

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

XXXXXXXXXXXXXX

**DOCKET NUMBER:** BC-2022-01388

**COUNSEL:** XXXXX

**HEARING REQUESTED:** YES

### **APPLICANT'S REQUEST**

He be authorized entitlement to Servicemembers' Group Life Insurance Traumatic Injury Protection Program (TSGLI) in the amount of \$100,000 under the TSGLI schedule of losses #8, "2<sup>nd</sup> degree or worse burns to at least 20% of the body to include face."

### **APPLICANT'S CONTENTIONS**

The decisions to date have discounted or ignored medical records, statements in support of the claim, and multiple medical opinions provided that are favorable to the applicant. The TSGLI office and its reviewers have minimized the severity and extent of the burns that the applicant suffered. The TSGLI office has also failed to consider the proper guidelines and improperly narrowed the guidelines and law. A fair weighing of the evidence with proper consideration of the statements and all the evidence must be made. Such a weighing supports approval of this appeal, under the benefit of the doubt and preponderance of evidence standards.

In support of his appeal, the applicant's counsel provides the initial claim denial for TSGLI Benefits dated 20 Nov 18, the NGB/A1PS TSGLI Appeal request dated 20 Aug 20, the NGB/A1PS TSGLI Appeal denial dated 21 Oct 21, and the ARPC/DPTTB TSGLI Appeal dated 25 Oct 21. Both NGB/A1PS and ARPC/DPTTB appeals included supporting documentation and a detailed description of why the claim should be approved.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

The applicant is an Air National Guard major (O-4).

According to documentation provided by the applicant's legal counsel:

On 20 Nov 18, according to a letter from NGB/A1PS, disapproved the applicant's TSGLI claim for burns because his loss did not meet the TSGLI criteria. Additionally, his claim for limb salvage was also not approved as his loss did not meet the TSGLI criteria.

On 20 Aug 20, according to a TSGLI Appeal Request Form, his legal counsel requested a reconsideration of the applicant's denied appeal.

On 21 Oct 21, a letter from NGB/A1PS, disapproved the applicant's claim for 2<sup>nd</sup> degree burns or worse over 20 percent.

On 25 Oct 21, according to TSGLI Appeal Request Form, his legal counsel appealed the 21 Oct 21 decision to ARPC/DPTTB.

For more information, see the excerpt of the applicant's record at Exhibit B, the advisory at Exhibit C, and the applicant's response at Exhibit E.

## **APPLICABLE AUTHORITY/GUIDANCE**

On 5 May 05, Public Law 109-13 established a traumatic injury program designed to provide financial assistance to service members during recovery from a serious traumatic injury, not necessarily as a result of combat. The insurance is a rider to the Servicemembers' Group Life Insurance (SGLI) policy. TSGLI provides coverage to any Service member insured under SGLI who sustains a serious traumatic injury that results in certain prescribed losses. TSGLI provides between \$25,000 and \$100,000 of coverage depending on the loss incurred. The Code of Federal Regulations, Title 38 Part 9.20 prescribes each service will certify its members for traumatic protection benefits. The services will certify whether the member was insured under SGLI at the time of the traumatic injury and whether or not the member sustained a qualifying loss.

Under the laws and regulations governing the TSGLI Program, burns are defined as 2nd degree or worse burns to at least 20% of the face or 20% of the body (which can include the face). (See 38 U.S.C. 1980A(b)(1)(G) and 38 CFR 9.20(e)(6)(xvii),(f)(8)).

Under the regulations that govern the TSGLI Program, limb salvage is defined as a series of operations designed to avoid amputation of an arm or leg while at the same time maximizing the limb's functionality. (See 38 CFR 9.20(e)(6)(xix) and (f) (14,15)). The surgeries typically involve bone and skin grafts, bone resection, reconstructive and plastic surgeries and often occur over a period of months or years. Surgeries defined as limb salvage must also be certified by a surgeon.

## **AIR FORCE EVALUATION**

ARPC/DPTT, recommends denying the applicant's request for TSGLI entitlement. Upon initial presentation, the applicant's burns were estimated at 20 – 25 percent TBSA. However, two days later when the applicant underwent skin grafting surgery, this estimate was revised to 15 percent TBSA and later revised again by his surgeon, taking into account the applicant's height and weight, to be 17 percent TBSA. Two weeks later, upon hospital discharge, his burns were documented at 15 percent TBSA. In his claim and subsequent appeals, the applicant asserted that he required limb salvage of both legs and contended that his burns should be classified as 23 percent TBSA; 17 percent from the actual burn injury, with an additional six (6) percent added from the skin harvest site and also newly claimed assistance for Activities of Daily Living (ADL) loss as the injury resulted in an inability to dress from 14 Jul 18 through 21 Nov 18 (130 days) or shower without assistance from 14 Jul 18 through mid-Dec 18 (140 days).

Within the documentation provided by the surgeon, the term "limb salvage" is loosely used and does not adhere to the definition outlined by the TSGLI program. Specifically, none of the medical records suggested that amputation of either leg was a treatment consideration. With regard to the claimed assistance for ADL loss, the operative note indicated the applicant was "(o)kay to ambulate with minimal knee flexion (post-operative day) #1"; and he was discharged home with instructions to shower daily, at an unrestricted, "as tolerated" activity level. No records containing a functional assessment from a medical professional (e.g., physical/occupational therapy) were submitted by the applicant to substantiate the claim that he was unable to independently dress/bather for over 130 consecutive days due to the injury.

The applicant asserts that the skin graft harvest sites, six (6) percent TBSA, must be counted towards the overall loss under the premise that a "loss arising from complications of necessary surgery to treat a traumatic are covered"; and when combined with the 17 percent TBSA burn injury would extend the "TBSA of the second-degree or worse burn from 17% to 23%". Medical review does not agree for several reasons. First, the operating surgeon had already

counseled him on the risks, benefits, and alternatives to surgery. They commenced the procedure fully intending to harvest split-thickness skin grafts from the applicant's upper thigh. These "new" wounds were created and are not considered to be complications, as evidenced by the operative report that states "patient tolerated treatment well, emerged without complications". As such, the guidance to cover losses "arising from complications of necessary surgery to treat a traumatic injury" does not apply.

Secondly, it must be reiterated that the TSGLI burn standard requires a TBSA percentage calculation that is based on areas of the body being burned, and not those areas of the body affected by skin graft harvesting (i.e. not burned).

Finally, there is no commonly accepted practices that measure the surface area of the burn in conjunction with the surface area affected by skin graft harvesting necessary to treat the burn. For the purpose of TSGLI, a burn victim would not be able to combine percentages of all affected surfaces and have them considered "burned". While it is acknowledged that significant burn injuries often require skin grafting; however, skin grafting has never been added to the Code of Federal Regulations (CFR), and thus can not be used to satisfy the TSGLI standard for a qualifying loss due to burns.

In summary, there is no medical evidence that supports the applicant's claims: his burn injuries were 20 – 25 percent TBSA; his skin graft harvesting is a complication or further injury; his injury qualifies as limb salvage; or that his injury qualifies for ADL assistance for dressing and showering. Therefore, in lieu of evidence to the contrary, they recommend his request for TSGLI be denied.

The complete advisory opinion is at Exhibit C.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 31 Aug 22 for comment (Exhibit D), and the applicant replied on 1 Sep 22. In his response, the applicant disagreed with the advisory opinion's position, and contends the six percent (6%) of TBSA should be included in the calculation and asks that the TSGLI Appeal, dated 23 Oct 21, be reconsidered.

In addition, the applicant provides another brief from his counsel, who argues that the TSGLI Procedures Guide Version 2.48 makes it clear that "a loss arising from complications of necessary surgery to treat a traumatic injury are covered. These situations are not excluded under the medical or surgical treatment exclusion above because the surgery was required due to a traumatic injury, not simply the result of treatment of an illness or disease." In this case, the applicant's treatment of his traumatic burns extended the TBSA of the second-degree or worse burn from 17% to 23%, which is acknowledged in the decision dated October 21, 2021. The applicant's counsel goes onto state that a loss arising from complications of necessary surgery to treat a traumatic injury are covered. These situations are not excluded under the medical or surgical treatment exclusion above because the surgery was required due to a traumatic injury, not simply the result of treatment of an illness or disease. Therefore, the previously provided exhibits, medical records, and other supporting evidence demonstrate that the applicant is entitled to a recovery of \$100,000.00 under the TSGLI Schedule of Losses #8; "Burns: 2nd degree or worse burns to at least 20% of the body including the face OR, at least 20% of the face".

The applicant's complete response is at Exhibit E.

## **FINDINGS AND CONCLUSION**

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of ARPC/DPTT and finds a preponderance of the evidence does not substantiate the applicant's contentions. Records indicate that the applicant did not require ADL assistance as he was discharged with the ability to ambulate with minimal knee flexion and with instructions to shower at an unrestricted, "as tolerated level". The Board determines that the applicant's claim of limb salvage does not meet the criteria under the regulations that govern the TSGLI program. Finally, the Board finds of critical significance the assessment of the applicant's attending surgeon, who adjusted the 15 percent TSBA to 17 percent based upon his weight and height and who noted that the additional six percent TSBA was needed for new wounds surgically created as skin harvest sites and were therefore not caused by the original burn injury. Therefore, the Board recommends against correcting the applicant's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

## **RECOMMENDATION**

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

## **CERTIFICATION**

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-01388 in Executive Session on 8 Nov 22:

, Panel Chair  
, Panel Member  
, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 27 Apr 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 28 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 31 Aug 22.
- Exhibit E: Applicant's Response, w/atchs, dated 31 Aug 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

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