

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20240009852

APPLICANT REQUESTS: 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)
- Attorney's Brief
- Power of Attorney
- TSGLI Appeal Request Form
- Application to TSGLI Benefits
- Certification Completed by Treating Physician
- TSGLI File Review
- DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- Medical Documents
- TSGLI Ten Year Review

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 he would like correction of his wrongly denied application for benefits under the TSGLI program. The evidence submitted shows the injury in question clearly meets the criteria for payment of TSGLI therefore he reasserts his right to said benefits and requests payment of the same.
3. The applicant's attorney states, on behalf of the applicant, in pertinent part:
 - a. On 20 July 2005, while conducting a required training exercise at the Engineer Obstacle Course, the applicant sustained a traumatic L4 compression fracture, when attempting to negotiate an obstacle on the course. He fell approximately seven feet,

landing with force at an extreme unnatural angle. In an attempt to repair the extensive damage he sustained, as a direct result of the incident, his physicians placed him in a Jewett brace on 25 July 2005 for a period of 12 weeks. They assert that the Jewett brace is, in fact, an immobilizing device and is not to be considered adaptive equipment/adaptive technology.

b. The applicant falls into a classification of patients who, in lieu of surgical intervention, received treatments that attempt to target pain relief and promote a natural healing process with bracing and rehabilitation therapy. A back brace provides external support to significantly limit the motion of fractured vertebrae. The instructions given to patients include specific instructions requiring the assistance of a caregiver with ADL such as dressing, showering, transferring, and ambulating, and pointedly state that the patient will experience "decreased independence in basic and instrumental ADLs" while utilizing the device.

c. The denial of the applicant's previous application for TSGLI states "medical documentation does not support your inability to perform ADLs for 30 days". According to the SGLI Procedures Guide, in order to assert a claim for benefits for inability to perform ADL, a claimant "must have been unable to independently perform at least two or more ADLs for at least 30 days must also have been certified by a medical professional." It is their assertion that the medical documentation and certifications from multiple physicians clearly constitutes sufficient documentation to support his claim for benefits under the TSGLI program.

d. From the date he sustained severe injuries to his spine, during a required training exercise, and for a period of not less than 90 days, he was completely unable to perform the ADLs of dressing, bathing, toileting, and transferring without hands-on and/or stand-by assistance from another individual.

4. The applicant provides TSGLI documentation, which includes his statements regarding his injuries and the assistance he required. He also provides medical documentation, which will be reviewed by the Army Review Boards Agency (ARBA) Medical Section who will provide an advisory.

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

a. He was in the Regular Army from 24 November 1989 through 15 October 1993 when he was honorably discharged with disability severance pay. He was in the Regular Army from 6 April 2004 through 31 August 2012 when he was honorably discharged for completion of required active service. He was in the Army National Guard on active duty from 1 September 2012 through 31 May 2020, when he was honorably transferred to U.S. Army Reserve Control Group (Retired).

b. TSGLI applications which include U.S. Army Human Resource Command's (AHRC) denials and reasons for denial. The applications include medical documentation, which will be reviewed by the ARBA Medical Section.

6. On 3 February 2025, AHRC responded to a request for information regarding the applicant's requests for TSGLI. They provide their TSGLI documentation to include their denial of the application which states his request was denied because the medical documentation he submitted did not indicate his back injury rendered him incapable of performing the ADLs of bathing, dressing, toileting, or transferring that are covered by TSGLI standards for 30 consecutive days or greater.

7. On 4 March 2025, the response from AHRC and supporting documents were forwarded to the applicant and his attorney to allow them the opportunity to respond. They did not respond.

8. Based on the applicant's documents showing he sustained an injury, while on active duty, the ARBA Medical Section provided a medical review for the Board's consideration.

9. 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. JLV shows the applicant passed away on 4 January 2022.

3. 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. Through counsel, he is seeking the \$75,000 TSLGI benefit for having been unable to independently perform the four activities of daily living (ADLs) of dressing, transferring from bed to/from a chair, toileting, and bathing, with or without activity modification and/or assistive devices, for more than 90 but less than 120 consecutive days due to a lumbar compression fracture sustained on 20 July 2005 in a seven foot fall on an obstacle course.

4. The Record of Proceedings (ROP) details the circumstances of the case and the previous denials. To date, the applicant has not received a benefit from the TSLGI

program. The first milestone for the ADL loss benefit is at 30 days after the traumatic injury (18 August 2005).

5. On evaluation after the accident, the applicant was found to have a 25% (mild) compression fracture of the body of L4. He was placed in a Jewett brace.

6. A Jewett brace is a type thoraco-lumbar-sacral orthosis (TLSO) brace. This brace is used to treat stable fractures of the lumbar spine by limiting motion in the thoracic, lumbar and sacral regions of the spine. This brace maintains the spine in extension to preserve the stable fractures as they heal.



7. The Office of The Adjutant General's 26 April 2017 explanation of denial is the third denial for this claim. It, along with the 4-page provider review done for this case (pages 308 - 311 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 OTAG explanation of denial to the applicant and 4-page provider review.

8. 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)

9. 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."

10. The provider review states:

"The lawyer's 26 Jun 2012 letter and the Jewett Spinal Brace Instructions indicate the Soldier could shower, while wearing the brace. Thus, with fully functional arms and legs along with a long-handled sponge, the Soldier should be able to bathe in at least a modified independent manner, while wearing the brace.

The Jewett brace instructions do describe a means of donning and doffing the brace in a modified independent manner, but also indicate caregiver assistance may be needed. Therefore, the Soldier may have required assistance with dressing.

With fully functional arms and legs, he should be able to transfer into and out of bed and a chair in at least a modified independent manner.

Furthermore, a person with fully functional arms and legs should be able to sit on a toilet and then grab his pants and pull them up while he is standing without bending his back. Thus, he can toilet independently. [*Note: Most forward flexion comes from the hips and not the spine.]

As discussed above, the Soldier may have required assistance with dressing, particularly donning/doffing his back brace; however, the TSGLI standard for payment is requiring assistance for 2 out of 6 basic ADLs. Therefore, the claim of other traumatic injury related ADL loss does not qualify for payment at any milestone."

11. Under the laws and regulations governing the TSGLI Program (38 U.S.C. 1980A(b)(1)(H), (b)(2)(D), and 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 basic 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.18.

12. No such corroborating documentation was identified in the supporting documentation or AHLTA.

13. It is the opinion of the Agency Medical Advisor that there is insufficient probative evidence the applicant was unable to perform two or more basic ADLS after the 29th day following his accident. Hence, it is recommended the request for a TSGLI payment should be denied.

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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official noting under the laws and regulations governing the TSGLI Program (38 U.S.C. 1980A(b)(1)(H), (b)(2)(D), and 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 basic 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.

2. 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. No such corroborating documentation was identified in the supporting documentation. Based on this, the Board determined there was insufficient evidence to support reversal of the decision rendered by the U.S. Army Human Resources Command and awarding the applicant TSGLI.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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//