



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

██████████
Docket No. 8612-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 6 February 2025. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies. The Board also considered a ██████████ advisory opinion (AO) from the Wounded Warrior Regiment of the U.S. Marine Corps. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A review of your record shows that you enlisted in the Marine Corps Reserve and commenced initial active duty for training on 19 October 2004; which you completed and you were released from active duty on 19 October 2004. You were recalled to active duty on 1 June 2006 to serve in support of ██████████ and were released on 31 May 2007. According to your Certificate of Release or Discharge from Active Duty (DD Form 214) covering that period, you served in ██████ in a designated "Imminent Danger Pay area from 09/24/2006 to 04/23/2007," and you were awarded a Purple Heart Medal and Combat Action Ribbon; among other medals and awards. On 12 April 2010, the Physical Evaluation Board found you to be unfit at a 20% rating and you were discharged in 2010. You were ultimately transferred to the permanent disability retired list (PDRL), effective 30 May 2010, per a letter in your service record reflecting action by this Board; which granted you relief in the form of changing your disability separation to a

disability retirement. Thus, on 22 August 2019, the Marine Corps informed you it was effectuating your transfer to the PDRL due to a combat related injury effective 30 May 2010 per the findings of this Board. Thereafter, you filed for Traumatic Servicemembers' Group Life Insurance (TSGLI).

Your request for TSGLI was denied by the TSGLI Certifying Office and its denial was communicated to you by its letter dated 7 October 2019. The TSGLI board explained that, with respect to your claim for hearing loss, after thoroughly reviewing the supporting documentation submitted with your claim, it determined that hearing loss could not be paid. In reaching its decision, the TSGLI board explained that your audiogram dated 17 May 2007 reads that your highest level of hearing loss during the hearing threshold sensitivity for air conduction test was 45 decibels in your left ear and 50 in your right ear; which is less than the 80 decibel loss required under the laws and regulations governing the TSGLI program. The TSGLI board further explained that it relied on a medical note of 17 May 2007 indicated you had mild bilateral hearing loss.

With respect to your claim for traumatic brain injury, your claim was also denied because it did not meet the TSGLI criteria. According to its denial letter, after carefully reviewing your provided documents and the statement provided by your spouse, there was no medical documentation that supported your claim for the inability to independently perform activities of daily living due to a traumatic brain injury. Further, according to the TSGLI Certifying Office, there was no "supporting documentation nor were there any physical or occupational notes that merely suggested your inability to perform activities of daily living for 15, 30, 60, or 90 consecutive days." The TSGLI Certifying Office further explained that, according to TSGLI regulations, if the patient is able to perform the activity by using accommodating equipment, such as a cane, crutches, walker, commode, etc. or the patient has developed skills to allow him/her to perform the activity without assistance, the patient is considered able to independently perform the activity." The TSGLI Certifying Office explained that

To approve your claim, we need evidence addressing the specific injury/injuries you sustained as a result of the traumatic event and providing a timeline of treatment up to the first 90 days of recovery. 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.

Thereafter, you requested reconsideration of your denied claim. The TSGLI Certifying Office denied your request for reconsideration and communicated its denial to you by a letter dated 17 August 2020. With respect to claim for hearing loss, the TSGLI Certifying Office explained essentially as it had found before; that the level of hearing loss had not met the 80 decibel threshold as required by the laws and regulations governing TSGLI.

Next, the TSGLI Certifying Office explained that your claim for traumatic brain injury was not approved because your loss did not meet the TSGLI criteria. The TSGLI Certifying Office further explained that:

Medical documentation provided with your claim indicates you suffered a mild TBI, however after an extensive review of your supporting documentation it was determined that there was insufficient medical documentation to support your inability to independently perform ADLs due to a traumatic brain injury. In addition, there were no occupational therapy or physical therapy notes to support this claim. Under the regulations that govern the TSGLI Program, traumatic brain injury is covered if it causes the inability to independently perform at least two activities of daily living (ADLs) for at least 15 consecutive days. (See 38 U.S.C. 1980A(b)(1)(H) and (b)(2)(D), and 38 CFR 9.20(d),(e)(6)(vi) and (f)(17)).

Thereafter, you appealed the denial of your reconsideration to the TSGLI appellate authority, which was denied by letter dated 9 June 2021. With respect to your claim for traumatic brain injury, the TSGLI appellate authority explained that it was not approved because your loss did not meet the TSGLI criteria, and:

Under the regulations that govern the TSGLI Program, traumatic brain injury is covered if it causes the inability to independently perform at least two activities of daily living (ADLs) for at least 15 consecutive days. (See 38 U.S.C. 1980A(b)(1)(H) and (b)(2)(D), and 38 CFR 9.20(d), (e)(6)(vi) and (f)(17)). The claimant is considered unable to perform an activity independently only if he or she requires at least one of the following, without which they would be incapable of

- Physical assistance (hands-on) or;
- Stand-by assistance (within arm's reach) or,
- Verbal assistance (must be instructed)

Under the regulations that govern the TSGLI Program, evidence must demonstrate your inability to independently perform at least two of the six AOL (Eating, Bathing, Dressing, Toileting, Transferring and Continence). To approve your claim, we need evidence addressing the specific injury/injuries you sustained as a result of the traumatic event and providing a timeline of treatment up to the first 90 days of recovery. 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. Moreover, supporting medical documentation must specifically address your inability to perform at least 2 of the 6 ADLs.

The TSGLI appellate authority found that “[c]ompetent medical authority concluded that there was no documentary evidence that suggested that you needed assistance with or your inability to perform ADLs was due to a traumatic brain injury.”

With respect to your claim for hearing loss in your left and right ears, the TSGLI appellate authority also found that your level of hearing loss did not qualify for TSGLI standards. The TSGLI appellate authority reiterated the applicable standards to a claim for hearing loss TSGLI.

In your application to this Board, you appeal the denial of your TSGLI for loss of ADLs [activities of daily living], which you contend was caused by an IED blast sustained in ██████████ in 2006. In support of your appeal, you provided documents including your prior requests for TSGLI, medical records, a written statement, letters from former colleagues who indicated that they assisted you after the IED blast, a letter from your wife, and a letter from a medical provider. You argued in your written statement that after the IED blast, you were transferred to the Battalion Aid Station (BAS) and placed on medical hold for a period of time. You assert that during this time, you required the assistance of fellow Marines to bath, feed, dress, personal hygiene, and restroom use.

In order to assist it in reviewing your application, the Board obtain the 4 October 2024 AO, which was considered unfavorable to your request. According to the AO:

The Marine Corps received the petitioner's Service Group Life Insurance Traumatic (TSGLI) claim and made the decision to deny the claim. The Marine Corps subsequently received the petitioner's request for reconsideration, which was based upon previously unsubmitted material, and again denied the claim. Finally, the Marine Corps received the petitioner's appeal, conducted the service's formal appeals process, and made the decision to deny the appeal. There are no further actions the service can take on the petitioner's claim. The Marine Corps' position regarding this claim has not changed. Each denial letter provided an explanation to the petitioner as to why the claim was denied and how the petitioner could further appeal the decision.

In its review of your petition, and the entirety of the materials you provided including the all levels of review of your claim, the Board did not agree with your rationale for relief. In reaching its decision, the Board observed that your claim for TSGLI was fully considered at every level of review by subject matter experts on three levels. In particular, the Board observed that, at each level of review, the decision maker explained to you the form of evidence that was required to perfect your claim. Specifically, it was explained to you that, to approve your claim, the TSGLI Certifying Office would need evidence addressing the specific injuries you sustained as a result of the traumatic event and that you needed to provide a timeline of treatment for the first 90 days of recovery. Further, this timeline of treatment “would consist of notations from licensed medical providers such as physicians, physician assistants, nurse practitioners, registered nurses, etc.” and that “[s]upporting 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.” In its review of the entirety of the materials that you provided, the Board did not observe that you provided

materials directly responsive to these categories. In reaching its decision, the Board considered all of your arguments, including the letters that you provided from your fellow Marines who explained that they assisted you with ADLs while you were in the BAS. This Board ultimately determined that you provided insufficient new evidence to persuade this Board to overturn the findings of the prior levels of review and denied your claim. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

3/4/2025

