



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

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Docket No. 2551-22
Ref: Signature Date

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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 9 May 2023. 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 its several levels of review upon reconsideration. The Board also considered the 21 March 2023 advisory opinion (AO) of a qualified medical professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 Navy and commenced a period of active duty on 25 May 1999. According to the AO, you suffered a fall and injured yourself in February 2008. The AO also notes that your medical records indicate that you had been receiving treatment for a back-related condition prior to your fall. On 4 December 2009, Navy Personnel Command directed that you be retired to the temporary disability retired list (TDRL) with a 40% disability finding. On 15 August 2018, you filed a claim for TSGLI. On 20 August 2020, Commander, Navy Personnel Command reported to you that the Navy Casualty Office TSGLI Certifying Office had denied your claim. The rationale for the denial was that, "supporting documentation submitted with your claim indicates that your loss was a result of lumbar

decompression surgery for a herniated disk vice a fall down the stairs. This does not meet the definition of a traumatic event resulting in traumatic injury under the TSGLI.”

On 24 September 2020, you submitted a request for reconsideration, stating that “[w]e disagree with the prior decision and ask for the entire file to be reviewed de novo. Also, as new, and relevant evidence in support of this appeal, [a nurse] has provided a nurse statement with an outline of the medical records” In connection with reviewing your request for reconsideration, Navy Personnel Command obtained an opinion from the Department of the Navy Bureau of Medicine and Surgery (BUMED). On 10 November 2020, BUMED issued a Memorandum for the Record directed to Navy Personnel Command opining that, “[t]he available information DOES NOT support the scheduled loss indicated. Recommend the Navy Program Office NOT certify this claim as submitted.” BUMED explained further that, “[u]pon review of the case, there is insufficient evidence to support the member’s claim for hospitalization based on the TSGLI governing regulations. There is insufficient medical evidence that clearly identifies that the injury was initially caused by the incident.” On 18 November 2020, Navy Personnel Command informed you that it had reviewed your request for reconsideration and that your claim had not been approved. The decision cited the BUMED memorandum and explained that there was insufficient medical evidence that clearly identified the injury was caused by the traumatic event.

On 15 December 2020, you submitted an appeal to the TSGLI Appeals Board stating “[w]e disagree with the prior decision and ask for the entire file to be reviewed de novo. Also, as new, and relevant evidence in support of this appeal, [a medical doctor] has also provided a medical statement” On 29 March 2022, the Secretary of the Navy Council of Review Boards (CORB) issued a letter to you stating that the “Department of the Navy Appeals Board for Traumatic Injury Protection under the [TSGLI] program completed a TSGLI appeal” and that it denied your appeal, explaining as follows:

The Board disapproved [Petitioner’s] claim because she failed to prove that her hospitalization was a direct result of a traumatic event as is required by The TSGLI Procedural Guide. It was unmistakable, from the evidence made available to the Board, that [Petitioner] experienced a serious fall down the stairs. It was also obvious to the Board that [Petitioner] received substantial treatment for her back. That said, after reviewing [Petitioner’s] case file, the Board determined that [she] failed to prove that her hospitalization was a direct result of a traumatic event. Having failed to meet the TSGLI standard, the Board supported the previous decision made by Navy Personnel Command.

The Board carefully considered your arguments that you deserve payment of \$25,000 due to a TSGLI hospitalization claim. In support of your claim, you contend that the denial of your inpatient hospitalization claim is unjustified in light of evidence in the medical records. You cite a report from a doctor from whom you received a favorable opinion report. You argued that your medical records have been improperly weighed, ignored or unjustifiably discounted.

In order to assist it in reviewing your petition, the Board obtained the 21 March 2023 AO, which was considered unfavorable to your position. As noted, you have previously been provided a

copy of this AO, thus only the conclusory final paragraphs are set forth below. According to the AO:

e. The applicant's attorney opines that statements and medical records have been improperly weighed, ignored or unjustifiably discounted; however, that was not the case. While the evidence does include conflicting arguments as to how the member's condition came to pass, the mere existence of these arguments does not automatically accord them all the same weight.

The AO described the rationale of the Navy Appeals Board for TSGLI as follows:

f. When faced with the various explanations in the record, the Board weighted the temporally proximate notes that were annotated in the applicant's health record, and simply stated, the weighted evidence did not indicate that the member's injury was the direct result of a traumatic event. That being the case, the Board denied the applicant's claim.

The AO concluded, "resolving all doubt to the applicant's benefit, the evidence does not support the applicant's assertion that her injury was the direct result of traumatic event, and for that reason, she does not merit TSGLI compensation per reference (b) [TSGLI Procedural Guide, Version 2.49 of Nov 21]."

In its review of your petition, the Board the entirety of the materials you provided including the all levels of review of your claim. As a result of its review the Board did not agree with your rationale for relief. In reaching its decision, the Board concurred with the rationales set forth by the AO, which endorsed the decisions of the prior levels of review denying your claim. Despite your argument that prior statements and medical records have been improperly weighed, ignored or unjustifiably discounted, the Board was unable to discern any such evidence. To the contrary, the Board observed that the decisions at each level of your request and appeal uniformly found that, based on your prior back treatment, there was insufficient evidence that your hospitalization as a direct result of a traumatic event. 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,

5/23/2023

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