

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230005339

APPLICANT REQUESTS:

- entitlement to the death gratuity in the amount of \$100,000.00 on behalf of the Former Service Member (FSM)
- a personal appearance (via telephone/video)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- DD Form 1300 (Report of Casualty), 14 March 2007
- DD Form 2064 (Certificate of Death), 26 March 2007
- Defense Finance and Accounting Service (DFAS) letter, 11 August 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states in pertinent part that she is the surviving daughter of the FSM. She contests that at the time of the FSM's death (14 March 2007), she was 5 years old. She notes the FSM was not married at the time of his death and therefore she is entitled to his death gratuity. However, upon requesting entitlement to the FSM's death gratuity, she was advised by DFAS they were precluded from disbursing this entitlement due to the provisions set forth in the Barring Act. She argues that she was too young at the time of the FSM's passing and therefore relied upon the adults in her life for guidance.

3. A review of the FSM's available personnel records reflects the following:

a. On 9 August 2005, the FSM enlisted in the Regular Army for 3 years and 20 weeks.

b. On 7 June 2006:

(1) The FSM completed SGLI 8286 (Servicemembers' Group Life Insurance (SGLI) Election and Certificate) for the maximum amount (\$400,000.00) making the following disbursement elections:

Principal –

- a. 50 percent gratuity to his mother (lump sum payment)
- b. 50 percent gratuity to his Trustee for the benefit of his children (lump sum payment)

Contingent –

- 100 percent brother (lump sum payment)

(2) The FSM also completed a DD Form 93 (Record of Emergency Data) indicating that the applicant was born on 22 July 2001 and was his only child. The FSMs mother is listed as his only beneficiary of his death gratuity and unpaid allowances if there are no surviving children or spouse. Item 4a. (Spouse Name) reflects that he was divorced. The FSM's records are void of a divorce decree or marriage certificate.

c. On 14 March 2007, the FSM was Killed in Action.

4. The applicant provides the following a:

a. DD Form 1300 dated 14 March 2007, reflective of documentary evidence of the FSM being KIA on 14 March 2007, while serving in Iraq in support of Operation Iraqi Freedom. Item 7 (Interested Persons) provides evidence of the applicant's relation (daughter) to the FSM. A 50 percent SGLI gratuity is to be paid out to the FSMs Trustee.

b. DFAS) letter dated 11 August 2022 reflective of their response to the applicant's request for entitlement to the FSM's death gratuity noting that they were denying her request because it was not submitted within 6-years of the date the claim accrued. The applicant is recognized as the proper beneficiary but was a minor at the time of the FSM's death and did not turn 18 until 22 July 2019. DFAS was unable to locate evidence that a claim was made by the applicant or on her behalf until now.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's contentions, military record, and regulatory guidance. The Board agreed that the Former Service Members intent was for his daughter to be his beneficiary as he was not married. The Board further agreed that the prior to the applicant's death, he had submitted a SGLI 8286 showing this daughter as his beneficiary. The Board considered documentation indicating that Army representatives may have provided erroneous regarding timeframes for a minor to file a claim within six years of becoming of age. After due consideration of the request, the Board determined the evidence presented sufficient to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected to show the applicant was eligible for and timely submitted SGLI claim within six months of becoming eligible.

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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. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. The Barring Act, Title 31, USC, section 3702 states that the Secretary of Defense shall settle claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits. A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues. A claim that is not received in the time required under this subsection shall be returned with a copy of this subsection, and no further communication is required.

3. Department of Defense Financial Management Regulation 7000.14, Volume 7A, chapter 36 (Payment on behalf of Deceased Members) states:

a. Death gratuity will be paid, regardless of whether death occurred in the line of duty or as the result of a member's misconduct, to eligible beneficiaries. A member may designate one or more persons, to receive a portion of the amount payable under paragraph 360206. If a member provides conflicting information regarding designation of beneficiaries and their proportionate shares of the death gratuity in blocks 11 and 14 of the DD Form 93, then payment will be made only to the extent that there are unambiguous designations.

b. Distribution. If a member does not make a designation under subparagraph 360203.A, or designates only a portion of the amount payable, then the remaining amount of the death gratuity not covered by a designation will be paid as follows:

- To the surviving spouse of a member
- If no surviving spouse, then the child or children of the member and descendants of deceased children, by representation

c. Determination of an eligible beneficiary may be established by the original or certified copy of the birth certificate. If the death gratuity is in excess of \$10,000.00, then payment may only be made to the guardian or conservator appointed by a court to receive such payments for the minor's benefit, thereby providing the government a means of obtaining a good acquittance.

d. Section 360206 (Amounts payable and Exemptions) the amount of death gratuity is \$100,000.00

4. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//