ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240007062

APPLICANT REQUESTS: reconsideration of his previous request for approval for Traumatic Servicemembers' Group Life Insurance (TSGLI) based on a traumatic injury resulting in the loss of activities of daily living (ADL)

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Prudential Insurance Company Notice of Disagreement
- Request for Reconsideration Wrongfully Denied Claim
- Statutory Power of Attorney
- TSGLI Document
- TSGLI Appeal Request Form
- Applicant's Summary Statement
- Applicant's Medical Treatment Timeline
- TSGLI Ten-Year Review
- Letter from Applicant's Wife
- Applicant's File Review
- Enlisted Record Brief
- Leave and Earnings Statement (LES) May 2014
- Medical Documents
- Physical Disability Evaluation System (PDES) Commander's Performance and Functional Statement
- Memorandum Request for Rating
- Physical Evaluation Board (PEB) Transmittal Document
- Department of Veterans Affairs (VA) Benefit Questionnaires
- VA Proposed Rating
- Disability Evaluation System (DES) Proposed Rating
- VA Claim Decision
- Medical Record
- LES 1-31 January 2009

<u>FACTS:</u>

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 AR20220010848 on 16 August 2023.

2. The applicant states he is requesting correction of his wrongfully denied application for benefits under TSGLI. The evidence submitted clearly shows the injury and loss of ADL in question clearly meets the criteria for payment of benefits under the TSGLI schedule of losses; therefore, the applicant reasserts his right to said benefits and requests payment of the same. The applicant requests to be a provided a copy of any medical advisory reports conducted, as part of the Board file.

3. The applicant provides the following documents:

a. Letter from applicant's attorney, notice of disagreement, which states, in pertinent part,

(1) They respectfully request the denial of a claim for TSGLI for injuries he sustained in the line of duty be overturned and the benefits for which he clearly qualifies be paid without further delay. The applicant was injured in an airborne operation on 17 January 2009. After the injury and surgery, he was completely unable to perform multiple ADL. He sustained permanent muscle damage, and continues to suffer the effects of the damage to present day.

(2) In order to assert a claim for TSGLI benefits for inability to perform ADL, a claimant "must have been unable to independently perform at least two ADL for at least 30 consecutive days" and it must have been "certified by a medical professional." The medical documentation clearly constitutes sufficient documentation to support his claim for benefits under the TSGLI program. The entire document is available for the Board's review.

b. A TSGLI Appeal Request Form, shows the applicant had a loss of ADL for more than 120 days due to a parachute malfunction on 17 January 2009. A Medical Treatment Timeline is available for the Board's review.

c. A letter from the applicant's wife, which states in pertinent part, after the applicant's surgery, on a daily basis she had to help him with a multitude of normal activities that we take for granted. He could not simply get out of bed, on his own. She explains the help she had to give him on a daily basis. The entire letter is available for the Board's review.

d. Medical documents, which 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.

e. PDES Commander's Performance and Functional Statement, states in pertinent part the applicant is unable to carry a ruck for extended periods of time. He has a profile for back pain/injury.

f. VA Benefits Questionnaires, VA proposed ratings, and VA claim decision, which are available for the Board's review and will be reviewed by the ARBA Medical Section.

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 and entered Active Duty on 22 June 2006. He remained in the Regular Army through immediate reenlistments.

b. Documents showing he requested TSGLI beginning on or about 15 March 2012 and the denials from that date to 2 March 2022. The documents are available for the Board's review.

c. DA Form 199 (Informal PEB Proceedings), 6 October 2014, shows he was found physically unfit for duty for degenerative joint disease of the thoracolumbar spine, right knee patellofemoral syndrome, right femorocetabular impingement syndrome impairment, right femorocetabular impingement syndrome impairment limitation of extension, and right femorocetabular impingement syndrome impairment limitation of flexion. The board recommended a rating of 30 percent and that he be permanently retired due to disability. The applicant concurred with the findings and waived a formal hearing in his case. He did not request reconsideration of his VA ratings.

d. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably transferred to U.S. Army Reserve Control Group (Retired) on 22 January 2015 for disability, permanent (enhanced).

5. On 16 August 2023, the Board denied his previous request in docket number AR20220010848. The Record of Proceedings for that case is available for the Board's review.

6. Based on the applicant's documents showing he received a PEB for conditions that made him unfit for duty, the ARBA Medical Section provided a medical review for the Board's consideration.

7. 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), and the Interactive Personnel Electronic Records Management System (iPERMS).

2. The applicant is applying to the ABCMR requesting reversal of the denials of ABCMR's prior denials of his applications (AR20220010848) for benefits from the Traumatic Servicemember's Group Life Insurance (TSGLI) program. His counsel stated the following:

> "Correction of wrongfully denied application for Under The Servicemembers' Group Life Insurance traumatic injury protection (TSGLI) program"
>
> "The evidence submitted clearly shows that the injury and loss of ADLS in question clearly meets criteria for payment of benefits under the TSGLI schedule of losses; therefore, the claimant re-asserts his right to said benefits and requests payment of the same."

3. The Record of Proceedings (ROP) outlines the circumstances of the case. It documents the previous denials of his claim for benefits. Review of these previous denials showed consistency in their reasons for denying his claim.

4. Upon review of his supporting documents submitted, there was no additional evidence to support the applicant's claim or evidence to reverse the previous medical advisor's opinion (AR20220010848) to this case.

5. Based on the above information, it is the opinion of the Agency Medical Advisor that there is no medical documentation supporting either of the applicant's claims. Therefore, no TSGLI payment is warranted.

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 concurred with the advising official finding TSGLI payment is

not warranted. The Board noted the applicant’s event occurred on January 2009 during a military jump in Georgia, however the evidence provided did not indicate the applicant suffered a loss with 730 days of the traumatic event. Evidence in the records shows a loss occurred or began on 10 January 2012, which is more than 2 years after his traumatic event.

2. The Board carefully considered the applicant’s counsel contentions that the applicant required hands on and stand by assistance from 17 January to 10 September 2009 for bathing, dressing, and toileting. The Board agreed the applicant's only significant injury was to his right knee, thus indicating his arms, back, left leg, right hip, and right ankle were uninjured and fully functioning. The medical record showed he was not admitted to the hospital for this injury immediately following the traumatic event but was treated in an outpatient status. Also, the medical record, particularly in the 20 January 2009 (day 4 after the traumatic event), Ambulatory Primary Care Note and the 28 January 2009 (day 12), Primary Care Note, documented this injury was treated with a knee brace and pain medicine, but he was not given any other assistive devices (i.e. crutches, wheelchair, etc.). The Board determined the applicant was ambulatory and could fully weight-bear on the right leg. This outpatient status and full weight-bearing on the right leg indicated this injury lacked the severity to prevent independent basic ADL performance. Furthermore, based on the Army TSGLI review which found the applicant’s claim concerning losses associated with ADL from the traumatic event on 17 January 2009 at Ft. Benning Ga, does not qualify for TSGLI payment. Therefore, based on the preponderance of evidence the Board denied relief.

3. Based on governing regulations, The Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) program is an automatic provision under Servicemembers Group Life Insurance (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 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. 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.

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 Board found 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 AR20220010848 on 16 August 2023.

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. 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.

2. 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)

3. 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.

4. 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.

5. 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.

6. 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.

7. 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//