



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

■
Docket No. 5296-23
Ref: Signature Date

Dear ■■■■■

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 19 October 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 review upon reconsideration.

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 in February 2004. According to your petition, on 14 January 2018, at 1300, you were "participating in a mountain tactical parachute operations freefall exercise" and your "parachute collapsed as [you were] descending to the ground causing [you] to fall straight downward in a seated position while wearing [your] full combat gear." You contend that you "crashed extremely hard onto the ground causing injuries to [your] buttocks and tailbone."

Thereafter, in March 2018, you filed a claim for Traumatic Servicemember's Group Life Insurance (TSGLI). You asserted in your claim that, as a result of your accident, you were unable to perform several activities of daily living (ADLs), which, according to your claim,

justified an award of TSGLI. On 16 May 2018, your claim for TSGLI was denied by Navy Personnel Command, as follows, in part:

You claimed the inability to perform Activities of Daily Living (ADLs) for more than 30 days, specifically for bathe [sic] for 39 days, incontinence for 34 days and dress for 36 days, without the assistance [sic]. Your injury was the result of a parachute accident in █, █ on January 14, 2018. The medical documentation provided from an unidentified local hospital emergency room, documents Dr. [], DO, requested lumbosacral x-rays and a pelvis CAT scan. The radiologist interpretation was that there was no definitive fracture. You were able to demonstrate ambulation using a walker and a cane before being discharged from the Emergency Department. You flew back to █ and went directly to Naval Medical Center (█) Emergency Department, undergoing new x-rays, CT and MRI with a referral to the Orthopaedic Clinic.

On January 29, 2018 you were seen by Dr. [], MD, at 1302 for the follow up of the closed fracture of coccyx and S5 (tailbone.) Dr. [] notes you were ambulating with a cane, with pain and spasms of the buttocks, finding it difficult to sit, while being more comfortable on your abdomen, no loss of bowel or bladder control, and bruising had decreased. Dr. [] recommended continue use of cane and would advance your activities in approximately four weeks. There was no evidence in the medical documentation from the Orthopaedic Clinic, Occupational or Physical Therapy, that you provided that indicated an evaluation that you medically required assistance with two or more ADLs for a period of 30 consecutive days.

You appealed this denial of your claim in an undated letter. In your letter, you described that you had documented bladder issues from 14 January 2018 to 16 February 2018, and you referred to several medical records that reflect you reported bladder issues. You also stated that you had a lack of mobility and that you were unable to shower or get dressed following your injury, from 14 January 2018 to 21 February 2018. In addition, you also said that, on 12 February 2018, you requested nursing care to assist with the most basic of life functions, being able to shower and dress.

On 20 November 2018, your appeal was denied by the Bureau of Medicine and Surgery, as follows:

The available information DOES NOT support the scheduled loss indicated. Recommend the Navy Program Office NOT certify this claim as submitted. The Navy Program Office may include a copy of this letter in the package sent to OSGLI.

Note: the service member's injuries and the available medical documentation are inconsistent with the inability to perform 2 or more activities of daily living for 30 or more days.

Upon review of the case, there is insufficient evidence to support the member's claim for fractured coccyx 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. Secondary, The [sic] loss presented within these documents does not meet the TSGLI medical standard for ADL medical necessity. The submitted documents confirm the mechanism of injury, the specific injury sustained and the required treatment, however there is no evidence that the applicant experienced a period with loss of ability to perform two or more ADL's as required by TSGLI.

On 11 October 2019, you filed an appeal of the denial of your TSGLI appeal. According to your appeal, you contended:

- The treatment records from [] █ document [Petitioner's] traumatic injury on January 14, 2018 (previously provided);
- The treatment records from █ document [Petitioner's] follow up evaluation and treatment of his traumatic injury, identifying his symptomatology, care plan, and limitations during his recovery including the need to use a cane (previously provided);
- The order by █ for home nursing care until February 18, 2018 to assist [Petitioner] with his ADLs (previously provided);
- The statement of caregiver Nurse [] who participated in providing physical assistance to [Petitioner] for bathing, dressing, and other ADLs (including getting up and down the stairs) from the time of his return from █ until the 4th week of February 2018 (previously provided);
- The statement of caregiver Nurse [] who participated in providing physical assistance to [Petitioner] bathing, dressing, and other ADLs (including getting up and down the stairs) from the time of his return from █ until around February 21, 2018 (previously provided);
- The subsequent records of █ documenting [Petitioner's] incontinence and development of significant pain at L5-S 1, the MRI scan confirming an L5-S 1 disc protrusion, and discussion and ratification of the fact that he needed ADL assistance for a period during his earlier traumatic injury recovery (previously provided);
- The ADL certification by █ Officer, [], D.O., attached as Part B to [Petitioner's] TSGLI application (previously provided) which certified that:
- [Petitioner] needed physical assistance (hands-on) with bathing between January 14, 2018 and February 21, 2018 -38 days - resulting from his traumatic injuries;

- [Petitioner] needed physical assistance (hands-on) with dressing between January 14, 2018 and February 18, 2018 - 35 days - resulting from his traumatic injuries;
- [Petitioner] experienced an inability to maintain urinary continence between January 14, 2018 and February 15, 2018 - 32 days - (which was self-managed) resulting from his traumatic injuries.

On 29 September 2022, the Coordinator of the TSGLI Appeals Board informed you that the TSGLI Appeals Board, consisting of three members, two of whom were medical doctors, reviewed your appeal and denied it as follows:

The member claimed that he was eligible for TSGLI compensation due to his inability to independently perform at least two ADLs for at least 30 days consecutively. It was unmistakable, from the evidence made available to the Board, that [Petitioner] was involved in a serious parachuting incident. It was also obvious to the Board that [Petitioner] received significant medical treatment subsequent to that incident. That said, in reviewing his case file, it was clear to the Board that [Petitioner] did not qualify for any TSGLI compensation. The Board denied [Petitioner's] claim because his medical condition did not meet the compensation requirements that are outlined in the TSGLI Procedures Guide - the document that governs TSGLI compensation. The evidence indicates that [Petitioner] failed to meet the criteria for loss of ADLs. While [Petitioner] may have needed some assistance with certain ADLs, no temporally proximate evidence indicated that such assistance was medically required. According to the TSGLI Procedural Guide, in order to receive compensation for the loss of ADLs, members must demonstrate that they require assistance in the performance of two or more ADLs. In reviewing the medical documentation, it was apparent to the Board that AOL support was not required for any extended period. Having failed to meet the TSGLI standard, the Board supported the previous decision made by NPC.

In your petition to this Board, you request that this Board review the prior denials of your claim for TSGLI and grant you a 30-day ADL loss claim under TSGLI. In support of your petition, you contend that your claim for TSGLI was denied without substantial evidence was contrary to the factual record. You further assert that your claim was denied without any substantial evidence to support its position, contrary to the factual record, and has imposed standards which are non-existent to deny benefits.

In its review of your petition, and the entirety of the materials you provided including the all levels of review of your claim, the Board did not agree with your rationale for relief. In reaching its decision, the Board observed that your claim for TSGLI was well-developed and was reviewed by subject matter experts on three levels. In particular, the Board observed that, at each level of review, you made fulsome arguments in support of your entitlement to the TSGLI payment. Despite consideration of each level of your arguments in support, each level of review did not concur with your rationale. The Board considered all of your arguments, including your argument that the TSGLI Appeals Board improperly applied a non-existent standard of "medically required" in denying your appeal. In its review, the Board did not believe the TSGLI

applied a non-existent standard. Rather, in the Board's view, the TSGLI Appeals Board was seeking to convey to you that the losses that you presented did not meet the TSGLI medical standard, which echoes the finding that the Navy's Bureau of Medical and Surgery made when it reviewed and considered your claim. In other words, the TSGLI Appeals Board, as well as the prior two bodies that reviewed your claim, found the medical evidence to be insufficient to support a finding that you medically needed the claimed ADL assistance for the period of time that you claim. This Board concurred with the prior denial decisions and their stated rationales. Ultimately, the Board found that you did not provide any evidence of sufficient weight to persuade this Board to overturn the findings of the prior levels of review. 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,

11/17/2023

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Executive Director

Signed by: █