

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20240001340

APPLICANT REQUESTS:

- in effect, reversal of the U.S. Army Human Resources Command, Special Compensation Branch that denied his multiple Traumatic Servicemember's Group Life Insurance (TSGLI) claims
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement

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 states:

a. He is appealing his TSGLI decision because some of the decision is incorrect. He never applied for any loss of activities of daily living (ADL) in 1998 or 1999. He only applied for loss of ADLs in 2012. In 2012, his TSGLI claim was denied because he was told his injury and claim were over 2 years apart, but he did not lose anything until he was diagnosed and had surgery as a result in 2012. So, his claim and losses were at the same time.

b. His time allotted to claim a loss should be extended. When he first applied for ADL loss, his claim and loss actually occurred at the same time. He is to this day still suffering from these issues and they will be with him for the rest of his life.

c. His traumatic injury occurred in February 2009, while in Kuwait and he was in a documented rollover. In 2012, he was diagnosed with post-traumatic stress disorder

(PTSD) traumatic brain injury (TBI), depression, and other things. He claimed all of this in 2012, when he initially sent in his first claim. He was injured in 2009 and did not have a loss until 2012. His loss in 2012 was a result of the accident in 2009. He believes his claim was misjudged because the time he filed his claim and the date of his loss were actually at the same time. All of the TBIs he claimed were true and he has been sending paperwork in since 2012, when he first applied for loss of ADL.

d. He also applied for caregiver status for his wife and it was also denied. He was told he would get home healthcare, but it took them over 2 1/2 weeks to get to him. Had it not been for his wife being there for his surgery, driving over the washed out roads from the hurricane to get back home, he would not have had anyone. His arms did not work and he could barely move. He could not even open medicine to take it. He could not bathe or brush his teeth. No one even brought him food to eat; and he could not cook for himself. She was all the help he had.

e. He did not have any neck pain until the rollover. In 1999, there was not a traumatic event; he was injured. It was not his neck that was involved in the injury; it was his face. He received Motrin, bandages, and gauze. He was sent back to the unit and continued until he was discharged in December 1999. He was then out of the military until 2008, when he enlisted again. In 2009, he deployed to Kuwait and in February was involved in the rollover. He was stationed in Germany in 2010 and in 2011, was sent through the Medical Evaluation Board (MEB) system. The TBI and other things were found before 2012 and afterward. He had surgery because of the rollover that occurred in 2009. He claimed ADL loss when he had surgery, which is the same time he applied for TSGLI.

f. He was never hit anywhere by his neck in 1998/1999. He was only hit in the face and was given Motrin and bandages. There are not any records of it because they never saw him. He did not know that the accident had to happen in war. His only trauma happened in Kuwait in 2009, when he was injured. Things started being noticed in 2010 and 2011, when he went through the MEB. In 2012 he was diagnosed with spinal issues and had surgery, all as a result of the accident.

g. His loss occurred at the same time he was diagnosed and had to have surgery, in 2012. That is also when he filed his first TSGLI claim. He claimed loss of ADLs and caregiver status for his wife in 2012 and both were denied. He could not take care of himself and had to rely solely on his wife because he did not receive home healthcare.

3. The applicant initially enlisted in the Regular Army on 29 January 1998, and was awarded the Military Occupational Specialty (MOS) 92G (Food Service Specialist). He was given a general discharge under honorable conditions on 2 December 1999, and was credited with 1 year, 10 months, and 4 days of net active service this period.

4. The applicant again enlisted in the Regular Army on 23 May 2008, and was awarded the MOS 88M (Motor Transport Operator).

5. The exact dates of the applicant's deployment to Kuwait are not in his available records for review.

6. The applicant's service records contain Headquarters, 3rd Infantry Division and Fort Stewart Orders 353-507, dated 18 December 2008, deploying him with his unit to the Central Command (CENTCOM) area of responsibility (AOR) in support of Operation Iraqi Freedom (OIF) effective 20 January 2009, for a period of 365 days or until completion of mission.

7. An Enlisted Record Brief (ERB) in the applicant's service records shows he was deployed to Kuwait from 24 February 2008 through 24 May 2009. As 24 February 2008, predates the applicant's second enlistment in the Regular Army, this date is presumed to be a typographical error intended to read deployment to Kuwait from 24 February 2009 through 24 May 2009.

8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he deployed to Haiti from 23 January 2010 through 24 March 2010.

9. A U.S. Army Human Resources Command (AHRC) TSGLI Intake Form shows:

a. The applicant's initial TSGLI claim was received in the AHRC TSGLI office on 21 March 2013.

b. In support of his initial TSGLI claim, the applicant submitted the following documents, all of which have been provided in full to the Board for review:

- Standard Form 600 (Chronological Record of Medical Care), 6 February 2009
- Radiologic Examination Report, 15 August 2012
- Standard Form 600, 14 September 2012
- Standard Form 600, 11 October 2012
- Operative Report, 5 November 2012
- initial SGLV 8600 (Application for TSGLI Benefits), 10 December 2012

10. The applicant's initial SGLV 8600, dated 10 December 2012, shows:

a. Part A (Member's Claim Information and Authorization) shows the applicant indicated:

(1) His traumatic injury occurred in 1998 when he was working on Kelly Hill, Fort Benning, GA, and he got hit in the face and neck with a 5-ton truck tire. In 2009, while

downrange in Kuwait, he was in a rollover when the seatbelt popped loose while upside down and he fell on top of his head, sustaining neck and back injuries with concussion, migraines, dizziness, blurred vision, and pain.

(2) In an additional included statement, he further indicated the February 2009 rollover exercise in Kuwait resulted in spinal problems and pain. In 2012, he underwent surgery on his upper back as a result of the two incidents. He received a laminectomy and fusion of the spine at C-3 through C-7. The surgery caused neurological issues with his upper right side and right arm and hand with numbness of his fingers. Additionally, in 2010 he deployed to Haiti for earthquake relief and upon returning, his unit disbanded and they had to move furniture and to vacate the unit, during which he injured his right hand, smashing it between furniture and against the door and wall. He was told he may have a bone out of place and in February 2013, he had a metacarpal loss of the right hand and was told the tendons in his right wrist were no mendable and would have to be fused.

b. Part B (Medical Professional Statement) shows Neurosurgeon, Dr. N_____ G_____ signed the form on 3 December 2012, indicating:

(1) The applicant's claim was for hospitalization for other traumatic injury from 5 November 2012 through 9 November 2012, where he underwent significant multi-level cervical fusion. He remained inpatient for 5 days and required assistance from his wife to perform almost all ADLS. He continues to wear a collar and is still unable to drive.

(2) The applicant required physical assistance (hands-on) and standby assistance with the following ADLs for the following periods of time:

- unable to bathe independently from 5 November 2012 - 3 December 2012
- unable to dress independently from 5 November 2012 - 3 December 2012
- unable to eat independently from 5 November 2012 - 26 November 2012
- unable to toilet independently from 5 November 2012 - 3 December 2012
- unable to transfer independently from 5 November 2012 - 3 December 2012

11. An AHRC Special Compensations Branch (TSGLI) letter to the applicant, dated 25 March 2013, informed the applicant that his claim for TSGLI benefits was reviewed and he did not meet the eligibility requirements. His claim could not be processed because he did not suffer a scheduled loss within 2 years (730 days) of his traumatic event. The documentation provided indicates his claimed traumatic event occurred on 1998 and 2009 and his claimed losses began/occurred in November 2012, which is not within 2 years (730 days) of his event(s).

12. A second AHRC TSGLI Intake Form shows a second TSGLI claim was received from the applicant on 22 April 2013, but the application was incomplete. That application

consisted of the applicant's self-authored statement, indicating he was told by the TSGLI office that he did not qualify because he did not file his paperwork in a timely manner. The reason he did not turn it in sooner is because TSGLI did not exist when he got hurt in 1998 and when he got hurt in 2009, he was downrange. Now, because of the traumas he incurred in 1998 and 2009, he had to have back surgery in 2012, which is when he first learned of TSGLI. He should not be disqualified because he did not know of TSGLI earlier and would like his case to be looked at again.

13. An AHRC Special Compensations Branch (TSGLI) letter, dated 24 April 2013, informed the applicant that they received his incomplete TSGLI application and provided him with a checklist of items required in order process his claim, to include a complete TSGLI Application form with medical provider input.

14. U.S. Army Installation Management Command Orders 302-2232, dated 29 October 2013, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability effective 15 January 2014, with a disability rating of 70 percent.

15. An AHRC Special Compensations Branch (TSGLI) letter, dated 4 December 2013, informed the applicant that they received his incomplete TSGLI application and provided him with a checklist of items required in order process his claim, to include a complete TSGLI Application form and documentation to support his claimed losses covering the period of loss claimed from February 2009 through June 2009.

16. The applicant's DD Form 214 shows he was retired due to permanent disability effective 15 January 2014 and was credited with 5 years, 7 months, and 23 days of net active service this period.

17. A third AHRC TSGLI Intake Form shows the AHRC TSGLI office received an incomplete request for reconsideration from the applicant on 22 January 2018. The applicant's request included the following documents, all of which have been provided in full to the Board for review:

- DA Form 5181-R (Screening Note of Acute Medical Care), 15 June 1998
- DA Form 5181-R, 20 August 1998
- DA Form 5181-R, 29 June 1999
- Operative Report, 5 November 2012
- Standard Form 600, 27 November 2012
- Standard Form 600, 6 February 2013
- SGLV 8600, 20 January 2018

18. The applicant's SGLV 8600, dated 20 January 2018, indicates in Part A:

a. He was injured in two different enlistments, in 1998-1999 and in 2009. In his first enlistment in 1998-1999, he was working in the motor pool and was struck in the face and neck with a 5-ton truck tire. He went to the Troop Medical Clinic (TMC) for back and neck pain, blurred vision, and migraines. He got out of the Army in 1999 and after a break in service enlisted again in 2008. In 2009, he went to Kuwait and in February 2009, was injured in a rollover exercise when his seatbelt popped loose while he was upside down, landing on top of his head with all of his gear. He saw stars, was dizzy, felt like his neck snapped, had migraines, neck, and back pain.

b. He further indicates on the form he was hospitalized due to TBI and other traumatic injury beginning on 5 November 2012, with the date of discharge not listed, and that he had a loss of speech beginning on 11 October 2012. He states he had a laminectomy and fusion of C-3 through C-7. After surgery, his right arm was dead and useless and he required a neck and back brace. He could not bathe himself, get in and out of bed, needed help to the toilet, and to dress and groom himself because he is right-hand dominant. Most of the time he had to urinate in a urinal jug because of the pain. His wife had to take a 2-week leave of absence from work to take care of him. When she left, he had to have home healthcare for the next 3 to 4 months.

c. Part B is not completed by a medical professional.

19. An AHRC Special Compensation Branch (TSGLI) letter dated 16 March 2018, informed the applicant that in order to process his request for TSGLI reconsideration, they must receive a completed SGLV 8600A (TSGLI Appeal Request Form) and that his TSGLI application could not be processed as is. Once the Army TSGLI program office receives the form, they will add it to his claim and process it accordingly.

20. An SGLV 8600A (TSGLI Appeal Request Form), dated 20 March 2018, shows the applicant provided AHRC the requisite appeal request form accompanied by the following documents, which have been provided in full to the Board for review:

- Headquarters, 3rd Infantry Division and Fort Stewart Orders 353-507, 18 December 2008
- Office or Other Outpatient Services medical document, dated 17 January 2013

21. The applicant's SGLV 8600A, dated 20 March 2018, shows he indicated on the form the new evidence he was providing:

- he was in Kuwait in February 2009 and he provided orders
- he had surgery in 2012 because of his accident

- his loss occurred within 730 days of the traumatic event; timeline from the rollover until the surgery
- he was involved in a rollover in Kuwait while in war
- his timeline of events shows he was injured in Kuwait in February 2009; was mobilized to Haiti in January 2010; was stationed in Germany in 2010, then was stationed at Fort Benning, GA, and had both his MEB and surgery in 2012

22. An AHRC Special Compensation Branch (TSGLI) letter dated 25 July 2018, shows:

a. The applicant was informed the Army TSGLI certifying office evaluated his claim for TSGLI benefits for his event in Kuwait in February 2009, and his claim was not approved. The following losses were evaluated with regard to this decision:

- ADL other than TBI up to 30 days
- loss of speech

b. His claim for the above losses was not approved because his losses did not occur within the prescribed time period defined by regulation. Under the laws and regulations governing the TSGLI Program, his losses must have occurred within 730 days (2 years) of the traumatic injury caused by the traumatic event.

c. Medical documentation provided with his claim indicates his losses occurred in 2012, which is more than 2 years after February 2009, the date of his traumatic injury caused by the traumatic event. The applicant was advised of his right to appeal this decision in writing within 1 year of the date of this letter.

23. An AHRC Special Compensation Branch (TSGLI) letter, dated 18 August 2022, informed the applicant that the Army TSGLI office received his incomplete TSGLI application and in order to process his TSGLI claim, he would need to provide a complete application and provided him a checklist of required items.

24. A letter from the Office of The Adjutant General, dated 29 June 2023, shows:

a. The applicant was advised that the Army TSGLI program office received his appeal request and after reviewing the supporting documentation, found his claims concerning losses associated with ADLs for the claimed traumatic events in 1998/1999 and on 4 February 2009, in Kuwait, do not qualify for TSGLI payment.

b. For TSGLI purposes, scheduled losses (i.e., loss of ADLs) must be caused by traumatic injuries from a single traumatic event (Title 38 of the Code of Federal Regulation (CFR), section 9.20 (b), (c), and (e) (1), (2), and (5)). Title 38 CFR, Section 9.20 (d)(2) states the eligibility requirements for payment of traumatic injury protection benefits are that a member "must suffer a scheduled loss that is a direct result of a

traumatic injury and no other cause." The TSGLI Procedural Guide, Part 1 (page 5) further clarifies a direct result as "there must be a clear connection between the traumatic event and resulting loss and no other factor aside from the traumatic event can play a part in causing the loss." Title 38 CFR, Section 9.20 also states in (b)(1)(ii) the traumatic event must occur on or after 7 October 2001, while section 9.20 (d)(4) states the member "must suffer a scheduled loss within 2 years (730 days) of the traumatic injury."

c. Qualifying Other Traumatic Injury (OTI) related ADL loss claims will pay \$25,000.00 at the 30, 60, 90, and 120 consecutive day milestones, per Title 38 CFR, section 9.20 (f)(20) and the TSGLI Procedural Guide, Part 4 (7)(g) (page 22). Qualifying Traumatic Brain Injury (TBI) related ADL loss claims will pay \$25,000.00 at the 15, 30, 60, and 90 consecutive day milestones, per Title 38 CFR, section 9.20 (f)(17) and the TSGLI Procedural Guide, Part 4 (7)(c) (page 20).

d. Loss of TSGLI program-specific ADLs is defined in Title 38 CFR, section 9.20 (d)(6)(vi) as follows "the term inability to carry out activities of daily living means the inability to independently perform at least two of the six following functions: (A) Bathing, (B) Continence, (C) Dressing, (D) Eating, (E) Toileting, (F) Transferring in or out of a bed or chair with or without equipment." The TSGLI Procedural Guide, Part 4 (7)(a) (page 18-19) 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."

e. For your OTI-related AOL loss claim, the applicant claimed ADL loss of bathing, dressing, toileting, and transferring as related to his neck condition, especially after his 29 April 2012 spinal fusion surgery. He claimed his neck condition occurred secondary to two separate traumatic events, one in 1998/1999 and another on 4 February 2009. His initially claimed traumatic event of a tire hitting him in the face and neck during 1998 or 1999 would not be a TSGLI qualifying traumatic event, because it occurred prior to 7 October 2001. Any injury or scheduled loss resulting from this 1998/1999 event would not be eligible for TSGLI benefits. Furthermore, he did not present any medical documents from that time to support this claimed 1998/1999 traumatic event. The three presented medical documents from 15 June 1998, 20 August 1998, and 28 June 1999, did not mention the claimed tire-to-face/neck traumatic event, but rather mentioned no direct trauma, a previous motor vehicle accident, or straining while doing a leg press resulting in headaches or back pain.

f. The 4 February 2009 traumatic event concerning a rollover training accident where he landed on his head would be a qualifying TSGLI traumatic event. However, the medical notes from 5 February 2009, 23 February 2009, 23 April 2010, and 27 June 2010 documented that his neck pain was present and worsening prior to the 4 February 2009 traumatic event, whether it was in 2008 during his deployment or the 1998/1999

claimed traumatic event. Thus, this neck pain was caused by multiple traumatic events and the progressive wear and tear of his deployment, and any scheduled loss related to this neck pain would not be eligible for TSGLI benefits.

g. Furthermore, the available medical record did not show any basic ADL loss during the first 2 years after the claimed 4 February 2009 traumatic event. Instead, it showed a history of intermittent neck pain with a normal electromyogram/nerve conduction study and no consistent signs or symptoms of a nerve root compression. In fact, the 27 June 2010 Physical Therapy Note documented he was able to complete all military activities. Thus, there was no period of 30 consecutive days of basic ADL loss within 2 years of his claimed 4 February 2009 traumatic event. Therefore, any TSGLI ADL loss claim would not qualify for benefits.

h. The applicant claimed he experienced 30 days of basic ADL loss of bathing, dressing, toileting, and transferring after his 5 November 2012 neck surgery. Unfortunately, this surgery occurred greater than 2 years after the claimed 4 February 2009 traumatic event, thus any potential ADL loss caused by this surgery would not be eligible for TSGLI benefits. Furthermore, the medical record does not support the claim of 30 consecutive days of ADL loss of bathing, dressing, toileting, and transferring after the 5 November 2012 surgery. The 8 November 2012 Case Management Note documented he was able to ambulate without assistance. The 20 November 2012 Neurosurgery Follow-Up Note stated his left arm symptoms had resolved, but he had developed some right arm pain and numbness. In the 21 November 2012 Case Management Note, the applicant reported he was walking around, and Home Health Occupational Therapy was working with him on strengthening. He had diminished neck range of motion (ROM) but a normal gait in the 6 December 2012 Neurosurgery Note. The 8 January 2013 Physical Therapy Note showed his neck active ROM was 50 percent in rotation and side-bending and 25 percent in forward flexion and extension, while the shoulder active ROM was zero-to-120 degrees forward flexion and zero-to-95 degrees abduction. It also recorded right arm strength that was diminished at 3-4 out of 5. These ROMs and strengths were diminished but still functional for performing basic ADLs. Thus, the medical record showed some diminished function of the neck and right upper extremity after the 5 November 2012 surgery, but not to the severity to prevent basic ADL performance at the 30-day milestone or beyond. Therefore, the OTI-related ADL loss claim would not have qualified for TSGLI benefits even if it had been eligible.

i. Concerning the TBI-related ADL loss claim, the TSGLI application and the medical record do not support this claim. First, the applicant only claim on his 3 August 2022 TSGLI Appeal Request Form that you had a TBI and did not claim any ADL loss related to his TBI. TSGLI does not pay benefits for merely having a TBI. TSGLI only pays benefits if the TBI causes TSGLI ADL loss for at least 15 consecutive days within 2 years of a qualifying traumatic event. Second, he was not officially diagnosed with a TBI until 14 September 2012, which is greater than 2 years after the claimed 4 February

2009 traumatic event. This delayed diagnosis indicated the applicant's TBI was not of the severity prior to 14 September 2012, to warrant an evaluation and diagnosis, thus it would not be of the severity to prevent independent basic ADL performance. Moreover, any potential TBI-related ADL loss after 14 September 2012, would not be eligible for TSGLI benefits since it was greater than 2 years after the claimed traumatic event. Third, the 16 April 2012 Speech Language Pathology Cognitive Assessment, the 14 September 2012 TBI Neurology Note, the 27 November 2012 MEB Narrative Summary, and the 5 June 2013, Neuropsychological Evaluation indicated any TBI residual symptoms were not of a severity to prevent independent basic ADL performance. In fact, the 27 November 2012 MEB Narrative Summary stated the applicant's Post-Concussion Syndrome with Headaches, and Cognitive Disorder were medically acceptable to remain in the Army. Last, the TBI claim was not signed by a medical professional, which is required by TSGLI regulation for a claim to qualify for TSGLI benefits. Thus, his TBI claim does not qualify for any TSGLI payment.

j. The applicant was advised of his right to apply to the ABCMR if he disagreed with this decision.

25. 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, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), Healthcare Artifact and Image Management Solution system (HAIMS), and the Interactive Personnel Electronic Records Management System (iPERMS).

2. The applicant is applying to the ABCMR requesting reversal of the denials of his application for benefits from the Traumatic Servicemember's Group Life Insurance (TSGLI) program. He is seeking a TSLGI benefit for having been unable to independently a chair, toileting, and bathing, and maintaining continence, with or without modification perform five of six activities of daily living (ADLs) of bathing, eating, dressing, transferring from bed to/from, and toileting, with or with the use of assistive devices, from 5 November 2012 thru 3 December 2012 consecutive days due following neck surgery.

3. The Record of Proceedings (ROP) details the circumstances of the case and the prior denials.

4. The applicant is ineligible for a TSLGI benefit for two reasons:

a. Benefits for loss of the ability to perform two or more ADLs due to other than a traumatic brain injury (OTI) occur in 30-day increments with the first \$25,000

payment starting on the 30th consecutive day following the traumatic injury or other qualifying event. The 5th of November thru and including the 3rd of December is 29 days.

b. The applicant claims that the injuries which were the cause of his 2012 neck surgery occurred in 1998/9 and 2009. Under the laws and regulations governing the TSGLI Program, the loss must occur within 730 days (two years) of the traumatic injury caused by the traumatic event (See 38 U.S. C. 1980A(c)(2)(8) and 38 CFR 9.20(d)(4)).

5. It is the opinion of the ARBA medical advisor the applicant is ineligible for a TSGLI payment for the loss of to the ability to perform two or more ADLs, with or with the use of assistive devices, 30 or more days due to OTI.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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.

a. The Board thoroughly reviewed the supporting documentation and found the applicant's claim concerning losses associated with ADLs for the claimed traumatic events in 1998/1999 and on 4 February 2009, in Kuwait, do not qualify for TSGLI payment. The Board did not find clear connection between the traumatic event and the resulting loss. According to the TSGLI program guidance, to qualify, the scheduled loss must be a direct result of a traumatic injury and no other cause. Additionally, the service member must suffer a scheduled loss within 2 years (730 days) of the traumatic injury. Also, regarding the 4 February 2009 neck pain, according to the submitted medical documents, the applicant's neck pain was mostly caused by the progressive wear and tear of his deployment, and any scheduled loss related to this neck pain would not be eligible for TSGLI benefits.

b. The applicant claimed he experienced 30 days of basic ADL loss of bathing, dressing, toileting, and transferring after his 5 November 2012 neck surgery. Again, the evidence shows the surgery occurred greater than 2 years after the claimed 4 February 2009 traumatic event, thus any potential ADL loss caused by this surgery would not be eligible for TSGLI benefits.

c. The Board considered the medical records, any VA documents provided by the applicant and the review, the applicant's statement, and conclusions of the medical

reviewing official. The Board agreed with the medical provider's finding the applicant is ineligible for a TSGLI payment for the loss of to the ability to perform two or more ADLs, with or with the use of assistive devices, 30 or more days due to other 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 for correction of the records of the individual concerned.

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

REFERENCES:

1. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-

martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

2. 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.

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. 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)

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 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.

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 activities of daily living (ADL).

6. 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.

7. 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.

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.

9. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//