI. According to this professional opinion, at the relevant time frame, you were forgetful and had short-term memory loss, and that, because you could not remember when it was time to eat, change your clothes, choose appropriate clothing, or groom and bathe, your then-wife had to provide verbal cues to perform these basic ADL tasks. This professional further explained that a corroborating statement could not be obtained from your former wife because you are estranged from her.

On 27 June 2018, Navy Personnel Command (NPC) denied your request for TSGLI. In its denial, NPC explained that your record contained no medical documentation from any outside medical treatment facility for a post-motor vehicle accident, and there was no police report to confirm an accident. Further, there was no evidence of an evaluation by a licensed healthcare professional such as a neurologist, trauma specialist, Physical Therapy, or your primary care provider for loss of ADLs. In addition, NPC noted that there was no medical documentation provided that supports your statement of any injuries other than your statement for the “medical necessity for assistance.” NPC explained that, to support your claim, it needed evidence addressing the specific timeline of treatment of the first 30 days of recovery. It further explained that the timeline of treatment needed would consist of notations from licensed medical providers such occupational/physical therapists, orthopedist, plastic surgery or a wound care specialist. As a result of the lack of this information, NPC concluded that your loss did not meet the TSGLI criteria.

On 10 October 2019, you sought reconsideration and provided the professional opinion of a physician, who stated that, “[u]nfortunately the medical records for [Petitioner] are incomplete. His initial hospital records which would have included nursing notes and physical, occupational, and speech therapy consultations (if performed) are not available. It appears he also underwent neurocognitive evaluation through the DVBC program quite quickly after his initial injury but these records are also not available.” After reviewing your personal statement and available medical records, the physician opined that the medical records support that you lost the ability to eat, dress, shower, or bathe, for 15 days.

On 26 March 2021, the Department of the Navy, Council of Review Boards (CORB) denied your request for reconsideration, noting as follows:

[I]n reviewing [Petitioner’s] case file, it was clear to the Board that [Petitioner] failed to meet the minimum requirement for loss of ADLs as defined by The TSGLI Procedural Guide. More specifically, the medical notes annotated in the member’s health record temporally proximate to his injury did not indicate that [Petitioner] was unable to independently perform at least two ADLs. While [Petitioner] may have needed some assistance with certain ADLs, no temporally

proximate evidence indicates that such assistance was medically required. Since [Petitioner] failed to meet the minimum requirements outlined in the TSGLI Procedural Guide, his claim was disapproved; thereby supporting the previous decision made by Navy Personnel Command.

Thereafter, you filed your petition with this Board, asserting that the prior reviewers of your TSGLI request ignored relevant medical information. Among other things, you provided your application and prior decisions relating to your request. In connection with reviewing your petition, the Board obtained the 7 July 2022 AO. According to the AO:

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. Because the Board weighted the evidence, there is not an approximate balance in the evidence. Said another way, this is 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."

In summary, 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 15 days continuously, and for that reason, he does not merit TSGLI compensation per reference (b).

You were provided a copy of the AO, and on 9 July 2022, you provided a rebuttal, in which you stated:

There is not much substance to this letter, which makes it difficult to provide a detailed response. However, I noticed that no reference is made to the provided opinion of [Petitioner's Expert Report above], who is my most conservative independent medical opinion provider on these matters. That said, I ask for the entire file to be reviewed de novo, with particular attention provided to [Petitioner's Expert Report above] opinion and the related appeal.

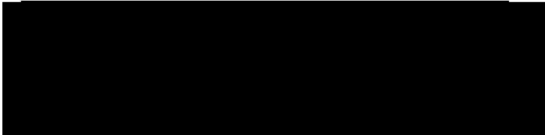
As you requested, the Board carefully reviewed the entirety of the record, and it considered your arguments that you deserve TSGLI based on the injuries you state you incurred in 2003. The Board's review included your petition, your prior requests for TSGLI and the interim denials, as well as the AO, the opinions of medical professionals that you provided, as well as your rebuttal to the AO. The Board also independently reviewed your contemporaneous medical and physical therapy records. As a result of its review, the Board disagreed with your rationale for relief and substantially concurred with the AO. In its review of the opinions of your medical professionals, the Board noted that they did not review contemporaneous medical records. The prior reviews of your request for TSGLI all noted the lack of supporting contemporaneous medical information,

and none of the materials that you provided included the information that is required for a favorable determination. As a result, the Board concluded that you did not meet the criteria to be eligible for compensation under 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,

8/10/2022



Executive Director

Signed by: █