

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2024

DOCKET NUMBER: AR20230006508

APPLICANT REQUESTS: through Counsel, reconsideration of his prior request for approval of his Traumatic Servicemember's 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
- 4 pages of records labeled, "Witness Statement in Support of Claimed Loss from Claimant's [Department of Veterans Affairs] (VA) Appointed Caregiver"
- 9 pages of records labeled, "Original Application for TSGLI Benefits – Certified for Payment by L____ L. W____ 8/26/2006"
- 11 pages of records labeled, "Military Records in Support of Claimed Traumatic Injury and Loss"
- 17 pages of records labeled, "Medical Records in Support of Claimed Traumatic Injury and Loss"
- 166 pages of records labeled, "Additional Medical Records in Support of Claimed Loss"
- 46 pages of records labeled, "Medical Records – Traumatic Brain Injury (TBI)"
- 101 pages of records labeled "TSGLI Year Ten Review"

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180009462 on 20 November 2020.

2. Counsel states:

a. They respectfully request the denial of a claim for TSGLI benefits submitted by the applicant for injuries he sustained in the line of duty on 19 June 2004, be overturned and the benefits for which the applicant clearly qualifies be paid without further denial or delay.

b. On 19 June 2004, while deployed to Camp Scania, Iraq, the applicant was performing service on a 240V generator, which was positioned on a platform approximately 25 feet above the ground, when the camp came under attack from incoming mortar rounds and small arms fire. During the attack, the generator voltmeter made contact with the applicant's right arm, the exorbitant force of the electrical current rendering him unconscious and throwing his body backward, causing him to fall to the ground. The applicant was discovered unconscious and severely wounded, having sustained severe head trauma as a result of the extreme impact of landing and multiple shrapnel wounds, in addition to severe wounds to his right arm and hand, the result of electric shock. Upon regaining consciousness, he immediately experienced severe pain in his head, neck and spine, dizziness, and inability to focus. He also experienced severe pain, numbness, tingling, and significantly decreased mobility in his dominant right arm and hand.

c. The applicant received emergency medical attention from medical providers at Camp Scania in an effort to stabilize his condition. He was then medically evacuated to Tallil Airbase on 22 June 2004, where he received interim urgent medical treatment before being transported to Landstuhl Regional Medical Center (LRMC), arriving on 30 June 2004. The applicant remained at LRMC until July 13, 2004, at which time he was transported to McDonald Army Community Hospital (ACH) at Fort Eustis, VA, and then to Walter Reed Army Medical Center (WRAMC), arriving on 14 July 2004. Physicians determined that the applicant had sustained moderate Traumatic Brain Injury (TBI), as well as severe, irreversible sensory-motor neuropathy to his right hand and arm and spinal kyphosis as a direct result of the aforementioned incident. He was immediately placed on physical profile, and despite extensive medical treatment, he was ultimately medically discharged as a direct result of the injuries he sustained.

d. The VA determined that the severity of the applicant's injuries render him totally and permanently disabled. He continues to require extensive assistance to the present date. He receives this assistance from his wife, who is his VA appointed caregiver.

e. From the date he was severely injured in the line of duty, and for a period of not less than 120 days, including 26 days of inpatient hospitalization and/or transport, the applicant was completely unable to perform multiple activities of daily living (ADLs), to include dressing, bathing, and toileting, without hands-on, stand-by, and/or verbal assistance from another individual, as is certified by multiple physicians and clearly evidenced by medical records and other supporting documentation (attached), to include a Part C Certification completed by one Sergeant First Class (SFC) L____ L. W____ on 26 June 2006, which clearly indicates that the applicant's injuries meet criteria for payment under the TSGLI program.

f. The 24 July 2006 letter of denial of the applicant's previous application for TSGLI benefits, states the service member "must incur a covered loss and that loss must be a

direct result of a traumatic event." Counsel asserts that the injuries the applicant sustained as a direct result of electric shock on 19 June 2004 clearly meet the criteria for traumatic injury directly resulting from a traumatic event. Traumatic injury is defined as "a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain." (Curtis v. DOJ, 342 Fed. Appx. 601 (Fed. Cir. 2009), citing Yanco v. US #00-5058, 258 F.3d 1356 (Fed. Cir. 2001)).

g. The 29 October 2016 letter of denial for the applicant's claim appeal for TSGLI benefits, stated that, "medical documentation does not support your inability to perform ADLs for 30 days," Counsel hereby educes 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, 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.

h. According to the TSGLI Procedures Guide, in order to assert a claim for benefits for inability to perform ADLs, a claimant "must have been unable to independently perform at least two 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 Counsel's assertion that the attached military service records, medical documentation, percipient witness statement, and multiple physician certifications, clearly constitute sufficient documentation to support the applicant's claim for benefits under the TSGLI program.

i. There has been some speculation whether Title 38, U.S. Code, section 5107(b) applies to TSGLI claims. In their TSGLI Year-Ten Review, the VA Insurance Service staff provided clear guidance on the application of the "Benefit of the Doubt" doctrine to claims for TSGLI benefits. The report states: "38 USC 5107(b) establishes the general evidentiary standard for benefits decisions made by VA. This standard also applies to TSGLI, which falls under the purview of Title 38." The VA implemented this recommendation in March 2017, with updates to the TSGLI Procedures Guide. (Department of Veterans Affairs, Veterans Benefits Administration, Servicemembers Group Life Insurance Traumatic Injury (TSGLI) Protection Program Year-Ten Review (2018)).

j. 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 the 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 38 C.F.R. section 3.102. (Sheets v. Derwinski, 2 Vet. App. 512, 516- 17 (1992)).

k. Given the substantial evidence regarding his injuries and subsequent hospitalization, as well as his ongoing loss of ability to perform ADLs, 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.

3. The applicant enlisted in the Virginia Army National Guard (VAARNG) on 19 September 2001.

4. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was ordered to active duty in support of Operation Enduring Freedom (OEF) on 24 February 2003, with no foreign service listed. He was honorably released from active duty after 3 months and 9 days of net active service on 2 June 2003, due to completion of required service, and transferred back to his VAARNG unit.

5. The applicant's available service records do not contain any documents, to include a DD Form 214, detailing the dates of his mobilization and service in Iraq in support of Operation Iraqi Freedom (OIF) on or around June 2004.

6. Multiple Standard Forms 600 (Chronological Record of Medical Care) show the following:

a. The applicant was seen by a medical professional on 19 June 2004, with complaints of right hand/arm pain due to being electrocuted approximately 10 minutes prior, when he touched a generator with his wet arm and was shocked. His pain level was 8/10. His sensation was normal from his axillae area and decreased downward toward his hand. Feeling and sensation ceased in the middle of his forearm and he was unable to grasp or wiggle his fingers. There was no loss of consciousness or radiculopathy.

b. The applicant was seen on 24 June 2004, at Tallil Air Base, Iraq, subsequent to electrical shock to his right forearm on 20 June 2004, with resultant numbness.

c. The applicant was seen at the Tallil Air Base Orthopaedic Clinic on 25 June 2004, for electrical shock to his right arm. He was given pain medication, a physical profile, and scheduled for medical air evacuation on 27 June 2004.

7. Multiple Air Force Forms 3899A (Aeromedical Evacuation Patient Record), which have been provided in full to the Board for review, show in part the following:

a. The applicant was ambulatory en route from Tallil Air Base, Iraq, on 27 June 2004, with a final destination of Walter Reed Army Medical Center (WRAMC) for further evaluation of his hand. He was capable of self-care/self-medicating and did not need an attendant.

b. The applicant ambulated on board the flight from Tallil Air Base, Iraq, to Balad Air Base, Iraq on 28 June 2004, without incident. His right arm was still in a case. He reported pain that was not incapacitating and reported no distress in the flight.

c. The applicant arrived in Balad on 28 June 2004 and ambulated off the flight. He was self-indicated, taking his pain medication on his own at 1530. He continued to be in pain and experienced numbness to his right index finger (IF), middle finger (MF), and ring finger (RF).

d. The applicant ambulated on the flight from Balad to Ramstein Air Base, Germany on 29 June 2004. His second, third, and fourth digits were cool to touch, remained numb, and he felt the pain medication was not working.

8. An additional Standard Form 600 contains a progress note from Central Europe, Orthopedics OIF/OEF, dated 30 June 2004, which shows the applicant's diagnosis was right forearm/hand electrocution injury resulting from a 240 volt generator voltmeter that touched mid forearm, right and exited the IF, MF, and RF of his right hand on 19 June 2004, in Scania, Iraq. Light touch absent to IF, MF, RF; sensation pressure to thumb and small finger (SF) intact.

9. A Patient Movement Request, dated 12 July 2004, shows the applicant arrived at Landstuhl Regional Medical Center (LRMC) on 30 June 2004, alert and oriented X4. His pain was managed with medication and his right arm was in a splint. He had no sensation or movement in his second, third, or fourth digits, but was able to wiggle his thumb and fifth digit. He had complaints of pain in his right elbow, but was able to carry his own bags. He was ambulatory on the flight enroute to McDonald Army Health Center (AHC), Fort Eustis, VA.

10. A DA Form 2173 (Statement of Medical Examination and Duty Status), dated 14 July 2004, shows the following:

a. The applicant was seen as an out-patient at a Combat Support Hospital (CSH) in Iraq on 19 June 2004, for a right arm/hand injury due to electrical shock.

b. The details of the accident, signed by a patient administrator on 14 July 2004, show the applicant was then an ARNG Soldier mobilized for OIF and working on a generator when he received an electrical shock.

c. The form is not signed by the unit commander or unit adviser.

11. There are no available medical records detailing an inpatient hospital stay as a result of the applicant's electrical shock to the right arm.

12. A Standard Form 600, dated 23 July 2004, shows the applicant was seen as an outpatient at the Portsmouth Naval Medical Center for a right arm physical therapy evaluation. The assessment and plan show his potential for rehabilitation was fair to good and he was released without limitations.

13. A Fort Eustis and Fort Monroe Physical Therapy Clinic, Daily Exercise/Procedure Flowsheet, documents the applicant's five physical therapy sessions dated between 27 July 2004 and 3 August 2004, indicating various exercises completed and their duration.

14. The applicant provided two memoranda, detailing his physical profiles, as follows:

a. On 12 January 2005, the applicant was given a temporary physical profile rating of "3" in the factor S (Psychiatric) for symptoms of intrusive thoughts, irritability, and sleep problems following deployment for OIF. The temporary physical profile was due to expire on 12 March 2005, limited him in multiple functional activities and assignments to isolated areas where definitive medical care is not available, and necessitated a Medical Evaluation Board (MEB).

b. On 20 January 2005, the applicant was given a temporary physical profile rating of "3" in the factor U (Upper extremities) for electric shock to the right arm; numbness. The temporary physical profile was due to expire on 20 April 2005, limited him in all functional activities and Army Physical Fitness (APFT) events, and necessitated an MEB.

15. A GL.2005.26 (TSGLI under the SGLI Program Certification Form and Instructions), later iterations of which are further named SGLV 8600 (Application for TSGLI Benefits), shows the following:

a. The applicant initially signed a claim for TSGLI on 18 June 2006. Part A (To Be Completed by Service Member) shows the administrative information filled out by the applicant pertaining to his name, address, and bank account.

b. Part B (To Be Completed by Attending Medical Professional) shows Dr. A____ T____, primary care physician, completed that portion of the form on 26 June 2006, indicating the following:

(1) The applicant's traumatic injury was accidental electrocution and head injury (closed) incurred on 19 June 2004.

(2) The applicant was unable to independently perform the ADLs of dressing, bathing, and eating for a period of 120 days beginning on 19 June 2004.

(3) The comments show right arm sensory neuropathy which appeared to be permanent as it has continued for over 2 years and the applicant is right-handed.

c. Part C (To Be Completed by Branch of Service) shows SFC L____ W____ signed the form on 26 June 2006, indicating the following:

(1) The applicant was on duty in Iraq on 19 June 2004, at the time the traumatic event of electrical shock while repairing a generator transpired.

(2) The applicant was covered under SGLI at the time of the traumatic event.

(3) The traumatic injury event qualified for TSGLI.

16. A letter from the Office of SGLI, Administrator of the TSGLI Program, dated 24 July 2006, shows the following:

a. The applicant was informed that evaluation of his claim for TSGLI benefits was completed and unfortunately, his claim could not be approved.

b. His claim was not approved because to be eligible for TSGLI, he must incur a covered loss and that loss must be a direct result of a traumatic event.

c. The supporting medical documentation does not support the physician's certification; therefore, his claim could not be approved.

d. He was advised of his right to appeal this decision.

17. U.S. Army Human Resources Command Orders A-10-720356, dated 4 October 2007, ordered the applicant to active duty to participate in the Reserve Component Medical Holdover Medical Retention Processing Program (MRP) for completion of medical care and treatment.

18. Counsel provided numerous medical records, all of which have been provided in full to the Board for review, documenting many of the applicant's medical appointments while he was assigned to the Warrior Transition Unit, relating to headache, slow cognition, and claims of TBI.

a. A Standard Form 600 shows on 19 October 2007, he provided an intake history reporting that he was medically evacuated from Iraq in the summer of 2004 after falling 15 to 18 feet on his head, causing a TBI and spinal injuries. The applicant was subsequently scheduled for an appointment in the TBI clinic.

b. A Standard Form 600 shows he was seen on 28 April 2008 for reported TBI. The notes show a recent speech therapy evaluation at the VA, dated 25 March 2008, show the applicant reported then that he was on a ladder 18 to 20 feet up fixing a generator when electricity entered his elbow and went out the right hand, burning it. He stated he was unconscious for at least one hour or more and felt disoriented. During the 28 April 2008 visit, he was administered a psychiatric evaluation comprehensive examination and released without limitations.

19. A DA Form 3947 (MEB Proceedings) shows an MEB convened on 21 May 2008, where the applicant was referred to a Physical Evaluation Board (PEB) for the following medically unacceptable conditions:

- depression
- chronic PTSD
- TBI
- stuttering
- cervicalgia
- lumbago
- right hand and arm numbness and weakness status post electrocution injury
- jaw pain
- acne
- bilateral knee pain

20. A partial DA Form 199 (PEB Proceedings) shows a PEB convened on 14 October 2008, where the applicant was found physically unfit for the following conditions:

- PTSD and major depressive disorder, 50 percent
- TBI with headaches, 10 percent

21. The applicant's records contain multiple additional partial SGLV 8600s, wherein the medical professional's statement in Part B (Medical Professional's Statement) is new or updated, without corresponding updates on the part of the applicant to Part A on the new form.

22. An SGLV 8600, Part B, signed by Dr. M____ B____ on 18 November 2008, shows the following:

a. The applicant sustained injury on 19 June 2004, due to a generator incident where he sustained a fall and head trauma. He is rated for TBI, cervical and lumbar disc/vertebral injury with chronic pain.

b. He was unable to independently perform the following ADLs:

(1) bathing: he was completely dependent upon another person for taking a sponge bath, tub bath, and showering; he was able to use accommodating equipment to get into and out of the tub/shower; he was unable to use his right arm at all for 9 months from 19 June 2004 through 15 March 2005.

(2) dressing: he was completely dependent upon another person for dressing, including pulling shirt on or off, pulling pants on or off, fastening garments, securing equipment; he was not able to use accommodating equipment; he was unable to use his right arm for 9 months from 19 June 2004 through 15 March 2005.

(3) eating: he was completely dependent upon another person for eating, including getting food or liquid nourishment into his mouth; he sustained a head injury and was not able to feed himself without assistance from 19 June 2004 through May 2005.

23. The applicant's available records do not contain a letter from the U.S. Army Human Resources Command (AHRC), Special Compensation Branch (TSGLI) in response to the above-referenced new SGLV 8600, Part B, dated 18 November 2008.

24. Military Personnel Division Orders 326-0136, dated 21 November 2008, 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 physical disability with a rating of 60 percent, effective 27 January 2009.

25. A DD Form 214 shows the applicant was ordered to active duty for Medical Retention Processing Program from 14 September 2007 through 27 January 2009, on which date he was retired due to permanent physical disability.

26. The applicant's National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows he was honorably discharged and transferred to the Retired Reserve effective 27 January 2009. He was credited with 5 years, 4 months, and 10 days of total service for retired pay.

27. Military Personnel Division Orders 070-0136, dated 11 March 2009, amended above-referenced Military Personnel Division Orders 326-0136, dated 21 November 2008, to reflect the applicant's percentage of disability as 70 percent instead of 60 percent.

28. A VA letter, dated 12 April 2010, provided the applicant with a summary of the benefits he then currently received from the VA. It shows he had a combined permanent and total service-connected disability rating of 80 percent and was being paid at the 100 percent ratee because he was unemployable due to his service-connected disabilities.

29. An AHRC, Special Compensation Branch (TSGLI) letter, dated 7 May 2013, shows the Army TSGLI office received the applicant's request for reconsideration. The last decision on his claim was made more than 4 years ago. In order to process his claim for reconsideration, they must receive an updated claim form SGLV 8600, of which Part A must be completed by the applicant and Part B must be completed and signed by a medical professional certifying his losses. He must also have medical documentation from within 2 years of is traumatic event to support his claimed losses. His TSGLI application cannot be processed as is and was pending his resubmission with the required documentation and corrections.

30. An SGLV 8600, Part B, signed by M____ O____, Occupational Medicine, on 25 June 2013, shows the following:

a. The applicant had a period of inpatient hospitalization at LRMC and WRAMC, from 20 June 2004 through 20 May 2005, due to TBI. His medical history is consistent with a typical moderate TBI injury.

b. He was unable to independently perform the following ADLs due to TBI:

(1) bathing: from 20 June 2004 through ongoing, he required physical assistance (hands on) and stand-by assistance for getting into and out of the shower.

(2) dressing: from 20 June 2004 through ongoing, he required physical assistance (hands-on) because he could not raise his hands over his head.

31. The applicant's wife provided a statement on 20 November 2013, showing she has been his caregiver since 2007. She helps him daily with everyday ADLs as he has a TBI and vertigo, losing balance often and experiencing blackouts. Due to his TBI, he has fallen many times in the shower after losing his balance. She also bathes him from head to toe while in the shower, dries him afterward, and gets him dressed. She also helps him get in and out of bed and sit down and get up from a seated position. He walks with a cane, but with her by his side for extra support. She also helps him going down stairs

and using the toilet, as he has fallen many times. She administers his daily medication, tends to most of the finances, and does the household chores of cooking and cleaning.

32. A VA Health Administration Center, Caregiver Stipend Program statement, dated 26 February 2015 shows the applicant's wife received a benefit amount of \$1,853.10 for personal care services provided from 1 February 2015 through 28 February 2015.

33. An SGLV 8600, Part B, signed by R____ H____, Chiropractor, on 6 September 2015, shows the following:

a. The applicant suffered severe, permanent injuries to his head and right upper extremity. The records are clear that he suffered and continues to suffer from TBI as well a permanent sensory-motor neuropathy in his dominant right arm and had and cervical and lumbar disc/vertebrae injury with chronic pain. He has required constant attendance from caregivers in order to perform ADLs. His condition is permanent and is not expected to resolve.

b. He had periods of inpatient hospitalization at Tallil Air Base, Iraq, LRMC and WRAMC. The date of his admittance to the first hospital was 22 June 2004, the date of his transport was 30 June 2004, and the date of his discharge from the last hospital was 14 July 2004.

c. The predominant reason he was unable to perform ADLs was TBI and other traumatic injury. He was on a platform performing maintenance on a 240V generator when a voltmeter came into contact with his right mid forearm, sending an electric shock through his right upper extremity and out his right hand. The force of the electrocution knocked him off the generator platform, causing him to fall to the ground below, where he struck his head, rendering him unconscious. He suffered permanent sensory-motor neuropathy in his dominant right hand and forearm, moderate TBI injury, and cervical and lumbar disc/vertebrae injury with chronic pain. His injuries have rendered him incapable of performing ADLs from the date of the injury to present day.

d. He was unable to independently perform the following ADLs:

(1) bathing: from 19 June 2004 through ongoing, he required physical assistance (hands on), stand-by assistance, and verbal assistance. He is unable to bathe without full/standby/verbal assistance due to his inability to maintain balance, use his right arm/hand, and cognitive issues from the TBI.

(2) dressing: from 19 June 2004 through ongoing, he required physical assistance (hands-on), and verbal assistance. He is unable to dress without full/standby/verbal assistance due to his inability to maintain balance, use his right arm/hand, and cognitive issues from the TBI.

(3) toileting: from 19 June 2004 through ongoing, he required physical assistance (hands-on), and verbal assistance. He is unable to toilet without full/stand-by/verbal assistance due to his inability to maintain balance, use his right arm/hand, and cognitive issues from the TBI.

(4) transferring: from 19 June 2004 through ongoing, he required physical assistance (hands-on), and verbal assistance. He is unable to transfer without full/stand-by/verbal assistance due to his inability to maintain balance, use his right arm/hand, and cognitive issues from the TBI.

34. An AHRC, Special Compensation Branch (TSGLI) letter, dated 2 October 2015, shows the Army TSGLI office received the applicant's incomplete TSGLI application and referred him to an enclosed checklist, identifying missing documentation and information. He was to submit the additional required information for his claim to be reactivated and processed.

35. An AHRC, Office of The Adjutant General letter, dated 29 October 2016, shows the following:

a. The Army TSGLI program office received the applicant's appeal request and after reviewing the claim and supporting documentation, The Adjutant General was unable to overturn the previous adjudication concerning losses associated with hospitalization and ADLs from the traumatic injury that occurred on 19 June 2004. The letter explains why his claim was not approved.

b. Concerning traumatic injury (other than TBI) related loss of ADLs, the applicant's medical record shows he suffered a right forearm/hand electrical injury from the traumatic event. His medical record does not indicate, nor suggest, his injury rendered him incapable of utilizing adaptive behavior or accommodating equipment to perform ADLs in at least a modified independent manner prior to the 30-day milestone.

c. According to program guidelines, 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. The 25 June 2004 Orthopedic Note (day 7 after the traumatic event) documents movement of the right thumb and small finger and full bending and straightening of the right elbow. An otherwise healthy person capable of this movement after a right arm injury should be able to perform basic ADLs in at least a modified independent manner using adaptive behavior. The 28 June 2004 Patient Movement Request (day 10 after the traumatic event) states he was capable of self-care/self-medication, which would indicate he could perform the basic ADLs. The 7 July 2004 Patient Movement Request (day 19 after the traumatic event) notes he was ambulatory and could carry his own bag, which would

escribe a person capable of performing basic ADLs. Therefore, this claim does not qualify for payment of benefits for the 30-day milestone or beyond.

d. Concerning TBI-related loss of ADLs, the medical record shows there was no head injury or TBI directly related to the traumatic event. According to program guidelines, the member must suffer a scheduled loss that is a direct result of a traumatic injury due to a traumatic event and no other cause. The 19 June 2004 Office Note records the traumatic event happened 10 minutes prior to the visit and there was no loss of consciousness. The 30 July 2004 Physical Therapy Note (day 42 after the traumatic event) documents there was no loss of consciousness during the traumatic event. Therefore, the claim of TBI-related loss of ADLs does not qualify for payment.

e. Concerning hospitalization, the medical record shows the applicant was in an outpatient status, while still in Iraq and at LRMC. There was no record presented nor found that showed he was admitted to an inpatient hospital upon return to Fort Eustis on 7 July 2004. Therefore, he does not qualify for the hospitalization benefit.

f. The letter from the applicant's spouse was considered for this adjudication.

g. The applicant was advised he had the right to appeal to the Army Review Boards Agency (ARBA) if he disagreed with this decision.

36. The applicant previously applied to the ABCMR on 25 May 2018, requesting approval of his previously denied TSGLI claims. Among the documents he provided with his application were an SGLV 8600, an SGLV 8600A (TSGLI Appeal Request Form), medical documentation, and a TSGLI timeline, which has been provided in full to the Board for review.

37. The SGLV 8600, dated 25 May 2018, shows the following:

a. Part A shows the applicant indicated on 19 June 2004, he was performing service on a 240V generator, which was positioned on a platform approximately 20 to 25 feet off the ground, at Camp Scania, Iraq, when the camp came under attack from incoming mortar rounds and small arms fire. During the attack, a voltmeter made contact with his right arm. The awesome force of the electrical current rendering him unconscious and threw his body backward, causing him to fall to the ground. The applicant was discovered several hours after the incident, still unconscious and severely wounded, having sustained severe head trauma as a result of the extreme impact of landing and multiple shrapnel wounds, in addition to severe wounds to his right arm and hand. The result of electric shock. Upon regaining consciousness, the applicant immediately experienced severe pain in his head and neck, dizziness, and inability to focus. He also experienced severe pain, numbness, tingling, and significantly decreased mobility in his (dominant) right arm and hand. He received emergency medical attention at Camp

Scania in an effort to stabilize his condition. He was then medically evacuated to Tallil Airbase on 22 June 2004, where he received interim urgent medical treatment before being transported to LRMC, arriving on 30 June 2004. The applicant remained at LRMC until 13 July 2004, at which time he was transported to McDonald ACH at Fort Eustis, VA, arriving on 14 July 2004. Physicians determined that he had sustained moderate TBI as well as severe, irreversible nerve damage to his right hand and arm and spinal kyphosis as a direct result of the aforementioned incident. He was immediately placed on a physical profile, and despite extensive medical treatment, he experienced little to no improvement and was ultimately medically discharged as a result of the injuries he sustained. The VA determined that the severity of his injuries render him totally and permanently disabled. Unable to move or experience sensation in his right hand and arm, and prone to frequent blinding headaches, vertigo and memory and speech impairment due to TBI, the applicant continues to require extensive assistance to perform ADLs, to include dressing and bathing. He receives this assistance from his wife, who has been appointed by the VA to be his full-time caregiver. From the date he was severely injured in the line of duty, and for a period of not less than 120 days, as is certified by multiple physicians and evidenced by medical records and other supporting documentation, the applicant was completely unable to perform multiple ADLs, to include dressing and bathing, without assistance from another individual.

b. A new Part B is not included with the SGLV 8600, dated 25 May 2018.

38. The SGLV 8600A, likewise dated 25 May 2018, shows the following:

a. The applicant was providing new medical evidence with his appeal to support this loss, including a caregiver statement, proof of enrollment in the VA Caregiver Program, VA Disability Rating, military service records and medical documentation supporting injury and losses.

b. His loss was the direct result of a traumatic event per the definition of “traumatic injury” in *Curtis v. DOJ*, 342 Fed. Appx. 601 (Fed. Cir. 2009) citing *Yanco v. U.S.* #00-5058.258 F.3d 1356 (Fed. Cir. 2001).

c. The first four paragraphs of the narrative at number 8, providing supporting details to be considered when his appeal is reviewed, restate the above statement captured in the SGLV 8600, Part A, dated 25 May 2018. The remainder of the narrative paragraphs in number 8 show it is Counsel’s assertion that the injuries sustained by the applicant as a direct result of electric shock on 19 June 2004, clearly meet the criteria for traumatic injury directly resulting from a traumatic event. A traumatic event is defined as “a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.”

d. Given the substantial evidence regarding his injuries and subsequent hospitalization, as well as his ongoing loss of ability to perform ADLs, the applicant clearly meets the criteria for eligibility set for the in the TSGLI Schedule of Losses. Therefore, Counsel reasserts their client's right to these benefits and respectfully request the contract between the Soldier and the TSGLI program be honored.

39. In the adjudication of his prior application to the ABCMR, a medical opinion was obtained from an Army Review Boards Agency (ARBA) medical advisor, included in the prior Record of Proceedings for Docket Number AR20180009462 and provided in full to the Board for review. In pertinent part, it shows the based on the information currently available, it is the opinion of the medical advisor that no medical documentation was found supporting the claim the applicant was unable to perform two or more ADLS past the 29th day following his injury.

40. On 20 November 2020, the Board denied the applicant's request, determining there was insufficient evidence of an error or injustice which would warrant a change to the decision concerning the applicant's TSGLI claim.

41. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

42. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

43. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

44. MEDICAL REVIEW:

a. The claimant through counsel, requests compensation through the TSGLI benefit program for loss of multiple activities of daily living (ADLs) for 120 days as a direct result of electric shock and traumatic brain injury sustained on 19Jun2004. The Army Review Boards Agency Medical Advisor was asked to review this request. The review included but was not limited to the claimant's medical and military records; the claimant's contentions through counsel's brief; the claimant's wife's statement; and the TSGLI Procedural Guide. The available records were thoroughly and carefully reviewed. This is a request for reconsideration of a previous denial by ABCMR board date 20Nov2020.

b. The ABCMR ROP was reviewed. Of note, the claimant was a member of the Virginia Army National Guard beginning 19Sep2001. Also of note, the ROP tracked the claimant's movement from the date of injury in Iraq through Germany (LRMC) and finally to the states.

c. Service treatment records indicate the claimant was seen on 19Jun2004 at CSC Scania in Iraq for an electrocution injury to the right hand and forearm. The claimant was reportedly repairing a generator when he was accidentally electrocuted. Approximately 250 volts entered through the right elbow and exited from the right-hand 2nd (index), 3rd (middle) and 4th (ring) digits according to records at the time. There was no loss of consciousness. He was alert and oriented x4 (person, place, time, and circumstance/event). Symptoms reported were limited to the right upper extremity. Signs and symptoms documented by the provider(s) were also limited to the right upper extremity. He was followed relatively briefly in Iraq, then he was ultimately medically evacuated to LRMC where he arrived on 30Jun2004 for further evaluation and hand rehabilitation. The claimant traveled in outpatient status from Iraq to LRMC and from LRMC to the states according to patient movement records. Two months after the electrocution injury, it was documented that the applicant reported that he had been on a ladder at the time and had fallen down several rungs but did not fall off (10Aug2004 Naval Medical Center, Portsmouth, Virginia Consultation Note). One year later, the applicant was referred for a TBI evaluation due to his report of recent issues with periods of memory loss in the context of reporting having been thrown off the ladder with loss of consciousness for an unknown period of time (12Aug2005 Richmond VAMC Primary Care Note).

d. Specifically, it is contended, that from the date of injury and "for a period of not less than 120 days [until 16Oct2004], including 26 days inpatient hospitalization and/or transport"; the claimant was completely unable to perform ADLs include dressing, bathing, and toileting, without hands-on, stand-by, and/or verbal assistance from another individual. The claimant contends they were not able to perform the ADLs due to the electrocution injury to the right forearm and traumatic brain injury. The claimant is right hand dominant. Pertinent records are briefly summarized below.

- 25Jun2004 Orthopedic Clinic. (Day 7 after traumatic event). The claimant had full motion of the thumb and small finger. He also had full elbow flexion and extension. His hand was placed in a splint and he was given a profile for right upper extremity restriction.
- 27Jun2004 Aeromedical Evacuation Patient Record (Day 9 after traumatic event). He “ambulated well”. He was deemed capable of self-care to include handling his own medication. He did not need an attendant.
- 28Jun2004 Aeromedical Evacuation Patient Record (Day 10 after traumatic event) “Ambulated on board without incident”. His arm was in a cast. He reported elbow pain 9/10. He took his medication. He reported the pain was not incapacitating.
- 06Jul2004 Aeromedical Evacuation Patient Record (Day 18 after traumatic event). There were no issues with ambulation or self-care. There were no voiding or bowel problems. His right hand was in a splint, and he complained of no feeling in his 2nd, 3rd, and 4th [digits]. He stated he was able to carry his own bag. He “ambulate[s] well”.
- 23Jul2004 Physical Therapy NMC Portsmouth (day 35 after traumatic event). The right hand had abnormal posture with cupped palm positioning at rest. There was no tenderness on palpation of the fingers. Motion of the thumb was normal. Motion of the remaining digits was abnormal and there was finger weakness. Wrist motion was abnormal and there was wrist weakness. Potential for rehab was fair to good.
- 30Jul2004 PT NMC. There was no loss of consciousness. The claimant described his injury and progression of symptoms since the injury. He also described the sequence of events leading to the electrocution (his arm had been sweaty when it touched the generator) and described feeling the electrical current exiting out of fingers with immediate loss of control of his hand.
- 10Aug2004 Naval Medical Center. The patient reported that the electric current entered below his right elbow. In this visit, he reported that he was on a ladder repairing the generator and fell down several steps but did not fall completely off the ladder.

e. TBI related events

- Early 2004 in Iraq he sustained a concussion from “shrapnel and blasts”. The claimant reported these events during the 23Dec2008 TBI C&P Exam.
- 19Jun2004 electrocution and fall off ladder. No characteristic TBI symptoms were reported at the time to include loss of consciousness.
- 22Oct2004 CT of head showed no acute injury. The study was ordered for a fall with unconsciousness secondary to intoxication.

- One year later, in October 2005 Richmond VAMC notes indicated he drank 2 pitchers of beer and got into a car accident and sustained head injury which rendered him unconscious on 13Oct2005. He also had head abrasions, nystagmus, headache, and amnesia. Claimant has “been having significant memory, concentration, and emotional/anger problems secondary to PTSD and electrocution/head injury while serving in Iraq (The Inpatient Psychiatry Attending Note). The 13Oct2005 CT of head showed no acute changes.
- In August 2007, he reportedly fell and hit his head on a windowsill during his inpatient psychiatric hospitalization (24Oct2007 Neuropsychology Consult). 08Aug2007 CT of the head showed no acute changes.
- 23Dec2008 TBI C&P Exam. The claimant was diagnosed with moderate TBI.

f. Review of available records for the claimed period of 120 consecutive days from the traumatic injury, did not reveal report of symptoms by the claimant or documentation of observable objective signs/symptoms by treating providers, known to be characteristic of traumatic brain injury. Over one year after the traumatic injury, the claimant reported recent onset of memory issues (12Aug2005). Multiple symptoms that could be attributable to traumatic brain injury followed; however, behavioral health specialists noted co-morbid mental health diagnoses which made it impossible to determine which symptoms were due to co-morbid mental disorder(s) versus residuals of TBI (16Dec2005 Initial Evaluation for Post-Traumatic Stress Disorder and 23Dec2008 TBI Compensation and Pension Examination). It should also be noted that many of the symptoms developed following a high-speed motor vehicle accident on 13Oct2005 that rendered him unconscious and with other objective signs of head injury as well as resulted in a psychiatric hospitalization 4 days later. And finally, it is a well-established medical fact that the impact of traumatic brain injury is cumulative. This is important because the claimant was diagnosed with moderate TBI on 23Dec2008 after multiple reported/documented traumatic head (and brain) injuries. The 20Nov2013 statement from the claimant’s wife indicating that she has been his caregiver since 2007 is acknowledged. However, 2007 is well outside of the 120-day claimed time period from the date of injury in June 2004 required to support the claim for TSGLI benefits.

g. Seven days after the traumatic event, the claimant’s exam documented in the orthopedic note was consistent with the claimant being fully ambulatory (without use of assistive device) and with full use of the left arm. He also had full motion of the right thumb and right 5th digit to assist the left upper extremity with ADL completion. In-flight medical documentation showed no issues with voiding or bowel. The claimant did not require an attendant. Records showed the claimant flew in an outpatient status. He demonstrated himself to be fully capable of self-care including self-dosing of medication while in flights. The latter being an Instrumental Activity of Daily Living (IADL) which involves higher mental and physical capabilities than basic ADLs. While stateside, he attended medical appointments without documented use of an attendant. Based on records available for review, the medical documentation did not indicate the claimant

was unable to independently perform at least two ADLs for at least 30 consecutive days from the date of his traumatic injury.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant sustained a right forearm/hand electrocution injury to his forearm on 19 June 2004, in Iraq. He contends he was unable to independently perform the ADLs of dressing, bathing, and eating for a period of 120 days beginning on 19 June 2004. He and counsel contend that the denial of a claim for TSGLI benefits submitted by the applicant for injuries he sustained in the line of duty on 19 June 2004, be overturned and the benefits for which the applicant qualifies be paid. He and counsel further contend that from the date he was severely injured, and for a period of not less than 120 days, including 26 days of inpatient hospitalization and/or transport, the applicant was completely unable to perform multiple ADLs. The Board reviewed the applicant's contention and supporting statements, his medical and military records; and the TSGLI Procedural Guide. According to the TSGLI Procedures Guide, a claim for benefits based on ADLs, must show the claimant's inability to independently perform at least two ADLs for at least 30 consecutive days and that the inability to perform two or more ADLs for at least 30 days must also have been certified by a medical professional. The Board also reviewed, was persuaded by, and agreed with the medical advisor's thorough review and finding that the medical documentation did not indicate the applicant was unable to independently perform at least two ADLs for at least 30 consecutive days from the date of his traumatic injury.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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 to amend the decision of the ABCMR set forth in Docket Number AR20180009462 on 20 November 2020.

■

■ ■

■

■

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. 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 Traumatic Servicemember's Group Life Insurance (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)

2. 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.

3. 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).

4. 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.

5. 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.

6. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of

service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. 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//