



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S COURTHOUSE RD SUITE 1001  
ARLINGTON VA 22204-2490

BAN  
Docket No. NR05353-13  
12 August 2014

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

- Encl:
- (1) DD Form 149 w/attachments
  - (2) Advisory Opinion (A/O) from Headquarters Marine Corps (HQMC) memo Traumatic Servicemembers' Group Life Insurance (TSGLI) Coordinator, Wounded Warrior Regiment of 16 Apr 2014
  - (3) Chronological Record of Medical Care of 24 Aug 2009 and Radiology Results ico [REDACTED] of 25 Apr 2009
  - (4) Statement from [REDACTED] of 27 Apr 2014
  - (5) Statement from [REDACTED] of 25 Mar 2013
  - (6) Chronological Records of Medical Care
  - (7) Application for TSGLI Benefits
  - (8) Title 38 Code of Federal Regulations Section 9.20 Traumatic injury protection guidelines of 1 Jul 2008
  - (9) TSGLI Claim Certification Worksheet
  - (10) Prudential Office of Servicemembers' Group Life Insurance (OSGLI) denial letter of 2 Mar 2012
  - (11) Findings of the Physical Evaluation Board Proceedings of 18 Jan 2012
  - (12) "A Call for Help" memo of 6 Jan 2014 from [REDACTED] [REDACTED] with a medical separation date of 16 March 2012
  - (13) Appeal letter to Prudential, OSGLI from Veteran Service Officer of 2 Aug 2012
  - (14) Regimental Surgeon TSGLI routing sheet of 27 Sep 2012
  - (15) HQMC memo of 1 Oct 2012
  - (16) Appeal letter to Appeals Board, Claim No. 11235539 from Veteran Service Officer and [REDACTED] of 12 Nov 2012
  - (17) Secretary of the Navy Council of Review Boards memo 1770 TSGLI 126 of 14 Dec 2012
  - (18) Secretary of the Navy Council of Review Boards memo 1770 CORB 003 of 12 Feb 2013
  - (19) Department of Veteran Affairs, Medical Disabilities of 28 Dec 2012
  - (20) Personal Letter by [REDACTED] of 28 Oct 2012
  - (21) TSGLI Response letter from [REDACTED] of 27 Apr 2014
  - (22) 2<sup>nd</sup> A/O from HQMC, TSGLI Coordinator, of 29 May 2014

1. Pursuant to the provisions of reference (a) Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that he was entitled to monetary compensation in the form of Traumatic Servicemembers' Group Life Insurance (SGLI) for a Other Traumatic Injury which resulted in the loss of Activities of Daily Living (ADL) for a period in excess of thirty days, from injuries he sustained in a fall, on active duty, in the Marine Corps on 25 April 2009.

2. The Board, consisting of Messrs. Zsalman, George and Ruskin, reviewed Petitioner's allegations of error and injustice on 30 June 2014 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In early 2009, Petitioner served as a corporal (Cpl) in the U.S. Marine Corps, stationed with the Marine Special Operations Command (MARSOC), in Twentynine Palms, California. On 25 April 2009, while conducting training in the Field Radio Operators Course, he fell approximately 25-30 feet down the side of a rocky mountain and claims to have sustained multiple traumatic injuries, enclosures (3) and (4).<sup>1</sup>

c. Immediately after the fall, Petitioner was sent to the Twentynine Palms Naval Hospital and claimed to be treated for multiple lacerations, given X rays and to have been diagnosed with a Grade 3 concussion, enclosures (3) and (4).<sup>2</sup> However, he claims that he was later released to his command and given the "ok" to continue training.

d. Within the next 4 weeks, Petitioner graduated from the Field Radio Operators Course and transferred to Camp Lejeune, North Carolina pending orders back to MARSOC. Petitioner stated that for the next seven to eight months, he continued to train, believing that he was

<sup>1</sup> Petitioner states in his letter dated 27 April 2014 that "I wasn't just dealing with the right shoulder [pain]. I was passing kidney stones, urinating blood, in immense amount of pain all over my body, I had a fractured [my] T-12 and [there were] discs bulging in [my] L3, L4, and L5, nerve damage in my left leg, back, and right shoulder/arm, testicular pain, and depression", enclosure (4).

<sup>2</sup> The definition of a Grade 3 level concussion, as defined by a Medical Dictionary, is a loss of consciousness for any period.



ok, just tattered and bruised. However, he stated that he continued to have "...memory loss, broken back, tore everything in right shoulder, nerve damage, kidney disease, seizures and more...loss of a creative organ, numerous surgeries and a minimum of 37 days loss of 5 activities of daily living, all approved, witnessed, and signed off by my doctor.", enclosure (5). Furthermore, Petitioner states that he continued to seek medical care and had multiple surgeries due to his fall, enclosure (6).

e. On 3 October 2011, Petitioner submitted a TSGLI<sup>3</sup> Application to Prudential, Office of Servicemembers' Group Life Insurance (OSGLI), (the administrators of TSGLI), requesting compensation for a 30 days loss of ADLs<sup>4</sup> for an (Other than Traumatic Brain Injury (OTI) claim, enclosure (7).

f. On 18 January 2012, Petitioner received a Physical Evaluation Board which recommended that he be separated from active duty with severance pay due to being unfit for service, due to his medical issues, enclosure (8).

g. On 2 March 2012, Petitioner's request for TSGLI was disapproved by Prudential OSGLI, concluding that his loss was not a direct result of a traumatic event,<sup>5</sup> enclosure (10), a claim that Petitioner disputes, enclosure (13).

h. On 21 March 2012,<sup>6</sup> HQMC via the TSGLI Claim Certification Worksheet, ultimately disapproved the claim for a 30 days loss of ADLs and hospitalization due to a lack of medical evidence supporting Petitioner's claim that his loss was a direct result of a traumatic event, enclosure (11).

i. Therefore, on 16 March 2012, he was medically separated with an honorable discharge, enclosure (12).

j. On 2 August 2012, Petitioner appealed the denial by Prudential OSGLI to HQMC stating that under the VA's TSGLI Procedural

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<sup>3</sup> TSGLI is designed to provide financial assistance to service members during their recovery period from a serious traumatic injury. Also, it is intended to provide immediate cash assistance to cover the expenses associated with the changes that accompany a traumatic injury.

<sup>4</sup> Bathing, dressing, toileting, transferring and eating. The requirement is to have only two losses of ADLs.

<sup>5</sup> Under Title 38 CFR 9.20, a traumatic event is defined as "the application of external force, violence, chemical, biological or radiological weapons, or accidental ingestion of contaminated substance causing damage to a living being" by the OSGLI, enclosure (9).

<sup>6</sup> Note: In enclosure (2), the advisory opinion states, the 21 March 2012 disapproval letter is a typographical error and 2 March 2012 is the correct date of disapproval.

Guide, the definition of a traumatic event is not only "...the application of external force...[but,] 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", enclosure (13). His appeal was denied.

k. On 27 September 2012, Petitioner submitted a reconsideration request to HQMC, via the TSGLI Section and the Wounded Warrior Regimental Nurse for an OTI and a review of 30 days loss of ADL's, enclosure (14). On 1 October 2012, HQMC disapproved his request again stating the medical documentation Petitioner provided did not indicate that the loss met the minimum TSGLI standard, enclosure (15) and (8).<sup>7</sup>

l. On 12 November 2012, Petitioner then appealed the reconsideration denial to the Presiding Officer, TSGLI Appeal Board, via a letter signed by himself and a Veteran Service Officer (VSO). The letter stated that Petitioner and the VSO disagreed with the HQMC's determination, and they claim that Petitioner's injuries did, in fact, meet the minimum TSGLI standards, enclosure (16). On 14 December 2012, the TSGLI Appeals Board denied the claim, stating that, "the preponderance of evidence does not support compensation for 30 days loss of ADLs. Regarding your claim for TBI characterization, the medical professional has not indicated on your claim that your losses were due to a TBI and there is insufficient evidence to support that you were not able to do your ADLs after your shoulder surgery due to a TBI", enclosure (17).

m. Petitioner appealed again to the Director, Navy Council of Review Boards. On 12 February 2013, the Director denied his reconsideration request based solely on that fact that his appeal did not present new and material evidence that was not already considered, enclosure (18).

n. Finally, on 22 May 2013, Petitioner submitted a BCNR request claiming that due to his fall while in the Marine Corps, he suffered a grade 3 concussion, TBI, memory loss, a broken back, tears in his right shoulder that required surgery, nerve damage, kidney disease, seizures, loss of a creative organ and had a minimum of 37 days of loss for 5 ADLs; all approved, witnessed and signed off by his doctor, enclosures (1) and (5). Additionally, Petitioner's spouse submitted a letter stating that Petitioner is 100% disabled by the VA, enclosure

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<sup>7</sup> Under Title 30 CFR 9.20 - Traumatic Injury Protection, you must meet all the of following requirements in order to be eligible for traumatic injury protection benefits: 1) You must be a member of the uniformed services who is insured by SGLI on the date you sustained a traumatic injury, 2) You must suffer a scheduled loss that is a direct result of a traumatic injury and no other cause, 3) You must survive for a period not less than seven full days from the date of the traumatic injury, 4) You must suffer a scheduled loss within two years of the traumatic injury, and 5) You must suffer a traumatic injury before midnight on the date of termination of your duty status.



(19), and that she, his caregiver, is certified by the VA as a Tier 3 level provider,<sup>8</sup> enclosure (20).

o. Enclosure (2) provided an unfavorable advisory opinion stating that the medical documentation provided does not indicate the member's loss met the TSGLI minimum standard.

p. On 27 April 2014, Petitioner responded to the A/O by providing the medical documentation by both the VA and from his personal physician that states that he met all the requirements under the TSGLI program requirements, including and that he incurred an OTI due to an injury while in the military, is unable to perform five ADLs and that he submitted his claim within the 730 day deadline for an TSGLI claim, enclosure (21).

q. On 29 May 2014, HQMC, TSGLI Coordinator, Wounded Warrior Regiment, enclosure (22), responded to Petitioner's rebuttal to the original A/O. Although HQMC state that they considered Petitioner's additional information, they still providing an unfavorable A/O and concurred with their original opinion without further explanation.

#### CONCLUSION:

Upon review and consideration of all the evidence in the record, the Board concludes that Petitioner's request warrants favorable action. The Board believed that Petitioner presented sufficient evidence to justify TSGLI payment since he ultimately provided the Board with medical documentation, personal statements, including the Veteran Administration's findings that he is 100% disabled and his spouse's personal statement to prove he had met all the requirements under the TSGLI guidelines to receive TSGLI compensation. Therefore, the Board finds that in light of these circumstances, that it is only just and fair for the Navy to grant his request. Accordingly, the Board concludes that the record should be corrected to show that Petitioner submitted, in a timely manner, a TSGLI claim and that his claim was in compliance to the TSGLI guidelines to award him \$25,000 for his OTI claim.

#### RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner is entitled to receive TSGLI OTI payment in the amount of \$25,000 due to his traumatic injury that occurred while on active duty in the United States Marine Corps.

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<sup>8</sup> According to the Veterans Administration, level Tier 3 is defined as the highest level that will require a caregiver to provide a maximum of 40 hours of care per week.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
BRONTHE I. MONTGOMERY  
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.

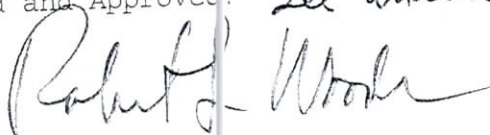


ROBERT D. ZSALMAN  
Acting Executive Director

Reviewed and Approved:

*See attached memorandum.*

*10/22/14*



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