IN THE CASE OF: [redacted].

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230001794

APPLICANT REQUESTS: through Counsel, approval of his Traumatic Servicemembers' Group Life Insurance (TSGLI) claim.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Counsel's brief
- Power of Attorney
- Ten (10) Dr. [redacted] Return to Work/School slips between 4 September 2009 – 9 May 2011
- Cervical Magnetic Resonance Imaging (MRI), 15 September 2009
- letter from Dr. [redacted] 24 November 2009
- U.S. Department of Labor, Office of Workers' Comp Programs letter, 5 February 2010
- letter from Dr. [redacted] 1 March 2010
- two letters from Dr. [redacted] both 7 April 2010
- U.S. Department of Justice, Federal Bureau of Prisons, Injury Report, 29 July 2010
- [redacted]Medical Center Operative Report, 2 August 2010
- [redacted]Medical Center Discharge Summary, 3 August 2010
- letter from Dr. [redacted] 4 November 2010
- U.S. Department of Justice, Federal Bureau of Prisons, Injury Report, 4 November 2010
- DA Form 3349 (Physical Profile), 4 November 2010
- [redacted] Clinic document, 13 January 2011
- DD Form 689 (Individual Sick Slip), 20 April 2011
- Weed Army Community Hospital, After Care Instructions, 29 April 2011
- Sworn Statement of Sergeant First Class (SFC) [redacted] 29 April 2011
- DA Form 2173 (Statement of Medical Examination and Duty Status), 1 May 2011
- Dr. [redacted] Procedures and Fees sheet, 4 May 2011
- Open MRI Diagnostic Imaging report, 6 May 2011
- letter from Dr. [redacted] and recommendation, 18 May 2011
- Headquarters, 81st Regional Support Command memorandum, 27 May 2011

- DA Form 199 (Physical Evaluation Board (PEB) Proceedings), 23 June 2011
- letter from Dr. [redacted] 30 September 2011
- Functional Capacity Certificate Form 507, 24 October 2011
- letter from Dr. [redacted] 3 February 2012
- Dwight D. Eisenhower Army Medical Center partial Medical Evaluation Board (MEB) Narrative Summary (NARSUM), 11 September 2012
- DA Form 199, 20 May 2013
- DA Form 199, 28 May 2013
- U.S. Army Physical Disability Agency (USAPDA) Orders D154-04, 3 June 2013
- USAPDA memorandum, 3 June 2013
- wife's statement, 10 October 2013
- SGLV 8600 (Application for TSGLI Benefits), 31 August 2020
- SGLV 8600A (TSGLI Appeal Request Form), 31 August 2020

FACTS:

1. Counsel states:

a. He respectfully requests the wrongful denial of a claim for TSGLI benefits submitted by the applicant for injuries he sustained on 24 July 2009 be overturned, and the benefits for which he clearly qualifies be paid without further delay.

b. On 24 July 2009, the applicant was injured while working at the Federal Corrections Institute (FCI) [redacted]. This injury occurred when a heavy roof hatch slammed down on the top of his head with great force, almost rendering him unconscious. An MRI was later conducted revealing ruptured cervical discs at C3-C4 and C4-C5, as well as autonomic nerve dysfunction C3-C4 and C4-C5. This severe spinal injury in the cervical area also included spinal cord compression with associated myelopathy, quadriparesis, pain, spasm, and radiating extremity weakness. He urgently needed surgery, but due to a delay in approval for treatment by the varying Government agencies involved, surgical intervention was delayed until 2 August 2010. During the delayed time period, the applicant's neurological symptoms increased, and he became unable to function, let alone work. As a result, he has an extended and ongoing continuous period of loss of activities of daily living (ADLs) due to the same injury. From 15 October 2009 through 1 January 2011, the applicant suffered a loss of ADLs as his neurological symptoms, myelopathy, and quadriparesis developed and surgical intervention was delayed. He has received $50,000.00 in payments for this period of ADL loss. However, the applicant's records indicate his ability to perform his ADLs was never regained. Post fusion surgery, he was placed in a Queen Anne collar, which renders the neck immobilized and limits the range of motion of the wearer's upper body, and therefore, the wearer cannot bathe or dress themselves. Assistance is also needed with mobility as the field of vision is impaired. This collar must be worn 24/7 post surgery for at least 30 days in order to allow the fusion and bone graft to properly fuse.

However, the applicant's graft failed to fuse properly within 60 days. He was not released to return to activity levels until 18 January 2011. He needed constant and continuous care from his family members to include assistance with bathing, dressing, toileting, transferring, and even getting in and out of bed.

c. Although the applicant never fully recovered from his injuries, he volunteered to go to the National Training Center (NTC) at Fort Irwin, CA, on 10 March 2011. He went as a Combat Training Instructor. His main tasks were to escort (by convoy) any element of the unit he was in charge of from point A to point B without incident. While riding the tank trail on 27 April 2011 (you could not drive in the convoy, you would have to drive your Hummer on the secondary roads beside the elements), he hit deep trenches numerous times. According to the medical documentation written by Dr. [redacted] "It is clear…that this injury was caused by an external force while riding in the Humvee." He further stated this injury occurred due to the "bumping and vibration which, thereafter, caused his back pain to escalate and subsequently he has developed a herniated disc on the right at L3-L4. He has a right L3 radiculopathy and is going to need to undergo surgery. It seems clear that his activities exacerbated his underlying condition and caused his disc herniation." Not only did the drive through the trenches cause further injury to his back, but when he arrived at his destination and tried to exit the Hummer, he was not able to lift his right leg high up enough to clear the threshold of the door. His right leg got tangled and twisted as he fell to the ground and landed on his buttocks with extreme force. As he was assisted back to his feet by three other Soldiers to sit back in the vehicle, the applicant started to feel excruciating pain in his lower back. He was unable to feel his knees, big toes, or his right leg.

d. Subsequently, Dr. [redacted] stated "This was clearly a new injury because his previous MRI scan did not show a disc herniation." Additionally, the applicant was seen by an MEB contracted physician, Dr. [redacted] In his evaluation of the applicant, it was documented that "Lumbar spine, 08/02/2012: Vertebral compression fracture at L4 with a 20 percent loss of height." Due to this second injury to his cervical spine, the applicant suffered further loss of ADLs from 27 April 27, 2011, through mid-August 2011. This exceeds the TSGLI requirements of loss of ADL s. The applicant should have been awarded the entire full amount of benefits available per injury, which is $100,000.00, for this claim. From the date he sustained severe injuries in the line of duty (LOD), and for a period of not less than 120 days, the applicant was completely unable to perform multiple ADLs, to include bathing, dressing, transferring, and toileting without full and/or stand-by assistance from another individual.

e. The wrongful denial of the applicant's previously submitted application for TSGLI benefits states "your claim for the inability to perform activities of daily living (ADLs) for 90 days or more due to traumatic injury (other than traumatic brain injury) was not approved because your loss did not meet the standards for TSGLI. To qualify, a claimant must have been unable to independently perform at least two activities of daily

living (ADLs) for at least 90 consecutive days." In this denial letter, they hereby educe the provisions of Title 38, U.S. Code, section 5107 (b), which clearly states that, while a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary, per Benefit of the Doubt. - The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

f. According to the TSGLI Procedures Guide, in order to assert a claim for benefits for inability to perform activities of daily living, a claimant "must have been unable to independently perform at least two activities of daily living (ADLs) for at least 30 consecutive days" and that "inability to perform two or more ADL 's for at least 30 days must also have been certified by a medical professional." It is their assertion that the attached medical documentation, percipient witness statement, and physician certification, clearly constitutes sufficient documentation to support the applicant’s claim for benefits under the TSGLI program. The Court has held that a failure to apply the benefit of the doubt rule when reviewing an application for benefits administered by the Secretary of Veterans Affairs (VA), or to set forth clear reasons for not applying it, constitutes error. Additionally, when any agent, in reviewing an application of benefits administered by the Secretary of the VA, can cite no evidence or facts by which to impeach or contradict a claim, there is no justifiable basis upon which to deny application of the doctrine under Title 38 C.F.R., section 3.102. (Sheets v. Derwinski, 2 Vet. App. 512, 516-17 (1992)).

g. They further hold that, in the applicant’s case, there are no records to document he EVER regained his ability to perform any ADLs during the time periods claimed. Given the substantial evidence regarding the severity of his injuries, as well as his ongoing loss of ability to perform activities of daily living, the applicant clearly meets the criteria for eligibility set forth in the TSGLI Schedule of Losses. Therefore, they reassert their client's right to these benefits, and respectfully request the Board honor the contract between the Soldier and the TSGLI program. They thank the Board for their time and attention to this matter and look forward to receiving prompt payment of the benefits payable to the applicant.

2. A DA Form 5016 (Chronological Statement of Retirement Points) shows after multiple prior enlistments in the Regular Army and Army National Guard (ARNG), the applicant enlisted in the U.S. Army Reserve (USAR) on 30 May 2008.

3. Records show the applicant incurred a work-related injury to his neck on 24 July 2009, while working at his civilian job in a Federal Prison when a steel hatch door

landed on his head. Medical documents from on or around the date of the injury are not in the applicant's available records for review.

4. The first medical document provided and available is a Dr. [redacted], Return to Work/School slip dated 4 September 2009. It shows the applicant was seen for care on 4 September 2009 and was able to return to work on 5 September 2009 with the remarks no lifting, bending, stooping, squatting until MRI results are available.

5. A Cervical MRI, dated 15 September 2009, shows the applicant had a history of neck pain secondary to trauma with no extremity pain; only neck pain and stiffness for 6 weeks after he hit his head on something at work. The conclusions show C3-4 broad based central disc protrusion effacing the ventral canal and slightly deforming the cord without abnormal signal intensity. C4-5 mild left neural foraminal narrowing. C5-6 mild to moderate right neural foraminal narrowing with mild left. C6-7 mild to moderate right neural foraminal narrowing with mild left.

6. Numerous additional Dr. [redacted], Return to Work/School slips show:

a. The slip dated 21 September 2009, shows he was seen for care on 21 September 2009, and was able to return to work on 22 September 2009 with the remarks no lifting, bending, stooping, squatting until seen by neurologist; desk job; still in effect.

b. The slip dated 14 October 2009, shows the applicant was currently under the care of a physician with a starting date as of 14 October 2009 until pending appointment with neurologist.

c. The slip dated 29 October 2009, shows the applicant was able to return to work on 1 December 2009.

d. The slip dated 24 November 2009 shows the applicant was able to return to work on 1 January 2010.

7. A letter from Dr. [redacted] dated 24 November 2009, shows the applicant was diagnosed with C3-4 broad based central disc protrusion effacing the ventral canal and slightly deforming the cord without abnormal signal intensity C4-5 mild left neural foraminal narrowing; C5-6 mild to moderate right neural foraminal narrowing with mild left; C6-7 mild to moderate right neural foraminal narrowing with mild left. This injury is directly related to the accident which occurred on 24 July 2009.

8. A Department of Labor, Office of Workers' Comp Programs letter, dated 5 February 2010, notified the applicant his claim had been accepted for his diagnosed condition of ruptured cervical disks at C3-C4 and C4-C5, autonomic nerve dysfunction C3-C4 and C4-C5.

9. A Dr. [redacted], Return to Work/School slip, dated 17 February 2010, shows the applicant was under the doctor's care from 29 July 2009 through 14 October 2009 and was able to return to work on 1 January 2010. The remarks show the applicant was currently under care of a physician and would not be able to return to work until seen by a neurologist or if he felt he could perform light duty requirements with no stooping, squatting, lifting, or bending.

10. A 3-page letter from Dr. [redacted] dated 1 March 2010, has been provided in full to the Board for review, and in part shows:

a. The applicant was seen in consultation on the date of the letter in the neurosurgical offices for a central disc protrusion, C3-4. He is a maintenance worker/supervisor for the Federal prison in Talladega. He was in good health with no neck problems until he sustained an on-the-job injury on 24 July 2009, when a hatch in the ceiling to the roof above his head as he was descending a ladder from the ceiling fell down hard, striking him on the top of the head.

b. He states he "saw stars," but did not lose consciousness. He was able to make his way down the ladder and had a severe headache with sensitivity on the top of his head. This was a Friday. He hurt through the weekend, and because he was still hurting on Monday, presented to Dr. [redacted] with complaints of severe axial neck pain with muscle spasms in the trapezius and paracervical muscles. His pain is aggravated by turning his neck and radiates in both collar bones into the back of his neck. He denies arm numbness or weakness. He denies gait disturbance and he denies bowel or bladder dysfunction.

c. Dr. [redacted] treated him with Celebrex and a muscle relaxant. He did not have any physical therapy, chiropractic care, or epidural steroid injections. His general health is good. He is in excellent physical condition. He lifts weights avidly. His gait and station is normal. Toe-walk, heel-walk, and tandem-walk are performed well. There is no Romberg sign, no drift of Barre. His neck range of motion is markedly restricted in all planes. There is definite trapezius and paracervical spasm. His shoulder range of motion is full actively and passively without atrophy or weakness of the shoulder girdle muscles. He has excellent development of the deltoids, biceps, and forearm muscles without any weakness demonstrated. There is no hyperreflexia in the biceps, triceps, brachioradialis, knees, and ankles. There are no pathological reflexes. There is no dermatomal sensory loss.

d. A review of his cervical MRI performed on 15 September 2009 reveals chronic degenerative change at C5-6 and C6-7, which was obviously not caused by the accident, but a soft disc protrusion at C3-4 compressing the spinal cord and producing spinal stenosis. This clearly could have been caused by the accident. The natural history of these discs is to shrink. If further imaging shows shrinking, it could be treated conservatively with physical therapy and epidural steroid injections; however, if the disc remained unchanged or enlarged, he may require surgical decompression to protect his spinal cord.

11. A Dr. [redacted] Return to Work/School slip, dated 31 March 2010, shows the applicant had been under the doctor's care since 15 October 2009 and was able to return to work on 1 January 2010. Remarks show he would not be able to return to work until seen by a neurologist for further diagnosis of his spinal cord decompressive cervical disc protrusion condition. He was pending actions from the Labor Department and should not return to work because of possible future damage this may cause to his neck. He could not be seen by a neurologist using his current insurance and he would not be able to perform light duty at his job.

12. A letter from Dr. [redacted] dated 7 April 2010, shows the applicant was evaluated by him on the date of the letter. He had developed clearcut myelopathic symptoms with numbness in his arms and hands and increased tone since the date of the accident on 24 July 2009. It was of the utmost importance that he undergo C3-4 anterior cervical discectomy and fusion to protect his spinal cord and help alleviate his symptoms. It was absolutely medically necessary that he be off of work from 15 October 2009 through 31 December 2010, and in his opinion, the applicant should not have returned to work, considering the severity of his symptomatology. He needs to be compensated for the time he was off of work.

13. A second letter from Dr. [redacted] also dated 7 April 2010, and addressed to Dr. [redacted] is a multi-page letter , which has been provided in full to the Board for review, shows in pertinent part, at the time he saw Dr [redacted] on 1 March 2010, he denied arm numbness or weakness, or gait disturbance. Since that time, he clearly developed myelopathic symptoms with mild diffuse quadriparesis, numbness in his hands with a tendency to drop things. A myelogram/cervical CT demonstrates significant ventral cord compression at C3-4. He has loss of signal ventral to his cord. Of note, the applicant was off of work from 15 October 2009 through 31 January 2010. He used his sick time to do this because he was in such significant discomfort. He felt compelled to return to work because he was running out of sick time. in spite of his injury, he was denied coverage for this period of time he missed work, which is outrageous. The length of time between his accident and getting this properly evaluated is really appalling and this needs to be taken care of as soon as possible. He discussed the procedure at length with the applicant and anticipated he would be off work for 2 or 3 months following surgery.

14. A U.S. Department of Justice, Federal Bureau of Prisons Injury Report, dated 29 July 2010, shows:

a. The applicant was injured on 24 July 2009. His diagnosis was herniated cervical disc.

b. His treatment plan shows anterior cervical discectomy and fusion scheduled for 2 August 2010, with a projected return to work date 6 weeks later.

c. His physical limitations included no lifting, bending, twisting, turning, pushing, pulling, overhead reaching, driving, or prolonged sitting and standing. He could not do any type of work while recovering from cervical disc surgery.

15. [redacted] Medical Center Operative Report shows the applicant underwent the following procedures on 2 August 2010, for his diagnosis of cervical disk herniation, C3-C4, performed by the primary surgeon Dr. [redacted]

- arthrodesis, C3-C4
- anterior cervical discectomy, decompression of spinal cord nerve roots, C3-C4; removal of herniated nucleus pulposus
- placement of intervertebral device at C3-C4
- anterior instrumentation, C3-C4

16. [redacted] Medical Center Discharge Summary shows:

a. The applicant was admitted on 2 August 2010 and discharged on 3 August 2010.

b. His discharge diagnoses were:

- disk osteophyte complex at C3-C4
- gastroesophageal reflux disease (GERD)
- benign prostatic hypertrophy
- psychiatric issues

c. The discharge instructions and follow-up show the applicant was given the usual discharge instructions of all anterior cervical diskectomy patients. He was to follow-up in 1 month for a routine appointment with Dr. [redacted] Discharge activity shows per routine instructions.

17. A letter from Dr. [redacted] dated 4 November 2010, shows in pertinent part:

a. The applicant was seen in follow-up in the neurosurgical office on the date of the letter. He is 3 months status post one-level anterior cervical discectomy and fusion at

C3-4. His follow-up x-ray demonstrated fusion taking place, but it was not yet solid. He was using a bone stimulator every day and was instructed to continue doing so for the next 3 months.

b. The applicant was currently at light duty at work and the doctor thought it would be safter to keep him at light duty for the next 3 months as his fusion becomes more solid. Overall, he seemed to be functioning well. He had good strength in his arms and good range of motion in his neck.

c. They would arrange for him to increase his physical therapy as recommended by the therapist with more strengthening. He would like to perform a complete formal Functional Capacities Evaluation (FCE) in 2 months and felt the applicant should be at maximum medical improvement by mid-January 2011.

18. A second U.S. Department of Justice, Federal Bureau of Prisons, Injury Report, dated 4 November 2010, shows:

a. The applicant was injured on 24 July 2009. His diagnosis was herniated cervical disc, neck pain.

b. His treatment plan shows physical therapy for 8 weeks followed by an FCE. His projected return to work date was 15 January 2011.

c. His physical limitations included no lifting, bending, twisting, turning, pushing, pulling, overhead reaching, driving, or prolonged sitting and standing. He could not do any type of work while recovering from cervical disc surgery.

d. He was to remain on light duty and adhere to the above limitations.

19. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

20. A DA Form 3349 shows:

a. The applicant was given a permanent physical profile with a PULHES of 333113 on 4 November 2010, for post-traumatic stress disorder (PTSD), depression, anxiety, narcotic medication use, pain in neck and lower back.

b. He was restricted from performing most functional activities, but was able to wear a helmet, military boots, and uniform for at least 12 hours per day and was able to wear protective mask and be in mission oriented protective posture (MOPP) level 4 for at least 2 continuous hours per day. He could not perform any Army Physical Fitness Test (APFT) events but could participate in the walk.

c. He required an MEB and was limited to no jumping, landing, lifting, lowering, carrying, pushing, pulling, or weight bearing.

21. A Norwood Clinic document, dated 13 January 2011, shows the applicant was seen on the date of the form related to his injury dated 24 July 2009. He was cleared to return to regular work on 18 January 2011, with no limitations.

22. A DD Form 689 shows on 20 April 2011, the applicant was given an Individual Sick Slip signed by a medical officer indicating no heavy lifting for 2 days.

23. A Sworn Statement by SFC [redacted] dated 29 April 2011, shows:

a. He was at the HMMMWV line at Forward Operating Base (FOB) Santa Fe, at Fort Irwin, CA, when he heard a thud followed by a grunt. He turned around and observed the applicant laying in a prone position on his back.

b. He and another Soldier assisted the applicant into the back seat, driver's side of his HMMWV. The applicant stated his ankle caught while exiting the HMMWV, throwing him down, wrenching his back, and twisting his ankle. They then drove the applicant to the Aid Station.

24. Weed Army Community Hospital at Fort Irwin, CA, After Care Instructions, dated 29 April 2011, shows:

a. The applicant was seen for low back pain of the lumbar spine and given instructions for back pain, lumbar, not otherwise specified (NOS).

b. The doctor did not find any pain over the bones in his back, even though he might have pain in the back muscles. This means it is very unlikely he had a broken bone in his back. The doctor did not think it was necessary to take an x-ray.

c. The doctor did not know the exact cause of his pain. His problem did not seem to be from a dangerous cause, and it was safe for him to go home that day.

d. He was not to do any heavy lifting or bending, but he could go back to normal daily activities if they did not make the pain worse.

25. A DA Form 2173, dated 1 May 2011, shows:

a. The applicant was seen as an outpatient at Weed Army Community Hospital, Fort Irwin, CA on 27 April 2011 for injury/low back pain, while he was on active duty for training (ADT) from 10 April 2011 through 1 May 2011.

b. The medical opinion shows the applicant incurred an increase in chronic back symptoms while riding in desert terrain. The details of the accident show worsened back symptoms following prolonged travel in HMMWV.

c. On 1 May 2011, the unit commander or advisor signed the form indicating a formal LOD investigation was not required and the injury was considered to have been incurred in the LOD.

26. A Dr. [redacted] Return to Work/School slip, dated 4 May 2011, shows the applicant received care on 4 May 2011, and was able to return to work on 9 May 2011. The remarks show lower back pain and bilateral leg radiculopathy.

27. An Open MRI Diagnostic Imaging report shows the applicant underwent a lumbar MRI on 6 May 2011. The impression shows degenerative change and disc herniation at L3-4 on the right with an extruded migrating fragment lying superior to the interspace level. This has developed since the prior examination on 24 September 2010.

28. A Dr. [redacted] Return to Work/School slip, dated 9 May 2011, shows the applicant received care on 9 May 2011, and was able to return to work on 16 May 2011. The remarks show he was seen for progressive lumbar disc disease.

29. Two letters from Dr. [redacted] both dated 18 May 2011, but addressed to different audiences, show in pertinent part:

a. The applicant was seen on the date of the letters. He had a history of back pain that had been stable until recently. He was involved in exercises with the military with a HUMVEE where there was a lot of bumping and vibration. Thereafter, his back pain escalated and he subsequently developed a herniated disc on the right at L3-4. He has a right L3 radiculopathy and is going to need to undergo surgery. It seems clear that his activities exacerbated his underlying condition and cause his disc herniation.

b. Dr. [redacted] recommended the applicant undergo a right L3-4 foraminal discectomy due to his herniated disc and fragment as soon as possible.

30. Headquarters, 81st Regional Support Command memorandum, dated 27 May 2011, shows a formal LOD investigation found the applicant's lower back injury was found to have been incurred in the LOD.

31. The applicant's first SGLV 8600, shows:

a. The TSGLI application was signed by him in Part A (Member's Claim Information and Authorization) on 29 August 2011. The remaining portion of Part A, detailing the description of the injury is not in his available records for review.

b. Part B (Medical Professional's Statement) was signed by Dr. [redacted] [the doctor who performed his cervical discectomy] on 13 October 2011, as having observed the patient's loss. The doctor indicates the applicant was unable to perform the following ADLs independently from 2 August 2010 through 4 November 2010, due to other traumatic injury:

(1) Bathe- he required physical assistance, stand-by assistance, and verbal assistance getting in and out of the tub and with bathing.

(2) Dress- he required physical assistance, stand-by assistance, and verbal assistance with dressing, putting on clothes, socks, and shoes.

(3) Transfer- he required physical assistance, stand-by assistance, and verbal assistance ambulating from the bed to the chair.

32. A U.S. Army Human Resources Command (AHRC) TSGLI Intake Form shows the following regarding the applicant's TSGLI claims:

- his initial application was received on 8 November 2011, and was denied; note the denial letter is not in the applicant's available records for review
- his reconsideration application was received on 24 April 2012, and was approved; note the approval letter is not in the applicant's available records for review

33. A DA Form 199 shows a non-duty related PEB convened on 23 June 2011, where the applicant was found physically unfit and his disposition should be referral for case disposition under Reserve component regulations for status post one-level anterior cervical discectomy and fusion at C3-4 secondary to on-the-job injury while working in a Federal prison. This condition rendered the applicant unable to perform functional activities and continued military service would create an unreasonable risk to his health.

34. A letter from Dr. [redacted] dated 30 September 2011, shows the applicant has been under his care. He sustained a back injury while doing exercises with the military in a HUMVEE in early 2011. He subsequently developed severe right-sided sciatica. He had numbness and weakness in his right leg. Surgery was recommended, but he did not have surgery. He was seen again on 29 August 2011, with improved, but persistent

discomfort. He did not need to undergo surgery at that time, but the injury could resurface at any time in the future and if it did, he would most likely require surgery.

35. A Functional Capacity Certificate Form 507, has been provided in full to the Board for review. It shows what the applicant indicated his conditions and limitations are as they relate to military service. It shows Dr. [redacted] signed the form on 24 October 2011, indicating the applicant had permanent limitations. His diagnoses include PTSD and sleep disorder, while the other hand-written findings and diagnoses are illegible.

36. A letter from Dr. [redacted] dated 3 February 2012, shows the applicant had a sudden onset of back pain, leg pain, and weakness while riding in a HUMVEE. This was clearly a new injury because his previous MRI did not show a disc herniation. It is also clear that this injury was caused by an external force while riding in the HUMVEE.

37. A partial Dwight D. Eisenhower Army Medical Center MEB NARSUM, dated 11 September 2012, shows in pertinent part:

a. The applicant's cervical intervertebral disc syndrome (IVDS) was found to not meet retention standards.

b. His neck pain precluded him from wearing body armor and he was not deployable and was unable to train.

c. His prognosis for the condition of neck pain due to cervical IVDS was fair. He would have persistent neck pain and stiffness but had no significant sensory or motor deficit. He would require pain medication indefinitely.

38. Two additional DA Forms 199, show two additional duty-related PEBs convened on 20 May 2013 and 28 May 2013, wherein the applicant was found physically unfit with a recommended rating of 60 percent and that his disposition be permanent disability retirement. His unfitting conditions are as follows:

- PTSD; 30 percent; he recounted witnessing a child pedestrian being run over by a vehicle while he was stationed in South Korea
- lumbar intervertebral disc syndrome; 20 percent; this condition began in May 2011, at Fort Irwin, CA when he hurt his back following cross country maneuvers in a HMMWV; he fell out of the HMMWV while dismounting, further injuring his back
- right lower extremity radiculopathy; 10 percent; this condition began in May 2011, at Fort Irwin, CA, when he fell out of a military vehicle
- left lower extremity radiculopathy; 10 percent; this condition began in May 2011, at Fort Irwin, CA, when he fell out of a military vehicle

- cervical fusion; non-compensable; this condition began in 2009 when he was injured on his civilian job.

39. USAPDA Orders D154-04, dated 3 June 2013, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent disability effective 8 July 2013, with a rating of 60 percent.

40. An AHRC TSGLI Intake Form shows the applicant's second TSGLI application was received on 13 June 2013. The applicant's second SGLV 8600 shows:

a. The applicant signed and dated Part A on 13 June 2013, providing traumatic injury information wherein he indicates his traumatic injury was incurred on 24 July 2009 while working at the Federal prison [redacted], when a roof hatch fell on his head. The Office of Workers Compensation initially denied his injury claim due to his physician not correctly submitting and working his injury report to their satisfaction. His claim was eventually approved on 5 February 2010. On 2 August 2010, he underwent surgery for this injury and needed assistance from his wife, son, and daughter when he could no longer drive himself to work, get in and out of bed, dress himself, and bathe independently, needing help to get into and out of the tub. He saw the doctor again on 4 November 2010, and while the fusion process was improving, he was not far along enough to be released to full duty, so he continued to need physical assistance until weeks after this visit. Note this description does not reference traumatic injury incurred while on ADT at Fort Irwin, CA, on 27 April 2011.

b. This application contains two Part B sections, completed by two different medical providers. Dr. [redacted] completed and signed Part B on 11 June 2013, indicating he had not observed the applicant's loss, but reviewed his medical records. He indicates on the form that the applicant was hospitalized at [redacted] Neurosurgery and Spine, from 2 August 2010 through 3 August 2010, for other traumatic injury. He further indicates:

(1) The applicant's other traumatic injury was a blow to the head, ultimately resulting in a severe spinal injury in the cervical area, including disk herniation and spinal cord compression with associated myelopathy, quadriparesis, pain, spasm, and radiating extremity weakness. Due to a delay in approval for treatment by the varying Government agencies involved, surgical intervention was delayed until 2 August 2010. During the time period of delay, the applicant's neurological symptoms increased and he became unable to function, let alone work. As a result, he has an extended and ongoing continuous period of loss of ADLs due to the same injury. From 15 October 2009 through 18 January 2011, he suffered a loss of ADLs as his neurological symptoms developed and surgical intervention was delayed. He received $50,000.00 in payment for this period of ADL loss; however, his records indicate his ability to perform

his ADLs was never regained. Post fusion surgery, he was placed in a Queen Anne collar. The collar renders the neck immobilized and limits the range of motion of the upper body; therefore, the wearer cannot bathe or dress themselves. Assistance is also needed with mobility as the field of vision is impaired. This collar must be worn 24/7 post surgery for at least 30 days and then it can only be removed during sleep for an additional 30 days in order to allow the fusion and bone grant to properly fuse. However, his graft failed to fuse properly within 60 days and he was not released to return to activity levels until 18 January 2011.

(2) The applicant was unable to independently perform the following ADLs from 2 January 2010 through 18 January 2011:

- bathe- physical assistance was needed due to range of motion limitations and inability to wash hair or body
- dress- physical assistance needed due to collar immobilization and no raising arms requiring assistance to dress both upper and lower body
- toilet- physical assistance and stand-by assistance were needed due to non-weight bearing, fall risk, no overhead reaching, upper extremity limitations
- transfer- physical assistance was needed as movement was restricted to allow graft to fuse, field of vision limitations, and fall risk due to medication

(3) The medical professional's comments show the applicant's condition is a degrative condition. The medical records indicate between 14 October 2009 and the eventual surgery, he was still under orders not to lift, bend, overhead lift, stoop, lower, carry, push, pull, weight bear, etc. The limitations to avoid overhead lifting alone would render him unable to wash his hair or put on a shirt. The limitations were specific, detailed, and were not discontinued between the time periods referenced. Furthermore, his eventual surgical intervention did not heal promptly and he remained soft fused 60 days post surgeries and his limitations were extended until January 2011. Therefore, the loss of ADLs is supported by both the nature of the injury and the medical records.

c. Nurse Practitioner [redacted] also completed and signed Part B on 11 June 2013, indicating she had not observed the applicant's loss, but reviewed his medical records. Her Part B input on the application in pertinent part mirrors that of Dr. [redacted] discussed above.

41. A Prudential Office of Servicemembers' Group Life Insurance (OSGLI) letter, dated 24 August 2013, shows:

a. The applicant's branch of service completed evaluation of his claim for TSGLI benefits and unfortunately, his claim for additional TSGLI benefits could not be approved.

b. He was previously awarded a $50,000.00 benefit for the inability to perform ADLs for 60 days due to other traumatic injury. In order to qualify for additional TSGLI benefits for ADL losses, ADLs would have to be lost for 90 consecutive days more.

c. His claim for the inability to perform ADLs for 90 days or more due to other traumatic injury was not approved because his loss did not meet the standards for TSGLI. To qualify, a claimant must have been unable to independently perform at least two ADLs for at least 90 consecutive days. The claimant is considered *unable* to perform and ADL only if they require at least one of the following, without which they would be *incapable* of performing the task:

- physical assistance (hands-on)
- stand-by assistance (within arm's reach)
- verbal assistance (must be instructed)

d. His inability to perform two or more ADLs for at least 90 days must also have been certified by a medical professional.

e. His claim for the inability to perform ADLs due to other traumatic injury was not approved by his branch of service because medical documentation does not support his inability to perform ADLs for 90 days.

f. His claim for hospitalization was not approved because his loss did not meet the TSGLI standard. Under TSGLI, hospitalization is defined as an inpatient hospital stay, which lasts for 15 or more consecutive days in a hospital or series of hospitals. Because evidence indicates his hospitalization was not 15 days in length, his branch of service could not approve his claim.

g. He was advised of his right to appeal this decision within 1 year of the date of this letter.

42. A statement provided by the applicant's wife, dated 10 October 2013, shows:

a. They have been married since 1985, and since that time, the applicant has sustained two major injuries. The first injury occurred on 29 July 2009, while on duty at the Federal prison [redacted] when he sustained a massive blow to the top of his head by a roof hatch, resulting in a cervical discectomy and fusion surgery to his neck.

b. Due to the mishandling of the claim process through the Office of Workers Compensation, he did not undergo surgery until 2 August 2010. He did not return to his regular job position until mid-January 2011.

c. The second injury was incurred on 27 April 2011, while on active duty at the NTC at Fort Irwin, CA. He sustained a lower back injury while operating and exiting a military vehicle. He was instructed by his physician to have surgery at that time but was later instructed to try and manage without surgery using other methods because of the recent surgery to his neck.

d. She has assisted him with the basic necessities and tasks during the above dates and to this day. She has assisted him in sitting up in bed in the morning to enable him to put his feet on the floor, waiting around until the completion of his shower, washing and massaging his lower and upper back, drying his back after his shower, lacing and zipping up his shoes, pulling on the back heel of his house shoes to get them on, putting his toes into his socks, and holding and securing his arms and legs to prevent further injury to his neck and lower back when having nightmares.

43. An additional AHRC TSGLI Intake Form, shows receipt of a second application request for reconsideration for the applicant was received on 30 August 2016, pertaining to traumatic injury on 24 July 2009, when a hatch feel and hit his head and that no new claim form was received.

44. An AHRC, Special Compensation Branch (TSGLI) letter, dated 18 August 2017, shows:

a. The U.S. Army TSGLI Certifying Office evaluated the applicant's claim for TSGLI benefits. His claim for his event in Alabama on 24 July 2009 was previously approved for $50,000.00 for his inability to perform ADLs for 60 days due to traumatic brain injury (other than traumatic injury). Other losses claimed were not approved. The following losses were evaluated with regard to this decision:

- hospitalization
- ADLs other than traumatic brain injury up to 120 days

b. His claim for hospitalization was not approved because his loss did not meet the TSGLI standard. Medical documentation provided with is claim indicates he was only claiming 1 day of hospitalization. Under the regulations that govern the TSGLI Program, hospitalization is defined as an inpatient hospital stay which lasts for 15 or more consecutive days in a hospital or series of hospitals. Additionally, even if 15 days of hospitalization had been claimed and found, 15 consecutive days of hospitalization replaces the first increment of ADL loss. Since his claim was approved for the loss of ADLs for a period of 60 days, he cannot be paid for 15 consecutive days of hospitalization for the same traumatic event for which he was paid for loss of ADLs.

c. His claim for the inability to perform ADLs due to traumatic injury (other than traumatic brain injury) was not approved because his loss did not meet the TSGLI

medical standard. While the letters provided with his claim were taken into consideration, the medical documentation provided with his claim does not indicate he was rendered incapable of performing two of more ADLs for at least 90 consecutive days or greater. These records discuss his injury and resulting surgeries; however, there is no insight into what ADL losses he may have sustained, if any, nor does it appear that there is any new or material evidence presented with his claim that provided any further insight into his claimed ADL losses.

d. The regulations that govern the TSGLI Program state that in order to qualify, a claimant must have been unable to independently perform at least two ADLs for at least 30 *consecutive* days. The claimant is considered *unable* to perform an activity independently only if they require at least one of the following, without which they would be *incapable* of performing the task:

- physical assistance (hands-on)
- stand-by assistance (within arm's reach)
- verbal assistance (must be instructed)

e. TSGLI regulations also state if the Soldier is able to perform the activity by the use of accommodating equipment/adaptive measures (such as a PDA, cane, crutches, wheelchair, etc.), then the Soldier is considered able to independently perform the activity. Medical documentation provided does not indicate the member's loss met the TSGLI minimum standard.

45. The applicant's final SGLV 8600 dated 31 August 2020 and accompanying SGLV 8600A, likewise dated 31 August 2020, provided an appeal of his TSGLI determination regarding ADL loss of bathing, dressing, toileting, and transferring for no less than 120 days and show:

a. The applicant signed and dated Part A on 31 August 2020, providing traumatic injury information wherein he indicates his traumatic injury was incurred on 24 July 2009 while working at the Federal prison at Talladega, AL, when a roof hatch fell on his head. An MRI later revealed ruptured cervical discs at C3-C4 and C4-C5, aw well as an autonomic nerve dysfunction at C3-C4 and C4-C5. This sever spinal injury in the cervical area also included spinal cord compression with associated myelopathy, quadriparesis, pain, spasm, and radiating extremity weakness. He urgently needed surgery, but due to a delay in approval for treatment, his symptoms increased and he became unable to function, let alone work. As a result, he has an extended and ongoing continuous period of loss of ADLs due to the same injury, from 15 October 2009 through 1 January 2011. He received $50,000.00 in payments for this period of ADL loss; however, his ability to perform ADLs was never regained. Although he never fully recovered from his injuries, he volunteered to go to NTC at Fort Irwin CA on 10 March 2011, and incurred a new injury while riding the tank trail on 27 April 2011, when

external force while riding in the Humvee caused his back pain to escalate and he developed a herniated disc on the right at L3-L4 with L3 radiculopathy requiring surgery. Additionally, he fell to the ground when he attempted to exit the Humvee, landing on the ground with extreme force and injuring his lower back. From the date of this new injury on 27 August 2011, through mid-August 2011, the applicant suffered further ADL loss and was unable to independently bathe, dress, transfer, and toilet without full and/or stand-by assistance. There are no records to document the applicant ever regained his ability to perform any ADLs during the time periods claimed.

b. The provided Part B with this August 2020 appeal application is the previously provided medical statement by Dr. [redacted] on 11 June 2013, as detailed above.

46. An AHRC letter from the Office of The Adjutant General, dated 22 July 2021, shows:

a. The Army TSGLI program office received the applicant's appeal request and after reviewing the claim and supporting documentation, The Adjutant General found his claim associated with ADL losses from the traumatic event in Alabama, on 24 July 2009, did not qualify for any additional TSGLI payment.

b. Loss of TSGLI program-specific ADLs is defined in Title 38 of the Code of Federal Regulation (CFR), section 9.20 (d)(6)(vi) as follows: "the term inability to carry out activities of daily living means the inability to independently perform at least two of the six following functions: (A) Bathing, (B) Continence, (C) Dressing, (D) Eating, (E) Toileting, (F) Transferring in or out of a bed or chair with or without equipment." The TSGLI Procedural Guide, Part 4 further clarifies "if the patient is able to perform the activity by using accommodating equipment [such as a cane, walker, commode, etc.] or adaptive behavior, the patient is considered able to independently perform the activity." In addition, qualifying Other Traumatic Injury (OTI) related ADL loss claims will pay $25,000.00 at the 30, 60, 90, and 120 consecutive day milestones, per Title 38 of the CFR, section 9.20 (f)(20) and the TSGLI Procedural Guide, Part 4 (7)(g).

c. Concerning breaks between consecutive periods of ADL loss, the TSGLI Procedural Guide, Part 4 (7)(h) (page 23) states, "If a member has a loss of ADL for a scheduled number of consecutive days, then regains the ability to perform ADL, the member must have a loss of ADL for the full length of the next scheduled payment interval in order to be eligible for another TSGLI payment. The member must sustain the loss of at least two of the six ADL for the entire period of days."

d. According to Title 38 CFR, section 9.20 (e)(5)(ii), "if a member suffers more than one scheduled loss from separate traumatic events occurring more than seven full days apart, the scheduled losses will be considered separately." The applicant was

previously paid $50,000.00 for OTI-related ADL loss of 60 days or greater. Therefore, the next OTI-related ADL loss milestone eligible for payment is at the 90 day milestone.

e. Concerning OTI-related ADL loss, the available medical record does not support basic ADL loss at day 90. Unfortunately, the applicant presented a limited amount of medical documentation with most of this documentation being "return to work" notes as opposed to the actual doctor's visit notes.

f. The applicant was previously awarded OTI-related ADL loss for 60 days from 15 October 2009 to 1 January 2010. The available medical record, the TSGLI applications, and the applicant's personal statement all document that he returned to work on 1 January 2010, on restricted duty and he continued to work on restricted duty until his 2 August 2010, surgery. A person who is able to work, even on restricted duty, has the physical abilities to perform the basic ADLs of bathing, dressing, toileting, and transferring in at least a modified independent manner per TSGLI regulations.

g. In addition, the 1 March 2010 Neurosurgery and Spine Note documents his only joint limitation was a restricted neck range of motion in all planes. It also showed he had a normal gait, toe-walk, heel-walk, and tandem walk along with full active range of motion of both shoulders without any shoulder girdle muscle weakness and no sensory loss. Thus, a person with functional arms, back, and legs would be able to perform basic ADLs in at least a modified independent manner.

h. Although the 7 April 2010, Neurosurgery and Spine Note showed he developed quadriparesis (weakness in all four extremities), it was mild and diffuse. Mild weakness in all four limbs should not prevent modified independent basic ADL performance, especially when no gait disturbances, balance issues, or restricted range of motion of the extremities are documented.

i. The 2 August 2010, C3-4 discectomy and spinal fusion surgery does pose a potential event that could affect basic ADL performance. However, since he had regained ability to independently perform basic ADLs prior to the surgery as noted above, any potential ADL loss caused by the 2 August 2010, surgery would have to last for 90 consecutive days to be eligible for TSGLI payment. This would be approximately 30 October 2010. Unfortunately, there were no medical records presented between 3 August 2010 (day 2 after the surgery), and 4 November 2010 (day 95 after the surgery), to include his one month follow-up visit with his surgeon in early September 2010. However, the 4 November 2010, Neurosurgery and Spine Follow-Up Note documents he was working on restricted duty at that time with the implication he had been on this work status for some time. It also stated he was functioning well with good arm strength and good neck range of motion. Thus, he was working restricted duty prior to the 90 day milestone and had the physical ability to perform basic ADLs

independently prior to day 90 after the surgery. Therefore, his OTI-related claim does not qualify for TSGLI payment at the 90 day milestone or beyond.

j. The statements from the applicant, his wife, and Nurse [redacted] were reviewed and considered for this adjudication. The statement that his wife provided ADL assistance to him for a period is accepted without question. However, the fact that she did provide ADL assistance is not the standard for TSGLI payment. The standard is that the ADL assistance must have been rendered because without such assistance he could not have performed ADLs in even a modified independent manner. In these statements, they emphasized that the applicant was off from work and was unable to perform military functional activities including deployment. However, these are not the standards for TSGLI payment. The standards are the inability to perform at least two ADLs of bathing, dressing, toileting, or transferring in at least a modified fashion for 30 consecutive day periods. The statements also emphasized his physical work limitations of no lifting, bending, twisting, turning, pushing, pulling, no overhead reaching, and no prolonged sitting or standing. Yet, these work restrictions would not prevent modified independent bathing, dressing, toileting, or transferring at home. In addition, the fact that he tried to deploy while recovering from his neck surgery indicates he felt he could perform his basic ADLs independently. Thus, these statements are not definitive proof that he qualified for TSGLI payment at the 90 day milestone.

k. Counsel and the applicant also claimed a second traumatic event from 27 April 2011, as a source of OTI-related AOL loss. Unfortunately, a second traumatic event is considered a separate claim for TSGLI purposes. This second traumatic event and any associated claimed scheduled losses has already been through the TSGLI appeal process and was denied on 13 June 2013. Thus, any additional appeal for this traumatic event would need to be addressed by the Army Review Boards Agency (ARBA). The applicant was advised of his right to apply to ARBA if he disagreed with this decision.

47. In the adjudication of this case, an advisory opinion was provided by the AHRC Special Compensation Branch, TSGLI office, on 20 November 2023, which includes lengthy medical opinions for the traumatic events claimed on 24 July 2009 (the first event) and those on 27 April 2011 (the second event). After a thorough review of all available record keeping systems, they were unable to locate an appeal decision letter for the second event. Both medical opinions have been provided in full to the Board for review. In pertinent part, Dr. [redacted] recommended denial of the claim for OTI-related ADL loss at the 90 day milestone or beyond for the injury incurred on 24 July 2009, and Dr. [redacted] recommended disapproval of the claim for OTI-related ADL loss at the 120 day milestone for the injury incurred on 27 April 2011. The crux of the arguments in the opinions are largely reflected in the Office of The Adjutant General's denial letter, dated 22 July 2021.

48. On 25 November 2023, ARBA provided the applicant and his representing Counsel with a copy of the AHRC, Special Compensation Branch, TSGLI office advisory opinion, including the two separate medical opinions for the traumatic events claimed on 24 July 2009 and 27 April 2011. They were given an opportunity to respond and provide rebuttal comments to the advisory opinions but did not respond.

49. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, his prior TSGLI denials, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS).

b. Through counsel, the applicant is applying to the ABCMR requesting the $50,000 benefit for the inability of independently perform four of the six activities of daily living (ADLs) of bathing, dressing, toileting, and transferring, with or without activity modification and/or assistive devices, for more than 120 consecutive days (2 Janaury 2010 thru 18 Janaury 2011) due to traumatic injury sustained on 24 July 2009.

c. The applicant has previously received payment of a $50,000 000 benefit for the inability of independently perform at least two of the six activities of daily living (ADLs) for more than 60 but less than 90 consecutive days (25 October 2009 thru 1 Janaury 2010) due to other traumatic injury.

d. The United States Army Human Resources Command's 13-page physician's review is excellent with an extensive review and discussion of the evidence and so does not need to be repeated here.

e. Interestingly, the applicant submitted a second claim for ADL losses from 2 August 2010 thru 18 January 2011. This was also addressed in the in the review and will be briefly reviewed her.

f. A 6 May 2011 Lumbar MRI report with the radiologist's impression of: 1. Degenerative change. 2. Disc herniation at L3-4 on the right with an extruded migrating fragment lying superior to the interspace level. This has developed since the prior examination dated 9/24/2010. Second is an 18 May 2011 "To Whom It May Concern memorandum from his provider:

"[Applicant] has been under my care. He has a history of back pain that has been stable until recently. He was involved in exercises with the military with a Humvee [HMMWV - High Mobility Multipurpose Wheeled Vehicle]. There was a lot of

bumping and vibration. Thereafter, his back pain escalated and subsequently he has developed a herniated disc on the right at L3-4. He has a right L3 radiculopathy and is going to need to undergo surgery. It seems clear that his activities exacerbated his underlying condition and caused his disc herniation.

g. This mechanism of injury does not meet the TSLGI standard for the required initiating traumatic event. From the TSLGI Procedures Guide Basic Definitions:

"External Force - An external force is a force or power that causes an individual to meet involuntarily with an object, matter, or entity that causes the individual harm. There is a distinct difference between internal and external forces. "Internal forces" are forces acting between body parts, and "external forces" are forces acting between the body and the environment, including contact forces and gravitational forces as well as other environmental forces.

Traumatic Event - A traumatic event is the application of external force, violence, chemical, biological, or radiological weapons, accidental ingestion of a contaminated substance, or exposure to the elements that causes damage to the body.

The event must involve a physical impact upon an individual. Some examples would include: an airplane crash, a fall in the bathtub, or a brick that falls and causes a sudden blow to the head. It would not include an injury that is induced by the stress or strain of the normal work effort that is employed by an individual, such as straining one's back from lifting a ladder.

Direct Result– Direct result means there must be a clear connection between the traumatic event and resulting loss and no other factor, aside from the traumatic event can play a part in causing the loss.

Traumatic Injury - A traumatic injury is the physical damage to your body that results from a traumatic event.

h. In addition, there is really no probative evidence this herniated disc prevented him from performing 2 or more of his ADLs. A claimant for TSLGI is considered unable to perform an activity independently only if he or she, with or without activity modification and/or assistive devices, requires at least one of the following without which they would be incapable of performing the task:

(1) Physical assistance (hands-on) or,

(2) Stand-by assistance (within arm's reach) or,

(3) Verbal assistance (must be instructed)

i. For determining if a member has a loss of TSGLI program specific ADLs, Title 38 of the Code of Federal Regulation, section 9.20 states "the term inability to carry out activities of daily living means the inability to independently perform at least two of the six following functions: (A) Bathing, (B) Continence, (C) Dressing, (D) Eating, (E) Toileting, (F) Transferring in or out of a bed or chair with or without equipment." The TSGLI Procedural Guide further clarifies "if the patient is able to perform the activity by using accommodating equipment (such as a cane, walker, commode, etc.) or adaptive behavior, the patient is considered able to independently perform the activity."

j. Under the laws and regulations governing the TSGLI Program (38 U.S.C. 1980A(b)(1)(H), (b)(2)(D), and 38 CFR 9.20(d), (e)(6)(vi), (f)(17) and (f)(20)), documentation must demonstrate the inability to independently perform at least two of the six ADLs (Eating, Bathing, Dressing, Toileting, Transferring, and Continence). Documentation addressing the specific injury/injuries sustained as a result of the traumatic event, and providing a timeline of treatment and recovery during the period of claimed inability to ADLs is required in order to approve a claim. The timeline of treatment would consist of notations from licensed medical providers such as physicians, physician assistants, nurse practitioners, registered nurses, etc. Supporting documentation can also be submitted by other medical providers acting within the scope of their practice pertinent to the sustained injury/injuries, to include occupational/physical therapists, audiologists, or speech/language pathologists.

k. From a 20 September 2011 To Whom It May Concern memorandum from the same provider:

> “He sustained a back injury while doing exercises with the military in a Humvee in early 2011. He subsequently developed right-sided sciatica that was severe. He had numbness and weakness in his right leg. We found him to have a large foraminal disc protrusion on the right at L3-4 causing obvious L 3-4 nerve root compression. Surgery was recommended, but he did not have surgery. We saw him back on 08/29/2011 with improved, but persistent, discomfort. A follow-up MRI scan demonstrated resolution of his disc herniation. Mr. [redacted] does not need to undergo surgery now.

l. Though the applicant had pain and right leg weakness, this would not be expected to limit the performance of ADLs, with or without activity modification and/or assistive devices, in an otherwise healthy and intact individual.

m. It is the opinion of the ARBA medical advisor there is insufficient probative evidence upon which to base a reversal of the United States Army Human Resources Command’s prior denials.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board concurred with the conclusion of The Adjutant General and the ARBA Medical Advisor that the applicant did not meet the criteria for an additional TSGLI payment based on ADL losses. Based on a preponderance of the evidence, the Board determined The Adjutant General's decision to deny the additional TSGLI claim was not in error or unjust.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

1/6/2025

X [redacted]

CHAIRPERSON

[redacted]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

2. Public Law 109-13 (The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief 2005) signed by the President on 11 May 2005 established the TSGLI Program. The U.S. Army Combat-Related Special Compensation Office has been designated as the lead agent for implementing the Army TSGLI Program. The TSGLI Program was established by Congress to provide relief to Soldiers and their families after suffering a traumatic injury. TSGLI provides between $25,000.00 and $100,000.00 to severely injured Soldiers who meet the requisite qualifications set forth by the Department of Defense. A service member must meet all of the following requirements to be eligible for payment of TSGLI. The service member must have:

- been insured by SGLI at the time of the traumatic event
- incurred a scheduled loss and that loss must be a direct result of a traumatic injury
- suffered the traumatic injury prior to midnight of the day of separation from the Uniformed Services
- suffered a scheduled loss within 2 years (730 days) of the traumatic injury
- survived for a period of not less than 7 full days from the date of the traumatic injury (in a death-related case)

3. A qualifying traumatic injury is an injury or loss caused by a traumatic event or a condition whose cause can be directly linked to a traumatic event. The U.S. Army Human Resources Command (AHRC) official TSGLI website lists two types of TSGLI losses, categorized as Part I and Part II. Each loss has a corresponding payment amount.

4. Part I losses includes sight, hearing, speech, quadriplegia, hemiplegia, uniplegia, burns, amputation of hand, amputation of four fingers on one hand or one thumb alone, amputation of foot, amputation of all toes including the big toe on one foot, amputation of big toe only, or other four toes on one foot, limb salvage of arm or leg, facial reconstruction, and coma from traumatic injury and/or traumatic brain injury resulting in the inability to perform two activities of daily living (ADL).

5. Part II losses include traumatic injuries resulting in the inability to perform at least two ADLs for 30 or more consecutive days and hospitalization due to a traumatic injury and other traumatic injury resulting in the inability to carry out two of the six ADL, which are dressing, bathing, toileting, eating, continence, and transferring. TSGLI claims may be filed for loss of ADL if the claimant requires assistance from another person to perform two of the six ADL for 30 days or more. ADL loss must be certified by a healthcare provider in Part B of the claim form and ADL loss must be substantiated by appropriate documentation, such as occupational/physical therapy reports, patient discharge summaries, or other pertinent documents demonstrating the injury type and duration of ADL loss.

6. Appendix B (Glossary of Terms) of the TSGLI Procedures Guide, dated September 2008, provides the following definitions:

a. Traumatic Event: The application of external force, violence, chemical, biological, or radiological weapons, accidental ingestion of a contaminated substance, or exposure to the elements that causes damage to a living body. Examples include:

- military motor vehicle accident
- military aircraft accident
- civilian motorcycle accident
- rocket propelled grenade attack
- improvised explosive device attack
- civilian motor vehicle accident
- civilian aircraft accident
- small arms attack
- training accident

b. Traumatic Injury: The physical damage to a living body that results from a traumatic event.

c. External Force: A force acting between the body and the environment, including a contact force, gravitational force, or environmental force, or one produced through accidental or violent means.

7. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records (ABCMR) applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//