

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2025

DOCKET NUMBER: AR20230012354

APPLICANT REQUESTS: through counsel, approval of his claim for Traumatic Servicemembers' Group Life Insurance (TSGLI) benefits in the amount of \$100,000

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings, dated 4 April 2016
- Memorandum Subject: Request for Rating, dated 6 May 2016
- Disability Evaluation System Proposed Rating, dated 15 July 2016
- A letter issued by the Department of Veterans Affairs (VA), dated 18 July 2016
- DA Form 199 (Informal PEB Proceedings), dated 19 July 2016
- Orders 238-0030, dated 25 August 2016
- Orders 253-0012, dated 9 September 2016
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- VA Rating Decision, dated 11 January 2017
- A letter issued by the VA, dated 12 Jan. 2017
- VA Rating Decision, dated 21 September 2017
- Leave and Earning Statements (LESs)
- Legal Brief to Prudential Insurance Company of America
- TSGLI response to counsel, 22 February 2022
- Application for TSGLI Benefits, dated 6 September 2023
- TSGLI Appeal Request, dated 6 September 2023
- TSGLI 10 Year Review handout
- Medical Records (316 pages)

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 provides, and the service record shows he enlisted in the Regular Army on 5 October 1994.
3. On 18 January 2003, the applicant was performing a parachute jump at 1,250 feet when the parachute became tangled with his legs causing his leg to be forcibly abducted and to sustain a parachute landing fall injury.
4. On 30 June 2003, the applicant underwent a major full reconstructive left knee operation and was placed on convalescent leave for 30 days and required physical assistance from another individual for 120 days with bathing, dressing, toileting, and transferring. Subsequent to the incident that transpired and for no less than 120 days, he required physical assistance from another individual with bathing, dressing, toileting, and transferring.
5. On 1 February 2016, the applicant, thru counsel, submitted a request to the U.S. Human Resources Command (HRC) a TSGLI claim for injuries he sustained in 2003.
6. On 19 July 2016, an informal physical evaluation board convened and found the applicant physically unfit with a recommended disability rating of 70 percent (%) for unfit conditions, with a disposition of permanent disability retirement, to include a rating of 10% for left knee derangement with arthritis, instability, chronic anterior cruciate ligament partial tear or sprain and chondromalacia patellae and 10% for left knee derangement with arthritis, limitation of motion, chronic anterior cruciate ligament partial tear or sprain and chondromalacia patellae. The VA later awarded the applicant a disability rating of 100% for all service-connected disabilities.
7. On 6 September 2016, HRC, Special Compensation Branch, TSGLI denied the applicant's claim for hospitalization and the loss of Activities of Daily Living (ADLs) for 120 days due to not meeting the TSGLI medical standard for approval.
8. On 2 November 2016, the applicant, submitted an appeal to HRC for TSGLI; however, his record is void and the applicant does not provide a response from HRC.
9. On 30 December 2016, he was honorably retired due to a permanent disability. He completed 22 years, 2 months, and 26 days of active-duty service.
10. On 14 April 2020 HRC responded to the applicant's counsel, denying his TSGLI appeal based on not meeting the medical standard for approval (the applicant's request was not provided).
11. On 21 September 2021, the applicant submitted another appeal for TSGLI and on 22 February 2022, HRC, The Adjutant General, denied his request. It states that his

record does not support basic ADL loss at the 30-day milestone. For this case, the applicant's only significant injury was to his left knee, thus indicating his arms, back, right leg, left hip, and left ankle were uninjured and fully functioning. The 21 January 2003 (Day 4 after the traumatic event), Narrative Summary documented he was discharged from the hospital that day, and during his hospital stay, he did well after receiving crutch training. The medical record showed he had progressive improvement of his condition and symptoms without any significant complications following his hospital discharge.

12. On 6 September 2023, the applicant submitted another appeal to HRC for TSGLI; however, no respond from HRC was provided or found in the applicant's record.

13. The applicant provides medical documentation in support of his request, which will be reviewed and discussed by the Medical Staff at the Army Review Boards Agency (ARBA).

14. In a request for an advisory opinion, on 24 April 2024, HRC, Chief, Special Compensation Branch, responded by providing a chronological synopsis of the events in question regarding the applicant's request for TSGLI and their multi decisions of denial to deny the applicant his requests based on insufficient evidence to show the loss of ADL's for a period of 120 days. They did not provide an opinion.

15. 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 \$100,000 TSLGI benefit for having been unable to independently perform the four of the six activities of daily living (ADLs) of dressing, toileting, bathing, and transferring, with or without modification and/or assistive devices, for more than 120 days (18 January 2003 – 15 September 2003) after sustaining a left knee dislocation in a parachute landing fall on 18 January 2003.

3. The Record of Proceedings (ROP) details the circumstances of the case. To date, the applicant has not received a payment from the TSLGI program. The first 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 30 consecutive days following his injury (16 February 2003).

4. The Office of The Adjutant General's 22 February 2022 explanation of denial is the third denial for this claim. It, along with the 10-page provider review done for this case (pages 701 – 711 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 TSLGI 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 TSLGI 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. However, under the laws and regulations governing the TSLGI 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.

8. The OTAG memorandum goes into detail on the review of submitted statements.
9. Submitted documentation shows the applicant was referred to the Disability Evaluation System in 2016 for anxiety disorder, a right knee issue from 2009, and residuals of his left knee injury. On 19 July 2016, his informal PEB recommended he be permanently retired for physical disability with a rating of 70%.
10. The applicant has also submitted multiple benefits letters from the VA. However, neither his 2016 retirement for disability nor his VA benefits have any bearing on his TSGLI claim for an injury in 2003.
11. All of the applicant's medical records, personal statements, and witness statements were reviewed and considered. When compared with the OTAG denial and reviewing physicians documentation, no significant omissions, errors, or discrepancies were identified.
12. Based on the information currently available, it is the opinion of the ARBA medical advisor that there is insufficient probative medical documentation supporting reversal of the OTAG's denial of the applicant's claim that he was unable to independently dress, toilet, bath and transfer, with or without modification and/or assistive devices, for 30 or more consecutive days following his 18 January traumatic injury.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendations outlined in the medical review, the Board concluded there was insufficient evidence warranting a reversal of the previous decision issued by OTAG denying the applicant's TSGLI application.

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.

//SIGNED//

X

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, United States Code (USC) (Armed Forces), 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. Army Regulation 15-185 Army Board for Correction of Military Records (ABCMR), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Public Law 109-13 (The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief 2005) signed by the President on 11 May 2005 established the TSGLI Program. The U.S. Army Combat-Related Special Compensation Office has been designated as the lead agent for implementing the Army TSGLI Program.

a. 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)

b. 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.

c. 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).

d. 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.

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

(1) 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

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

(3) 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.

4. Title 10, United States Code (USC) (Armed Forces), section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//