



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

█  
Docket No. 93-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. 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 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 25 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, applicable statutes, regulations, and policies. In addition, the Board considered the 4 April 2023 Advisory Opinion (AO) from the Director, Secretary of the Navy, Council of Review Boards (CORB). Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your record shows that you entered active duty Navy service on 18 June 2001. On 7 September 2002, you were involved in a rollover motor vehicle accident. You were initially treated at █ Hospital; the discharge summary stated that you had a severe right arm wound and a "large temporal soft tissue defect which involved approximately ¾ of [your] ear which was completely avulsed down to the cranium with exposed bone and a defect that was approximately 20 cm in length and approximately 15 cm in width, with exposed ear canal and only the lobule remaining of the ear." As part of your treatment, you underwent three surgical procedures to reconstruct your facial injuries. On 21 January 2004, your commanding officer (CO) notified you of administrative separation by reason of convenience of the government; stating that your injuries were deemed too severe for you to be able to serve in a deployable status or overseas and recommended separation with an Honorable discharge. You were subsequently discharged from the Navy, on 5 February 2004, with an Honorable characterization of service for a condition, not a disability.

On 23 December 2021 you submitted a claim for Traumatic Service Member Group Life Insurance (TSGLI), for a traumatic injury resulting in Facial Reconstruction – reconstructive surgery to correct traumatic avulsions of the face that cause discontinuity defects. You claimed that you lost 50% or more tissue in the left temple and left zygomatic area of the face and requested a recovery of \$50,000. As part of your claim, a Plastic and Reconstructive Surgeon certified your request.

On 23 February 2022, Navy Personnel Command (NPC) notified you that your claim did not meet the TSGLI criteria since the documentation provided indicated no avulsions of the face or jaw caused discontinuity defects to the left zygomatic or temple. In addition, the decision noted that the claimed loss was not certified by an oral maxillofacial surgeon.

You submitted a reconsideration TSGLI request and included a memo from a registered nurse. She states that “there was clearly an avulsion injury of the left side of the temple and zygomatic areas as the medical providers in the operative report ‘indicated large amounts of soft tissue and muscle of the left temple and zygomatic areas were torn away from the bone.’ Without a doubt, this is an avulsion injury.” The nurse also stated that surgeons that perform facial reconstructive surgery, such as a plastic surgeon or facial reconstructive surgeon, may certify Facial Reconstructive Losses.

On 24 June 2022, the Bureau of Medicine and Surgery (BUMED) sent notice to NPC stating the information you provided did support the claim for facial reconstruction for Other Traumatic Injury involving 50% or greater of the left temple. BUMED recommended NPC certify the claim of the left temple but deny the claim regarding the left zygomatic area.

On 28 June 2002, NPC notified you that you were approved for the \$25,000 facial reconstruction claim to the left temple. On 13 July 2022, you and your counsel submit an appeal to the TSGLI Appeals Board, requesting \$25,000 for the zygomatic claim. On 7 December 2022, CORB denied the appeal because your medical treatment documents did not support the requirements outlined in the TSGLI guidelines. Specifically, the decision noted that your medical records do not mention any zygomatic injury or defect.

The Board carefully considered your arguments that you deserve payment of \$25,000 due to surgery to correct discontinuity loss of tissue in 50% or more for the zygomatic. 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 the opinions of the facial reconstructive surgeon and nurse. You argued that your medical records have been improperly weighed, ignored or unjustifiably discounted. Finally, you assert that the TSGLI Appeals Board criteria for loss of 50% of the zygomatic is unclear and undefined in their decision, and they do not appear to rely in the findings of a facial reconstructive surgeon.

In order to assist it in reviewing your petition, the Board obtained the 4 April 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:

The anatomical definition of the zygomatic bone (or zygoma) is a paired, irregular bone that defines the anterior and lateral portions of the face. The zygomatic complex is involved in the protection of the contents of the orbit and the contour of the face and cheeks. To be eligible for TSGLI compensation for facial reconstructive surgeries of 50% of the zygomatic, surgery would have to be performed to correct discontinuity loss to 50% or more of the following facial subunit: left or right zygomatic. All temporally proximate medical records, to include civilian hospital records, the initial trauma evaluation, operative notes, as well as continued care notes from the treating military hospital indicate that [REDACTED] [REDACTED] injuries were limited to his temporal region. None of previously described documents mention any zygomatic injury or defect. Since there was no injury to the zygomatic region, [REDACTED] did not qualify for additional TSGLI compensation.

The applicant's attorney opines that statements and medical records have been improperly weighed, ignored or unjustifiably discounted. While the Board did not specifically mention [Facial Reconstructive Surgeon] or [Nurse] by name, it did point out that there was countervailing evidence in the case file. That is to say that there were temporally proximate medical records that showed no evidence of a zygomatic injury, and those records stood in stark contrast to [Facial Reconstructive Surgeon] and [Nurse's] assertion that there was an injury to [REDACTED] zygomatic. The Board went on to state that it weighted the temporality proximate notes, "more than the other countervailing evidence in the case file." While [REDACTED] [REDACTED] attorney may not agree with how the Board weighed the evidence, any assertion that the Board ignored or unjustifiably discounted [Facial Reconstructive Surgeon] and [Nurse's] statements is unfounded.

The AO concluded, "after reviewing all of the medical records provide, I find the preponderance of evidence does not support the member's claim that he should be compensated for facial reconstruction of 50% of the zygomatic."

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 rationale set forth by the AO, which reiterated that none of your temporally proximate medical records document any zygomatic injury or defect. Further, 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. As explained in the AO, the TSGLI Board carefully considered the medical evidence, including the medical opinions from the facial reconstructive surgeon and nurse, before finding that the weight of the temporally proximate medical records was more probative on the issue than those two medical opinions. The Board ultimately concurred with the AO's assessment of the evidence and also found that the lack of temporally proximate medical records, that mention a zygomatic injury or defect, supports a finding that you do not qualify for the additional \$25,000 payment for surgery to correct discontinuity loss of

tissue in 50% or more for the zygomatic. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Sincerely,

6/12/2023

