ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 12 March 2025

DOCKET NUMBER: AR20230012348

APPLICANT REQUESTS: correction of his military records to show he was approved for a $75,000 Traumatic Servicemembers' Group Life Insurance (TSGLI) benefit for his inability to perform activities of daily living (ADL)

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney Brief
- Exhibit A - Records Relating to TSGLI Application and Appeals
- Exhibit B - Medical Records Detailing ADL Loss-Causing Injuries
- Exhibit C - Records Relating to Enlistment and Service
- Exhibit D - Excerpt from Combined Federal Regulation 9.21(c)(20)
- Exhibit E - U.S. Army Human Resources Command (AHRC) TSGLI Appeal Decisions
- Exhibit F - Department of Veterans Affairs (VA) TSGLI Procedural Guide
- Exhibit G - Statement from P- T-, Recovery Care Coordinator
- Exhibit H - Statement from Dr. S- G. K-
- Exhibit I - Caregiver Statement and Timeline from T- S-
- Exhibit J - Sworn Declaration from Applicant
- Exhibit K - Servicemembers' Group Life Insurance (SGLI) Election and Certificate

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 defers to his counsel who states, on behalf of the applicant, in pertinent part:

a. The primary argument in this case is that the applicant is entitled to an additional TSGLI payment of $50,000, based upon his inability to independently perform two or

more ADLs for 60 days, and the Army erred in only awarding TSGLI benefits for the first ADL loss milestone.

b. The applicant has served in the Army since 7 January 2009. On 16 September 2019, he sustained serious and traumatic injuries, while conducting combat operations in Wardak Province, Afghanistan. Specifically, he was shot in his upper left thigh from approximately five to eight meters away. He underwent an emergency irrigation and debridement (I&D). The surgeon who performed the I&D noted his rectus femoris and sartorius had been transected by the gunshot.

c. TSGLI applies to a traumatic injury resulting in the inability to perform at least two ADLs. The federal regulations define ADLs as bathing, continence, dressing, eating, and toileting. A member is entitled to a $25,000 payment for 15 consecutive days of ADL loss, and an additional $25,000 is awarded at 30, 60, and 90 consecutive days of ADL loss. The maximum monetary award is $100,000 for up to 90 consecutive days of loss. Therefore, because the applicant required physical and standby assistance to dress and transfer from 16 October 2019 through 15 November 2019, he is entitled to an additional $50,000 in TSGLI benefits for the full 60-day period.

d. AHRC disregarded the applicant's lay evidence by stating that medical documentation submitted in support of his claim did not confirm that his ADL loss continued for 60 consecutive days. AHRC's failure to consider all evidence presented or to provide an adequate explanation for their determinations are errors and injustices warranting correction by the Board.

e. In 2021, he submitted his initial application for inability to dress and transfer for 60 consecutive days. He filed his claim without the assistance of persons familiar with the requirements of submitting a claim for TSGLI benefits. As a result, his initial application was denied. After the Army's denial of his initial application, he filed a request for reconsideration, but the Army again denied his claim due to "insufficient medical documents" to corroborate his ADL loss.

f. In 2022, he filed an appeal of his claim with AHRC. In support of his appeal, he submitted physical therapy notes, a caregiver statement, and letters of support from his treating physician and surgeon. On 19 September 2022, AHRC approved his claim for $25,000 for inability to independently dress and transfer for 30 consecutive days. AHRC, however, denied his claim for the full 60 consecutive days, stating that the "medical documentation provided with [his] claim did not confirm [his] ADL loss continued up to or at the 60 day milestone."

g. In February 2023, he submitted another appeal to AHRC, seeking benefits for the full 60-day period. He submitted additional medical documentation and a supporting statement from his Recovery Care Coordinator. He was unaware that he had previously

exhausted his appeal rights with the lower Army TSGLI office. Accordingly, the Army informed him that his appeal should be submitted to the Board.

h. After his gunshot wound in Afghanistan, a surgeon performed I&D surgery and noted that the applicant's rectus femoris and sartorius had been transected by the gunshot resulting in severe muscular and nerve damage. Due to the near point blank range of the gunshot, the exit wound was too large to close, so the surgeon was forced to cut from the wound entrance to the exit and pull his skin from above the incision, at a 45 degree angle, down and over in order to cover and close the exit wound. Due to the severity of both the muscular and nerve damage, he was medically evacuated from Landstuhl back to Joint Base Lewis-McChord, where he arrived on 21 September 2019, after several days of aeromedical treatment, while in transit. Upon his arrival, providers there assessed his condition, noting that he was ambulating withe a cane. In addition to his gunshot wound and muscular damage, his traumatic injury resulted in "dense numbness" and "intermittent sharp pains" in his left leg, as well as weakness with hip flexion and knee extension. The injuries resulted in "extensive loss of function and lack of independence with ADL to include dressing and transferring."

i. The applicant returned home on 21 September 2019, but he was unable to dress or transfer himself independently from 16 September 2019 to 23 November 2019 - a total of 69 days. His wife, T- S-, a caregiver at an assisted living retirement community, at the time, was unable to work because the applicant's injury forced her to remain home and provide physical assistance with his dressing and transferring. He was unable to dress or transfer without his wife's assistance for a number of reasons: (1) his limited hip and knee motions; (2) weight bearing precautions for the lower left extremity; (3) pain; and (4) muscle weakness.

j. On 24 September 2019, he attended his first weekly physical therapy appointment. His physical therapist noted his level of function was a one out of ten on a ten-point scale. She documented that he was using a cane to assist him with mobility. She assessed his range of motion, noting that his hip extension range was zero degrees.

k. Throughout the course of his recovery, his wife maintained a detailed timeline of extensive hands-on ADL assistance that she provided to him. Her records provide that his severe muscular injury left him unable to bend his left leg or reach his left foot. Without her assistance, he was unable to guide his leg through his pants and unable to put on his shoes or socks Accordingly, he depended on his wife's assistance to dress, beginning from the time of his discharge on 21 September 2019. When undressing, he relied on his wife's hands-on assistance to remove his under pants, pants, socks, and shoes.

l. His nerve damage, as well as his lack of strength and motor function in his left quad and hip flexor, left him unable to transfer without his wife's hands-on assistance. In order to transfer in and out of seated positions, he required at least one hand to be placed under his underarms and physical support to be lowered into/out of seated positions. He similarly required assistance to transfer on and off the toilet. When he was lying down, he required his wife to place one hand behind his shoulders and another on his lower back to be pulled into a seated position. From the seated position, he then required hands-on assistance to stand up. In order to go from a standing to reclining position, he required physical assistance to transfer and be lowered into bed because he was unable to lift his left leg.

m. Throughout the rest of October 2019, he attended four more physical therapy appointments. At home, his wife continued to provide extensive hands-on assistance. Between 6 October 2019 and 26 October 2019, his wife began each day by physically assisting him from bed into a seated position, rotating his legs off the bed, then pulling him onto his feet so he could ambulate with his cane. She would then accompany him to their couch, where she physically assisted him with lowering himself into a seated position. There, because he could not independently dress, she provided hands-on assistance. She would pull his pants up to his waist, then put on his socks and shoes. Each night, she removed his shoes, socks, and pants as he was unable to undress independently. Then she would assist him with lowering himself from a standing to seated position on their bed. Because he could not lift his left leg, she would lift it for him, rotating it onto the bed, then lowering him into a laying down position.

n. His wife continued providing hands-on assistance on a daily basis through 7 November 2019 when he had an additional physical therapy appointment. The notes reflect his functional dependence at home, where he still relied on his wife to dress and transfer him on a daily basis. Although he was now able to independently sit up in bed, he still could not stand up from bed without his wife physically assisting him. He was still unable to dress his lower body without his wife physically pulling his pants to his waist and putting his socks on shoes on for him. Each night, his limitations of motion - exacerbated by his fatigue from extensive physical therapy - left him unable to safely lower himself from a standing position in a controlled manner, making him a fall risk. Accordingly, he still relied on his wife's assistance to transfer from a standing position to a seated position, as well a to undress his lower body. The physical assistance was required on a daily basis until 23 November 2019, when he was first able to begin independently transferring.

o. A veteran is considered unable to independently perform an ADL, when they require either "physical" or "stand-by" assistance from another person to complete the ADL. Physical assistance refers to "hands-on assistance from another person to perform the ADL." Stand-by assistance is defined as the need to have another person "within arm's reach" to perform the ADL "because the member's ability fluctuates." In

this case, the applicant meets all of the TSGLI eligibility requirements for inability to independently perform ADLs because (1) he, as a result of a traumatic event, sustained a "traumatic injury" after 7 October 2001, and (2) the injury, as confirmed by his medical records, physical therapist, and caregiver, caused him to undergo a qualifying scheduled loss: the inability to dress and transfer for 60 consecutive days.

p. The boards erred in denying him TSGLI benefits for the full 60 consecutive days that he was unable to independently dress and transfer, as a direct result of his traumatic injury. The Board has the authority and the opportunity to correct this injustice and should do so in consideration of this appeal. Accordingly, he respectfully requests the Board grant his appeal and correct his Army records to show he was approved for a $75,000 TSGLI benefit for his inability to independently dress and transfer for more than 60 days. The entire attorney brief is available for the Board's review.

3. The applicant provides the following documents:

a. Records relating to his TSGLI application and appeals, are available for the Board's review.

b. Medical records detailing his ADL loss-causing injuries are available for the Board's review and will be reviewed by the Army Review Boards Agency (ARBA) Medical Section, who will provide an advisory opinion.

c. His service records which show his enlistment, awards, and promotions are available for the Board's review.

d. Statement from P- T-, Recovery Care Coordinator, 19 May 2022, states in pertinent part, Mr. T- observed the applicant's ADL losses, for which a continuous timeline justifies compensation, that he required full-time assistance from the caretaker, during his time of recovery. On 16 September 2019, he received gunshot wounds which caused him to be hospitalized. Upon his discharge on 21 September 2019, he required immediate assistance with wound care and was unable to function independently with dressing and transferring. He continued to be unable to independently dress and transfer himself, due to his very limited hip and knee range of motion and weight bearing precautions, until 23 November 2019. Mr. T- requests review of the new and relevant information provided by the applicant and approve him for compensation for his incurred ADL Losses. The entire letter, to include a timeline of events, is available for the Board's review.

e. A letter from Dr. S- G. K-, 28 September 2021, is to explain the applicant's difficulties with ADLs and loss of function from 16 September 2019 to 23 November 2019. The injuries the applicant sustained resulted in extensive loss of function and lack of independence with ADLs to include dressing and transferring. He

required physical assistance, due to limited hip and knee range of motions, weight bearing precautions for the left lower extremity, pain, and muscle weakness. The entire letter is available for the Board's review.

f. Home Care notes from his wife, from 22 September 2019 through 23 November 2019 which is available for the Board's review.

g. Applicant's declaration, which states in pertinent part, on 16 September 2019, he sustained a gunshot wound - from a short range of five to eight meters away - to his upper-left thigh, while conducting combat operations. He had surgery and the surgeon determined he had severed muscles in his left quadriceps, as well as the femoral nerve, causing severe muscular and nerve damage. On 21 September 2019, he was released from the hospital and returned home; however, his wife, was forced to remain home and provide him with both physical and standby assistance with dressing and transferring because he could not bend his left leg and experiences pain and muscle weakness. Without his wife's assistance, he was unable to put on his pants, shoes, and socks. He also required physical assistance, from his wife, to move in and out of bed as well as on or off the toilet. He required this assistance from 16 September 2019 through 23 November 2019. The entire statement is available for the Board's review.

h. SGLI Election and Certificate, 19 November 2013, shows he had SGLI coverage in the amount of $400,000 and his beneficiary was his wife.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army on 7 January 2009. He remains in the Regular Army through immediate reenlistments.

b. Documentation showing, he requested TSGLI beginning on or about 9 April 2021. On 6 November 2023, AHRC responded to his appeal request for TSGLI stating after reviewing the claim and supporting documentation, AHRC found his claims concerning losses associated with ADL from the claimed traumatic event on 16 September 2019 do not qualify for additional TSGLI payment. The TSGLI documents are available for the Boards review.

5. On 21 February 2024, AHRC responded to a request for information and provided a TSGLI case summary, which is available for the Board's review and will be reviewed by the ARBA Medical Section.

6. MEDICAL REVIEW:

1. 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, the Medical Protection System Medical Health Assessments (MEDPROS MHA) portal, and/or the Interactive Personnel Electronic Records Management System (iPERMS).

2. The applicant is applying to the ABCMR requesting reversal of the United States Army Human Resources Command's and the Adjutant General of the Army's denials of his application for additional benefits from the Traumatic Servicemember's Group Life Insurance (TSGLI) program. On his TSLGI application, he is seeking the $50,000 TSLGI benefit for having been unable to independently perform the two of the six activities of daily living (ADLs) of dressing and transferring, with or without modification and/or assistive devices, for more than 60 but less than 120 days after sustaining a gunshot wound to his left thigh on 16 September 2019 while serving in Afghanistan. There was no bone, nerve, or vessel injury, but there was injury to the rectus femoris and sartorius muscles which was repaired.

3. The Record of Proceedings (ROP) details the circumstances of the case. To date, the applicant has received a $25,000 payment from the TSLGI program for the inability to perform two or more ADLs for 30 days. The next payment milestone for the loss of the ability to perform two or more ADLs due to trauma other than a traumatic brain injury (TBI) is at 60 consecutive days following his injury (14 November 2019).

4. The Office of The Adjutant General's 6 November 2023 6-page explanation of denial is the third denial for this claim. It, along with the 10-page provider review done for this case (pages 513 – 552 of the supporting documents), do an excellent job of both laying out the timeline of the applicant's recovery and the reasoning for the denial. Hence, this review will concentrate on pointing out some to the pertinent facts and laws rather than repeating the 6-page explanation of denial to the applicant and 10-page provider review.

5. 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:

a. Physical assistance (hands-on) or,

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

c. Verbal assistance (must be instructed)

6. 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."

7. Applicant's counsel argues:

"The Army Human Resources Command ("HRC") disregarded SFC Smith's lay evidence by stating that medical documentation submitted in support of his claim did not confirm that his ADL loss continued for 60 consecutive days.

The HRC's failure to consider all evidence presented or to provide an adequate explanation for their determinations are errors and injustices warranting correction by the Army Board for Correction of Military Records ("ABCMR")."

8. However, under the laws and regulations governing the TSGLI Program (38 U.S.C. 1980A(b)(1)(H), (b)(2)(D), 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.

9. The OTAG memorandum goes into detail on the review of submitted statements.

10. All of the applicant's medical records, personal statements, and witness statements were reviewed and considered. It appears no new medical evidence was submitted with this application.

11. Based on the information currently available, it is the opinion of the ARBA medical advisor that there is insufficient probative medical documentation supporting the applicant's claim that he was unable to independently dress and transfer, with or without modification and/or assistive devices, 60 or more consecutive days following his 16 September 2019 traumatic injury.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request, available military records and medical review, the Board determined concurred with the advising opinion of the ARBA medical advisor that there is insufficient probative medical documentation supporting the applicant's claim that he was unable to independently dress and transfer, with or without modification and/or assistive devices, 60 or more consecutive days.

2. The Board noted the applicant's declaration wherein he described his gunshot wound sustained in Wardak Province, Afghanistan, and the subsequent muscular and nerve damage that required his wife's continuous assistance with dressing and transferring. The Board acknowledged the severity of the injury and the applicant's reliance on his spouse for physical support, TSGLI regulations require contemporaneous medical documentation to substantiate each milestone of ADL loss. The applicant's declaration, caregiver notes, and retrospective physician letters, though sincere and detailed, do not meet the evidentiary threshold for confirming uninterrupted ADL loss through the 60-day milestone. The Board also reviewed the applicant's SGLI Election and Certificate dated 19 November 2013, which confirms coverage in the amount of $400,000 with his wife designated as beneficiary, and his DD Form 4 showing continuous service in the Regular Army since 7 January 2009.

3. Furthermore, the Board considered documentation showing that on 6 November 2023, AHRC responded to his appeal request for TSGLI benefits, finding that his claims concerning ADL losses from the 16 September 2019 traumatic event did not qualify for additional payment beyond the $25,000 already awarded. Based on the totality of the record, the Board concurs with AHRC's determination that the applicant was properly

compensated for the initial 30-day milestone, and finds no error or injustice warranting correction of his military records to reflect entitlement to an additional $50,000 TSGLI payment. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

CHAIRPERSON

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, U.S. Code, 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 TSGLI program is an automatic provision under SGLI. TSGLI provides for payment to Servicemembers who are severely injured (on or off duty) as the result of a traumatic event and suffer a loss that qualifies for payment under TSGLI. TSGLI is designed to help traumatically injured Servicemembers and their families with the financial burdens associated with recovering from a severe injury. TSGLI payments range from $25,000 to $100,000 based on the qualifying loss suffered. The benefit is paid to the member, someone acting on the member's behalf if the member is incompetent, or the members' SGLI beneficiary if the member is deceased. TSGLI coverage was added to SGLI policies effective 1 December 2005 with a retroactive provision covering injuries from 7 October 2001 through 30 November 2005. All members covered under SGLI who experience a traumatic event that directly results in a traumatic injury causing a scheduled loss defined under the program are eligible for TSGLI payment.

3. 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)

4. 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 AHRC official TSGLI website lists two types of TSGLI losses, categorized as Part I and Part II. Each loss has a corresponding payment amount.

5. 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 ADL.

6. Part II losses include traumatic injuries resulting in the inability to perform at least two ADL 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 is required 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.

7. The TSGLI Procedures Guide 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. External Force: An external force is any sudden or violent motion causing an unexpected impact from a source outside of the body and independent of body mechanics.

c. Body Mechanics: Body mechanics is the use of one's body in production of motion or posture of the body, including movements during routine daily activities. 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. For example, a member who sprains an ankle while running in a basketball game would not be eligible for TSGLI payment because the loss was due to routine body mechanics involved in the twisting of the ankle while running.

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

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

f. Scheduled Loss: A scheduled loss is a condition listed in the TSGLI Schedule of Losses if that condition is directly caused by a traumatic injury. The Schedule of Losses lists all covered losses and payment amounts.

8. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//