

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240010473

APPLICANT REQUESTS: in effect, reversal of the U.S. Army Human Resources Command (HRC) decision to deny his Traumatic Servicemembers' Group Life Insurance (TSGLI) claim.

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

- DD Form 149 (Application for Correction of Military Record)
- HRC Letter
- Department of Veterans Affairs (VA) Form 21-2680 (Examination for Housebound Status or Permanent Need for Regular Aid and Attendance)
- SGLV Form 8600A (TSGLI Appeal Request Form)
- Medical Record, nine pages
- VA Form 21-526EZ (Application for Disability Compensation and Related Compensation Benefits)
- Permanent Orders
- Statement of Support

FACTS:

1. The applicant states, in effect, HRC denied his claim for TSGLI benefits even though he provided evidence that supported the maximum payout of \$100,000. Currently, he is rated "P&T SMC-L AID & ATTENDANCE" (permanently and totally disabled and eligible for Special Monthly Compensation at level "L," which reflects a high level of disability requiring significant assistance with daily living activities and necessitating aid and attendance).

2. The applicant provides documents pertaining to his TSGLI claim; his VA claim for benefits; and Permanent Orders, awarding him the Combat Action Badge for actively engaging or being engaged by the enemy, on 22 February 2005. Additionally, he submits the following:

a. Letter from the Office of The Adjutant General (TAG), HRC, dated 1 February 2024, in which the TAG states, after reviewing the applicant's TSGLI claim, he determined the applicant's claimed traumatic event, incurred in Iraq on 22 February

2005, did not qualify for TSGLI payment. After summarizing the TSGLI program and identifying relevant sections within the VA's TSGLI Procedural Guide, TAG details why the applicant's claim was denied:

(1) The applicant's claim is not supported by medical evidence.

(a) Although the applicant provided a copy of the Permanent Orders awarding his Combat Action Badge, he did not include medical documents for his claimed period of loss (22 February to 1 July 2005). Additionally, the applicant submitted no details as to the engagement for which he received the Combat Action Badge; specifically, whether, on 22 February 2005, he was exposed to RPG (rocket-propelled grenade) or IED (improvised explosive device).

(b) Later medical records varied greatly as to the date of the applicant's exposure to an IED; none identified 22 February 2005 as the date of injury. Instead, three medical notes from 2010 all indicated the injury occurred in May 2005.

(c) Further, a April 2010 medical note stated that, between May and October 2005, the applicant had numerous exposures to IED, RPG, and mortar blasts, of which the applicant believed six had adversely affected him. However, in May 2012, the applicant told VA, during his TBI Compensation and Pension (C&P) examination, that he had IED exposures in March, September, and November 2005, with September being the most severe. Subsequently, for his headache C&P examination, the applicant only described March 2005 as the date of IED exposure.

(2) Even if 22 February 2005 is accepted as a supported TSGLI traumatic event, the applicant's medical evidence did not verify the applicant's claimed TBI-related ADL loss of bathing, dressing, and eating.

(a) TAG noted that medical authority did not medically evacuate the applicant in 2005, after any of the IED blast exposures; the applicant remained in Iraq and completed his tour.

(b) Also, the applicant's medical evidence indicated he did not seek TBI evaluation until March 2010, and was not diagnosed with having a history of a mild concussion and post-concussive headaches until April 2010. "The fact you were able to wait approximately 5 years after your claimed IED blast exposure to be evaluated for your TBI would indicate any residual TBI symptoms lacked the severity to prevent independent basic ADL performance."

(c) In the applicant's May 2012 TBI C&P examination, the applicant denied having any headaches, dizziness, fainting, lightheadedness, sleeping problems, memory issues, increased irritability, or feelings of being tired. "This would show

(applicant) had no significant residual TBI symptoms during (his) Iraq deployment, therefore, there was nothing TBI-related to keep (applicant) from independently performing basic ADLs."

(d) The applicant's medical notes from April and December 2010, and the note dated in May 2012, all reported that the applicant developed headaches after the blast exposure, but they subsided gradually and did not return until after his January 2006 redeployment. "Headaches, especially as described above, would not cause loss of basic ADLs on a continual basis for 15 consecutive days or more, and, once again, there were no other reported symptoms that would prevent ADLs."

(3) TAG also pointed out that the applicant's January 2018 concussion clinic consultation note documented that the applicant attended college after his redeployment, during which he graduated with a 3.75 grade point average (GPA); "A person, who can graduate college, especially with a 3.75 GPA, has the cognitive ability to independently perform basic ADLs."

(4) The April 2010 and January 2011 medical notes offered as evidence identified headaches as the applicant's predominant post-concussive symptom; most of the other stated symptoms (i.e., poor concentration, forgetfulness, slow thinking) started after the applicant's redeployment and were believed to be related to a mood disorder such as post-traumatic stress disorder (PTSD). "According to the TSGLI Procedural Guide...injuries caused by a mental disorder are excluded from TSGLI payment." As such, any possible ADL loss caused by PTSD would not qualify for TSGLI.

(5) The medical notes submitted by the applicant, respectively dating from 2010, 2011, 2012, and 2018, showed the applicant's TBI symptoms were not severe enough to prevent that applicant from performing ADLs for 15 or more consecutive days.

- In April 2010, a TBI Consult Note stated the applicant was able to perform the ADLs of transfer and gait
- Medical records for later dates stated the applicant had headaches 2 to 4 times per week; the headaches lasted about 3 hours and would improve with pain medication; the May 2012 Headache C&P examination indicated the applicant's headaches did not affect his ability to work
- Additionally, the May 2012 Headache examination showed the applicant experienced prostrating headaches once a month; while prostrating headaches could prevent ADL performance, it did not meet the loss standard of 15 or more consecutive days
- Later medical records documented that the applicant lived alone, worked regularly, and returned to school to obtain a Master's Degree; "A person who can live alone, work, and/or go to school, has the physical and cognitive ability to independently perform ADLs"

(6) Along with the medical evidence, the applicant provided a statement from a former service member (Mr. J__ W__) with whom the applicant deployed.

(a) Mr. J__ W__ wrote his statement in 2022, more than 17 years after the claimed traumatic event, and he described the applicant's truck being struck by an IED while on patrol; however, Mr. J__ W__ did not identify the date of this event.

(b) Mr. J__ W__ went on to report that, after returning to the forward operating base (FOB), the applicant went to a medical center for treatment; the applicant failed to include any supporting medical documentation reflecting this treatment.

(c) Mr. J__ W__ added that the platoon assisted the applicant with such tasks as dressing, eating, and walking; however, he did not give a timeframe for when such assistance occurred, and what he described does not match the submitted medical evidence.

b. Mr. J__ W__ provides a September 2022 statement, wherein he affirms he has known the applicant since 2003, and they served together in Iraq.

(1) The unit first sergeant assigned the applicant as Mr. J__ W__'s noncommissioned officer (NCO). While on a patrol in Iraq, an IED explosion hit the applicant's truck, and the applicant and three other Soldiers in the truck suffered trauma.

(2) When they returned to the FOB, the applicant and the three Soldiers went to a medical center for treatment. Later, the applicant had difficulty focusing on simple tasks, such as dressing, eating, and walking. Members of the platoon took turns helping the applicant and the three other Soldiers with the everyday tasks of walking, feeding, and getting dressed.

3. A review of the applicant's service record shows the following:

a. On 17 September 1997, the applicant enlisted into the Regular Army for 3 years; upon completion of initial entry training and the award of military occupational specialty 19K (Armor Crewman), orders assigned him to an armor battalion in Germany, and he arrived at his new duty station, on or about 26 January 1998. Through extension and immediate reenlistments, the applicant continued his Regular Army Service.

b. In 2000, the applicant completed his tour in Germany, and after an assignment to Fort Riley, KS, orders sent him back to Germany; he arrived, on or about 13 February 2001. On 30 April 2003, the applicant deployed to Iraq; while deployed, his leadership promoted him to staff sergeant (SSG)/E-6. The applicant redeployed, on or about 28 April 2004. Orders subsequently reassigned the applicant to Fort Riley, and he arrived, in or around May/June 2004.

c. On 17 January 2005, the applicant deployed once more to Iraq; on 14 January 2006, he redeployed to Fort Riley. In April 2006, the applicant's rating chain issued him a DA Form 2166-8 (NCO Evaluation Report (NCOER)) for the rating period 200601 through 200604. The report shows the applicant passed his Army Physical Fitness Test (APFT) in March 2006; his rater rated him as "Fully Capable" and commented, "physical and mental abilities allowed NCO's to go extra mile...constantly performed at peak levels, under severe pressure and stress." The senior rater showed the applicant as "2/Successful" for overall performance and "2/Superior" for overall potential.

d. In August 2006, the applicant received another NCOER, rating period 200605 through 200607; the applicant's rater indicated the applicant's overall potential was "Among the Best," and affirmed the applicant passed his APFT and "displayed enthusiasm for physical training." The senior rater rated the applicant's overall performance as "2/Successful" and his potential as "2/Superior."

e. On 25 August 2006, the Army honorably discharged the applicant, based on having completed his required service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 years, 11 months, and 9 days of net active duty service.

f. On 28 June 2022, HRC disapproved the applicant's initial request for TSGLI. HRC stated, "Your claim for the inability to perform ADLs was not approved because the medical documentation provided with your claim did not contain enough information to support that you could not perform ADLs independently. The documentation did not cover the timeline of treatment for any 15 or 30 day period within 730 days (two years) of the date of your traumatic event."

g. On 4 August 2022, HRC denied the applicant's second request for TSGLI, stating, "Your claim for loss ADLs was not approved because your loss did not meet the TSGLI medical standard. Medical documentation provided with your initial claim and reconsideration request did not indicate that you were unable to perform at least two ADLs with at least modified independence for any 15 or 30 day period within 730 days (two years) of the date of your traumatic event."

4. Due the applicant's request for TSGLI, due to the loss of ADL's, his case is being reviewed by the Medical staff at the Army Review Boards Agency.

5. 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 United States Army Human Resources Command's and The Adjutant General's denials of his application for benefits from the Traumatic Servicemember's Group Life Insurance (TSGLI) program. The applicant is seeking the \$100,000 TSGLI benefit for having been unable to independently perform the four activities of daily living (ADLs) of eating, bathing, dressing, and transferring from bed to/from a chair, with or without modification and/or assistive devices, for more than 90 consecutive days, from 22 February 2005 thru 1 July 2005 April 2020 thru 15 January 2021), due to "Coma from traumatic injury AND/OR Traumatic Brain Injury" from exposure to an improvised explosive device (IED) on 22 February 2005.

3. The Record of Proceedings (ROP) details the circumstances of the case and the previous denials. The applicant has not previously received a payment from the TSGLI program. The first milestone for payment of a benefit for the loss of the ability to perform two or more ADLs due to coma from traumatic injury and/or traumatic brain injury is at 15 days following the injury (8 March 2005).

4. A claimant for TSGLI 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)

5. 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."

6. 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 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.

7. The supporting documentation and electronic medical records were reviewed. These reviews found The Adjutant General of the Army's 1 February 2024 thoroughly addressed multiple reasons why the applicant's application for TSLGI benefits was denied and so will not be repeated here except for a few excerpts of his reasoning:

"Your claimed traumatic event is not supported by the medical record. Unfortunately, you did not submit any medical documents during your claimed ADL loss period of February 22, 2005, to July 1, 2005, nor any medical documents within five years of your claimed traumatic event."

"Yet even if his claimed February 22, 2005, event is conceded as a supported TSGLI traumatic event, your claim of TBI-related ADL loss of bathing, dressing, and eating is not supported by the medical records at the 15-day milestone or beyond. The fact you were not medically evacuated from Iraq after any blast exposures and were able to stay and complete your tour of duty in Iraq until January 2006 showed that any potential TBI was mild and would not prevent independent performance of basic ADLs, such as bathing, dressing, and eating."

"The medical records also showed you did not seek evaluation for your TBI until March 29, 2010, and were not diagnosed with a history of a mild concussion and post-concussive headaches until April 23, 2010. The fact you were able to wait approximately 5 years after your claimed IED blast exposure to be evaluated for your TBI would indicate any residual TBI symptoms lacked the severity to prevent independent basic AOL performance."

8. As to the last excerpt, the TSLGI Procedures Guide states "The member must suffer the scheduled loss within two years (730 days) of the traumatic event." As noted above,

there is no medical evidence the applicant suffered qualifying ADL losses within two years of the IED exposure.

9. It is the opinion of the Agency Medical Advisor that there is no probative medical evidence warranting reversal of The Adjutant General’s finding that the applicant was not unable to perform two or more ADLS after the 15th day following his IED exposure. Hence, it is recommended the request for TSGLI payment should be denied.

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 recommendation outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to The Adjutant General’s previous finding that the applicant was not unable to perform two or more ADLs after the 15th day of his IED exposure.

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.

//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. Public Law 109-13 (The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief 2005), enacted on 11 May 2005, established the Traumatic Servicemembers' Group Life Insurance (TSGLI) program to provide relief to Soldiers and their families after suffering a traumatic injury. TSGLI provides between \$25,000 and \$100,000 to severely injured Soldiers who meet the requisite qualifications set forth by the Department of Defense. Additionally, the benefit is provided retroactively for Soldiers who incurred severe losses between 7 October 2001 and 30 November 2005, regardless of where it occurred.

2. Department of Veterans Affairs (VA) TSGLI Procedural Guide, currently in effect, provides procedural guidance for eligibility, claims submission and the appellate process. Included are the following:

a. Part I – General Provisions of TSGLI.

(1) Basic Definitions.

(a) Traumatic Event – a traumatic event is the application of external force, violence, chemical, biological, or radiological weapons, or accidental ingestion of a contaminated substance causing damage to a living being occurring on or after October 7, 2001.

(b) 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
- Physical impacts do not require penetrating injuries to occur. Non-penetrating blast injuries, such as those common with the use of improvised explosive devices that cause concussive injuries, still involve external force and violence from the power of the blast coming into contact with an individual

(c) 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.

(d) Traumatic Injury – A traumatic injury is the physical damage to your body that results from a traumatic event.

(e) 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.

(2) A Servicemember must meet all of the following requirements to be eligible for payment of TSGLI. To qualify for TSGLI, the Servicemember must have:

- been insured by SGLI at the time of the traumatic event; (if injured between 7 October 2001 through 30 November 2005, the member does not need to be insured under SGLI)
- suffered a scheduled loss that is a direct result of the traumatic injury due to a traumatic event and no other cause
- 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 event
- survived for a period of not less than 7 full days from the date of the traumatic event (in a death-related case)

(3) Injuries Excluded from TSGLI Payment:

- A mental disorder
- A mental or physical illness or disease
- Attempted suicide
- Intentionally self-inflicted injury or an attempt to inflict such injury
- Diagnostic procedures, preventive medical procedures, or any complications arising from such procedures or treatments
- The member's willful use of illegal or controlled substances, unless administered or consumed on the advice of a medical professional

- Injuries sustained while committing, or attempting to commit, a felony

(4) Amount Payable under TSGLI. The maximum amount payable under TSGLI for all injuries resulting from a single traumatic event is \$100,000. There are three scenarios that govern payments under TSGLI:

- A single injury resulting from a single traumatic event
- Multiple injuries resulting from a single traumatic event
- Multiple injuries resulting from multiple traumatic events

b. Part 4 – Schedule of Losses. A scheduled loss is a loss that is suffered as a result of a traumatic event and is listed on the Schedule of Losses. The Schedule of Losses, in Appendix A (Schedule of Losses) outlines the injuries covered under TSGLI and the amount payable for each injury. Certain injuries listed in the schedule may be combined and treated as a single scheduled loss. Payments range from a minimum of \$25,000 to a maximum of \$100,000. The Schedule of Losses is divided into two parts: Part 1, for injuries that may be combined with a single loss, and Part 2, pertaining to injuries that may not be combined with a single loss.

(1) Evaluating Losses Suffered. Losses must meet the TSGLI standard in order to be eligible for a benefit payment. There are 9 categories of losses covered:

- Sensory Losses
- Burns
- Paralysis
- Amputation
- Limb Reconstruction
- Facial Reconstruction
- Coma
- Activities of Daily Living (ADL)
- Genitourinary Losses

(2) Activities of Daily Living (ADL).

(a) A member is considered to have a loss of ADL if the member **REQUIRES** (emphasis added by VA) assistance to perform at least two of the six activities of daily living. 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.

(b) A Table is used to help determine whether a member has lost the ability to perform a particular ADL; it shows that the patient is unable to independently do the following:

- Bathe
- Maintain continence
- Dress
- Eat
- Use the toilet
- Transfer into or out of a bed or chair

(3) Loss of ADL due to Traumatic Brain Injury (TBI). When a member is unable to perform at least two of the six activities of daily living (ADL) due to TBI, TSGLI benefits will be paid based on the number of consecutive days the member has loss of ADL due to the brain injury. The duration of the loss of ADL includes the date the member began to be unable to perform ADL and the date the member was again able to perform ADL.

(a) Payments for loss of ADL are made as follows:

- \$25,000 at the 15th consecutive day
- An additional \$25,000 at the 30th consecutive day
- An additional \$25,000 at the 60th consecutive day
- An additional \$25,000 at the 90th consecutive day

(b) The member's first day of ADL loss due to TBI must occur within 730 days of the traumatic event in order to receive payment. If subsequent days of ADL loss due to TBI occur after the 730-day period ends, the member can still be paid a benefit, up to the maximum number of consecutive days of ADL loss that began before the end of the 730-day period. As soon as the member regains ADL function, the consecutive day period ends and no further benefits can be paid.

c. Part 5 – Filing a Claim for TSGLI. The member must use SGLV 8600, Application for TSGLI Benefits, to apply for TSGLI benefits. The application is available from the branch of service or the Department of Veteran's Affairs Insurance website. Among items to be completed in Part A of the form (Member's Claim Information and Medical Authorization), the member must provide supporting medical documentation and information that verifies the traumatic event. Part B (Medical Professional's Statement) is completed by a licensed medical practitioner and must explain how the applicant's losses meet TSGLI criteria.

d. Part 6 – Certifying a Claim for TSGLI. The TSGLI office for the member's branch of service certifies TSGLI claims, making the eligibility determination for the benefit.

(1) The certifying official must complete the TSGLI Certification Worksheet to indicate the disposition of the claim, and then forward the TSGLI application along with

the worksheet and any other supporting documentation to the Office of Servicemembers' Group Life Insurance (OSGLI).

(2) Supporting documentation, in cases where the claim is denied in full or in part (the member is paid for some but not all of the losses claimed on the TSGLI Application), includes a copy of the letter the TSGLI branch of service office sent to the member explaining the losses approved and denied.

(3) Upon completion of the certification, the certifying official of the member's branch of service will submit the application to OSGLI via email or fax.

d. Part 8 – The Denial and Appeals Process.

(1) Key terms:

(a) Denial: The disapproval of a claim for benefits by the TSGLI branch of service office.

(b) Full Denial: The TSGLI branch of service office denies all losses claimed by the member.

(c) Partial Denial: The TSGLI branch of service office approves some of the losses and denies others claimed by the member.

(d) Appeal: The actions taken by the member to seek a review of the denial decision by the TSGLI branch of service office. This can include requesting a review through the internal branch of service review process or initiating legal action in federal district court. The first level of appeal within the TSGLI branch of service office is called a reconsideration. The second and third level of appeal in the branch of service review process are handled by appellate organizations outside of the TSGLI branch of service office.

(2) Appeal Period. The one-year appeal period only applies to subsequent claims that do not include "new and material evidence". This means that all claims with new and material evidence are new claims and will be re-adjudicated no matter how long after the original decision the claim is submitted. In contrast, claims submitted after the one-year appeal period without new and material evidence are considered final decisions.

(3) Denial and Appeal Processing. Each branch of service has its own administrative appeals process for denied claims. While the appeal organizations for each branch of service vary somewhat, the overall process is the same for all branches, as described below:

(a) The member initially submits the original TSGLI application to the branch of service. The TSGLI branch of service office sends the member a letter denying the TSGLI benefit and providing appeal rights. The branch of service then forwards the certified claim as denied to OSGLI along with a copy of the original denial letter.

(b) For the first level of appeal/reconsideration, the member appeals in writing to the first level of the internal review process within their branch of service. This process is called a reconsideration and is done within the branch of service TSGLI office.

- If the decision is made to overturn the original denial decision on the certified claim, the claim is recertified to OSGLI and the claim is paid
- If the decision is made to uphold the original denial decision on the certified claim, the member is sent a letter by their branch of service informing them of the decision and the next steps they can take to appeal the decision; the claim is recertified to OSGLI

(c) Second level of appeal (U.S. Army TSGLI Appeals Board). If the member decides to appeal further, he/she makes a written request to the second level of the internal review process within their respective branch of service. The follow-on steps are the same as for the first level of appeal.

(d) Third Level of appeal (Army Review Boards Agency). If the member decides to appeal further, then you to do so in writing to the third level of the internal review process within their branch of service.

(4) In addition to utilizing the administrative appeals process, members have the right to file suit in federal court to contest an adverse TSGLI decision.

3. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

4. 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//