

**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2009-045**

**XXXXXXXXXXXXXXXXXXXX**  
**XXXXXXXXXXXXXXXXXXXX** (deceased)

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**DECISION OF THE DEPUTY GENERAL COUNSEL  
AS THE OFFICIAL WITH DELEGATED AUTHORITY TO TAKE FINAL ACTION  
ON BEHALF OF THE SECRETARY OF  
THE U.S. DEPARTMENT OF HOMELAND SECURITY**

I approve the Recommended Final Decision of the Board for Correction of Military Records of  
the United States Coast Guard and the relief recommended in the order therein.

Date: \_\_\_\_\_

\_\_\_\_\_  
/s/  
Joseph B. Maher  
Deputy General Counsel  
U.S. Department of Homeland Security

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**RECOMMENDED FINAL DECISION**

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the completed application on April 30, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 5, 2010, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, who was alive at the time of application (Tab A), alleged that the Coast Guard erroneously disenrolled him from Servicemembers' Group Life Insurance (SGLI). He stated that he was serving in the Selected Reserve (SELRES) in November 2005, when he became too sick with leukemia<sup>1</sup> to perform drills. He alleged that once he became too sick to drill, the Coast Guard should have transferred him to the Individual Ready Reserve (IRR) pursuant to Chapter 4.B.2.a.(2) of the Reserve Policy Manual. Because the Coast Guard kept him in the SELRES when he was too sick to drill and receive pay, he was disenrolled from SGLI due to non-payment of premiums. He alleged that if the Coast Guard had properly transferred him to the IRR, he would not have incurred the premiums and could have converted from SGLI to Veterans' Group Life Insurance (VGLI). However, no one ever counseled him on the matter.

The applicant stated that in November 2006, with his leukemia in remission, he began to drill again. He alleged that if the Coast Guard had acted properly, the Coast Guard would have transferred him from the IRR back into the SELRES when he became well.<sup>2</sup>

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<sup>1</sup> The applicant's civilian medical records, which he submitted, show that in November 2005, he was diagnosed with chronic myeloid leukemia in blast crisis with Philadelphia chromosome. (Tab T4) Chapter 3.F.18. of the Coast Guard Medical Manual states that chronic leukemia is disqualifying for military service "[w]hen response to therapy is unsatisfactory, or when therapy requires prolonged, intensive medical supervision." UNITED STATES COAST GUARD, COMDTINST M6000.1B, MEDICAL MANUAL (Change 18, 2004).

<sup>2</sup> Under 38 U.S.C. §§ 1965 and 1967, SELRES members are insured under SGLI unless they elect to decline coverage, whereas members of the IRR and Standby Reserve are only covered while serving on active duty or active duty for training.

The applicant alleged that in January 2007, when a \$162 SGLI premium arrearage was deducted from his drill pay, he called a "SGLI spokesperson" and was told that he was no longer eligible for SGLI and that he should submit a form SGLV-8286 to prevent further deductions of arrearages because he was no longer eligible. He alleged that this advice was erroneous because he could have resumed his coverage by requesting reenrollment using form SGLV-8285.<sup>3</sup> However, no one counseled him about it. Therefore, he signed an SGLV-8286 on January 30, 2007, after having been instructed to complete the form in a certain way (Tab E). Declining the coverage, he argued, was not voluntary as it "did not represent my personal choice or preference." He submitted a copy of this SGLV-8286. It appears as shown below and comes with a page of directions (Tab U) for completing the form.<sup>4</sup>

Please read the instructions before completing this form.			
<b>Servicemembers' Group Life Insurance Election and Certificate</b>			
Use this form to: (check all that apply)		<b>Important:</b> This form is for use by Active Duty and Reserve members. This form does not apply to and cannot be used for any other Government Life Insurance.	
<input type="checkbox"/> Name or update your beneficiary <input checked="" type="checkbox"/> Reduce the amount of your insurance coverage <input type="checkbox"/> Decline insurance coverage			
[Section for member's personal information omitted.]			
<b>Amount of Insurance</b>			
By law, you are automatically insured for \$400,000. <i>If you want \$400,000 of insurance</i> , skip to <i>Beneficiary(ies) and Payment Options</i> . <i>If you want less than \$400,000</i> of insurance, please check the appropriate block below and write the amount desired and your initials. Coverage is available in increments of \$50,000. <i>If you do not want any insurance*</i> , check the appropriate block below and write (in your own handwriting), "I do not want insurance at this time."			
Declining SGLI coverage also cancels all family coverage and traumatic injury protection under the SGLI program.			
<input type="checkbox"/> I want coverage in the amount of \$_____ Your initials _____  <input checked="" type="checkbox"/> <u>"I DO NOT WANT INSURANCE at this time"</u> (Write "I do not want insurance at this time.")			
<small>*Note: Reduced or refused insurance can only be restored by completing form SGLV-8285 with proof of good health and compliance with other requirements. Reduced or refused insurance will also affect the amount of Veterans' Group Life Insurance you can convert to upon separation from service.</small>			
[Uncompleted block entitled "Beneficiary(ies) and Payment Options" omitted]			
I HAVE READ AND UNDERSTAND the instructions on pages 2 and 3 of this form. I ALSO UNDERSTAND that			
<ul style="list-style-type: none"> <li>• This form cancels any prior beneficiary or payment instructions.</li> <li>• The proceeds will be paid to beneficiaries as stated in #6 on page 3 of this form, unless otherwise stated above.</li> <li>• If I have legal questions about this form, I may consult with a military attorney at no expense to me.</li> <li>• I cannot have combined SGLI and VGLI coverages at the same time for more than \$400,000.</li> </ul>			
<b>SIGN HERE IN INK</b> ▶ _____ /s/ _____		Date: <u>30 JAN 07</u>	
(Your signature. Do not print.)			
RECEIVED BY: [YN1 K's signature]	RANK, TITLE OR GRADE YN1/E-6	ORGANIZATION USCG	DATE RECEIVED 30 JAN 07

<sup>3</sup> Form SGLV-8285 (Tab V) requires the member to reveal any prior cancers, such as leukemia.

<sup>4</sup> Page 1 of Form SGLV-8286 (Tab U) is titled "Directions to Servicemember" and states the following:

SGLI is in effect throughout the period of full-time active duty or active duty for training. Coverage is also in effect on a full-time basis for reservists who are assigned to a unit or position in which they may be required to perform active duty or active duty for training and each year will be scheduled to perform at least 12 periods of inactive duty training that is creditable for retirement purposes under Chapter 1223 of title 10, United States Code.

The applicant alleged that the SGLV-8286 he signed on January 30, 2007, contains errors that make it ambiguous and defective, but the Coast Guard overlooked the deficiencies and used it as proof that he did not want SGLI. He stated that the defective SGLV-8286 should be considered invalid because he completed it based on bad information. He stated that he “would have been happy to pay SGLI premiums along the way, and would still pay any arrearage due to this change.” He argued that the SGLV-8286 should be corrected to show that he elected full insurance coverage of \$400,000.

The applicant stated that his record should be corrected to show that, instead of being disenrolled from SGLI due to non-payment of premiums, the Coast Guard transferred him to the IRR on November 28, 2005, and then transferred him from the IRR back to the SELRES on November 28, 2006, and that he was automatically reenrolled in SGLI due to his change in status from the IRR to the SELRES.

In support of his allegations, the applicant submitted a memorandum dated November 13, 2008, which was never sent to the recipient, PSC, concerning the applicant’s SGLI coverage. (Tab C) The memorandum is signed by a Coast Guard lieutenant who, as a certifying officer for SGLI, wrote the following:

1. The status of the life insurance policy under Servicemembers’ Group Life Insurance (SGLI) for [the applicant] was in question. On review, the form he prepared in January 2007 is found to be invalid and, thus, his insurance remains in effect. Insurance premiums of \$860.00 have not been collected and should be deducted (or paid) immediately.

2. Facts.

a. [The applicant] is an Electronics Technician, Third Class (ET3) in the U.S. Coast Guard Reserve. His employee identification number is [EID redacted]. [The applicant’s] date of initial entry on military service (DIEMS) is 28 November 2000. He served four years on active duty. He transferred to the Reserve on 28 November 2004. He has been a drilling member in Selected Reserve (SELRES) status, assigned to Electronics Support Detachment (ESD) Charleston, SC. He had “satisfactory service” in his first and third anniversary years. His Reserve activity during his second anniversary year, 28 November 2005 through 27 November 2006, was nil due to illness. He is still in the SELRES. [Direct Access database; encl. (5)-(7)]

b. [The applicant] suffers from terminal leukemia. His disease began prior to 2007. [multiple unrecorded telephone reports from Charleston SC and Miami FL, including that of ETC [name redacted], USCG, on 12 November 2008]

c. [The applicant] reports that an “SGLI spokesperson” told him the SGLI policy was not any good if [the applicant] was not on active duty. [The applicant] prepared paperwork to show non-participation in SGLI. He states he would not have acted thus had he been correctly informed in 2007. [Ref (a)-(b)]

d. [The applicant] had SGLI in effect at full coverage at least through November 2005 and continuously during the months prior. A pending SGLI premium arrearage was resolved in January 2007. No SGLI premiums were documented as due at the end of January 2007. [Enclosure (5)]

e. On or about 30 January 2007, [the applicant] completed form SGLV-8286, SGLI Election and Certificate. The form purports to decline SGLI coverage. The form was received for the Coast

Guard by YN1 [K], USCG, on or about 30 January 2007. The form does not require a witness. [Ref (b)]

f. A decision to decline SGLI coverage takes effect on the first day of the subsequent month. 1 February 2007 was the first day of the month after 30 January 2007. [Personnel Manual, Pay Manual, and SGLI regulations]

g. The top left block of form SGLV-8286 has three options: Name or update your beneficiary; Reduce the amount of your insurance coverage; or Decline insurance. The form shows a selection of "Reduce the amount of your insurance coverage." [Ref (b)]

h. In the "Amount of Insurance" block there is a check mark and the handwritten note "I Do Not Want Insurance at this time" [sic]. [*underline added to clarify unusual punctuation*] The annotation is not supplemented with initials. [Ref (b)]

i. The member submitted a statement dated 12 November 2008, reporting that an "SGLI spokesperson" told him the policy was not any good if he was not on active duty. This was the basis on which [the applicant] prepared form SGLV-8286 in January 2007. [Ref (a)]

j. For the continuous 30-month period from June 2006 through November 2008, inclusive, the premiums for a member with full SGLI coverage total \$860.00. (A different set of months would yield a different total.) This takes into account the 1 July 2008 rate change. This amount includes the mandatory \$1 per month for Traumatic SGLI (TSGLI) that is assessed whenever SGLI is in effect. For months from December 2008 forward, the monthly rate is \$26.00 for \$400K SGLI plus \$1.00 for \$100K TSGLI, total \$27.00 per month. [Ref (c); encl. (8)]

k. Coast Guard policy virtually prohibits refunds of SGLI premiums that were over-deducted or deducted in error if the event was more than six months in the past. However, discovery of underpayment or nonpayment of premiums means that the member was under-deducted (i.e., overpaid). That overpayment is collectible. The "six-month rule of thumb" does not apply to limit the time period considered for an overpayment and collection. [Ref (c)]

l. A member of the SELRES who has no current Coast Guard income from military duty may make arrangements to pay SGLI premiums through the Personnel Services Center (PSC), Military Accounts Section (MAS), in Topeka, KS. Premiums may be paid in advance. [Personnel & Pay Procedures Manual (3PM)]

m. Throughout this period [the applicant] was single. Family SGLI (FSGLI) is not a factor applicable to [the applicant]. No FSGLI premiums are owed. [Direct Access, DEERS, and SGLI regulations]

n. [The applicant] would be eligible for Veterans Group Life Insurance (VGLI) through the Department of Veterans Affairs (VA) if he transfers out of the Selected Reserve or is discharged, as long as he has SGLI in effect upon separation. [SGLI regulations]

### 3. Opinions.

a. [The applicant]'s statement [ref (a)] is credible. Credibility would be enhanced if his statement could be verified, particularly if he could name the person who advised him in 2007 regarding SGLI coverage. He has not named his advisor and probably cannot do so now, more than twenty months later. Exhaustive, unsuccessful medical treatment during the period since January 2007 further supports his inability to recall the identity of his advisor. [The applicant]'s impending death adds weight to his statement. As a single man with no known dependents he has no significant motivation to volunteer an untruthful or incomplete statement. A statement on a death bed is normally accepted as truthful, as if the dying person were under oath; the statement of a man in hospice and whose death is imminent, albeit not quite "death bed," should similarly be accepted as

truthful and credible, without quibble. In the face of impending death he is merely wrapping up his affairs. Thus, his statement is accepted as credible and substantially accurate.

b. [The applicant] relied on incorrect advice from an advisor he viewed as knowledgeable.

c. Misinformation regarding SGLI eligibility of Reservists was common quite recently among both administrative personnel and the Reservists themselves. Reference (c) was published on 7 July 2008 in part to address a variety of concerns, including ignorance. FSGLI policy was similarly addressed in reference (d) on 14 June 2007. Both documents were published too late to help [the applicant] in January 2007. However, the pertinent policy points were merely restated in references (c) and (d); they were the same in 2005, 2006, and 2007.

d. [The applicant] knew in January 2007 that he had leukemia. He had no apparent motivation to relinquish a life insurance policy worth \$400 thousand.

#### 4. Decision.

a. The SGLV-8286 of ET3 [the applicant] [EID redacted], USCGR, dated 30 January 2007, is invalid. It is invalid for the three reasons listed below. Any one of the three reasons might, by itself, be a basis to find the form to be invalid. Taken together it is clear that the record purporting to show the member's decision to decline SGLI is invalid. Thus, his "election" shown on reference (a) is void.

(1) The purpose of the form was to reduce insurance but the content of the form was to decline insurance. This is inconsistent. It is ambiguous. The form cannot be valid when ambiguous.

(2) The content of the form was to decline insurance but the member did not initial the statement. The member does not dispute that he wrote it but, without initials, there is potential to believe that the statement might have been written by someone other than the member. If the member was not still alive it would be impossible to verify the authenticity of the written statement. Even though the member is still alive, consistency requires a skeptical view regarding this error. By itself, this could be sufficient to raise significant doubts. The form might be invalid for this reason alone.

(3) The member was incorrectly counseled. He relied on that incorrect counsel. Because of incorrect counsel he prepared the SGLV-8286 dated 30 January 2007, to be consistent with what he believed was his sole option. In other words, he did what he was told. His election was neither informed nor wholly voluntary. It was ignorant. A member's ignorance is normally not sufficient, by itself, to invalidate a form that a member voluntarily signed. The form is presumed to be regular on its face. However, context must still be considered. Here we have a junior enlisted member; not a Yeoman with clerical experience and training in administrative regulations; without daily Coast Guard contact for three years due to service in the Reserve after leaving active duty; returning to drill after more than a year's absence; the absence due to a lengthy, successful battle with leukemia, a life-threatening illness; and (wrongly, as it turns out) told by a person who presented as authoritative that the member should prepare and sign a certain form in a particular way. There is considerable context in parallel with the member's stated ignorance. A Government record is presumed to be regular on its face unless confronted with clear and convincing evidence to the contrary. Ignorance, by itself, is not commonly accepted as a sufficient basis to invalidate a signed form. However, considering all the factors in this case, I see sufficiently clear and convincing evidence that the SGLV-8286 signed by [the applicant] on or about 30 January 2007 is so compromised by its context as to be, and it is, invalid.

b. [The applicant] is eligible for SGLI due to his SELRES status. He may file a new form SGLV-8286 to name beneficiaries as he sees fit. If he does not do so before he dies then distribution of any benefits would be "by law."

5. Action needed.

- a. The Personnel Services Center (PSC) should collect unpaid SGLI premiums of \$860.00 for the period February 2007 through November 2008, inclusive, or such other amount as may be calculated correctly.
- b. Full SGLI is in effect and will remain in effect, with premiums paid, unless [the applicant] knowledgeably and correctly declines or until the end of the 120-day grace period after he separates from the Selected Reserve.

The applicant also submitted a note “to file” dated November 19, 2008, which the certifying official wrote and gave to the applicant, stating that his memorandum dated November 13, 2008, was never transmitted to the PSC “due to subsequent issues.” (Tab D) The certifying official wrote that his “conclusion appears to remain a reasonable path. However, other paths may be at least as reasonable while being less objectionable to key actors. Correction of subject member’s record to show two status changes (SELRES to IRR, and IRR to SELRES) may have the advantage of correcting the larger record in the interest of accuracy and conformance to regulations. SGLI eligibility would then be merely a consequence—an inevitable and essential consequence—of correcting the record.”

The applicant also submitted a handwritten note he signed on November 12, 2008 (Tab B), stating that the reason he dropped SGLI was “because when I was out of work because of my illness I received a bill for back premiums. I called [and] talked to a SGLI spokesperson [and] asked if the policy was any good if I was not on active duty [and] they told me it was not. So I asked them to drop my insurance since I didn’t have the money to pay the back premiums. If the policy is effective when I am not on active duty I was misinformed + would have kept the policy in effect.”

In addition, the applicant submitted copies of two ALCOASTs (Tab G) about insurance issued in 2007 and 2008. He alleged that the fact that the Coast Guard issued these ALCOASTs proves that the SGLI policy is confusing. The first, ALCOAST 299/07, was issued on June 14, 2007, bears the subject “FSLGI Policy,” and states that its purpose is to reiterate, clarify and slightly revise FSLGI (Family SGLI) policy previously published in ALCOASTs 446/01, 282/03, and 430/05. The second, ALCOAST 326/08, was issued on July 7, 2008, and bears the subject “SGLI Premium Changes and Related Policy Issues.” Paragraph 3.G. of this ALCOAST notes that all members of the SELRES, all reservists on active duty, and all reservists scheduled to perform at least 12 days of annual training that year are eligible, whereas reservists on the active status list and in the IRR are not eligible. It also states that when members of the SELRES fail to drill for pay from which the premiums can be deducted, the PSC will pay the premiums for two months and deduct them from future pay and that failure to pay results in cancellation of SGLI.

The applicant also submitted a copy of a SGLV-8286, which he signed on November 14, 2008 (Tab F), to try to regain coverage under SGLI and name his parents as beneficiaries. This form was not entered in his record.

## SUMMARY OF THE RECORD

The applicant served four years of active duty from November 28, 2000, to November 27, 2004, when he was released to the Reserve and affiliated with the SELRES. Upon enlistment, the applicant completed a SGLV-8286 (Tab J) requesting SGLI coverage of just \$30,000 and naming his father as the beneficiary and his sister as the contingent beneficiary. SGLI premiums were deducted from his active duty pay (Tab L). The applicant completed another SGLV-8286 on April 6, 2001, after the legislated maximum amount of coverage rose from \$200,000 to \$250,000, did not request any reduction in the maximum coverage, and named his father as his principal beneficiary and a sister as his contingent beneficiary (Tab K).<sup>5</sup>

Upon his release from active duty, the applicant affiliated with the SELRES and received an affiliation bonus (Tab N) for obligating himself to serve his four remaining years of military service obligation (MSO) drilling in the SELRES.<sup>6</sup> His SGLI coverage continued automatically at the maximum amount, and the premiums were deducted from his drill pay (Tab M). As a reservist, the applicant was placed in an unbudgeted but paid billet within the Electronic Systems Support Unit (ESU) in Miami, Florida (Tab T2), but he drilled at the Electronics Support Detachment (ESD) in Charleston, South Carolina, where he was a full-time college student.

The applicant's Leave and Earnings Statements (LESEs) show that he drilled regularly in the SELRES in 2005 and received a SELRES affiliation bonus in September 2005. His SGLI premiums were deducted from his drill pay (Tab M). He stopped drilling and receiving drill pay in November 2005 when he was diagnosed with chronic myeloid leukemia (Tab T3). He informed his command of his diagnosis and that he would be going home to Iowa to receive treatment (Tab T9). However, his command retained him in the SELRES (Tab T8), and the Coast Guard paid the applicant's SGLI premiums for December 2005 through May 2006 (Tab O). His LESEs for these months bear notations about his SGLI premiums being in arrearage because he had not received drill pay from which to deduct them. The LESEs also show his mailing address as being in Charleston, S.C., although his command knew he was living in Iowa. His February 2006 LES stated the following:

- Your SGLI premium arrearage as of 28 FEB 06 is \$81.00.
- Your SGLI is in arrears for 60 days. Per law, your SGLI will be terminated if remittance is not received within 30 days. Make your check payable to USCG and send to: Commanding Officer (DC), Coast Guard PPC, 444 SE Quincy St., Topeka, KS 66683-3591, or you may make payment by Visa or Master Card by calling 785-339-3610.

The applicant's March 2006 contained the same notations except that his arrearage was \$108 as of March 31, 2006. His April 2006 LES stated the following:

- Your SGLI premium arrearage as of 31 MAR 06 is \$135.00.
- Your SGLI is over 60 days in arrears. Per law, your SGLI is being terminated.

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<sup>5</sup> Chapter 3.01.b. of the SGLI Handbook states that "[r]equests for reduced coverage or no coverage made prior to any legislated increase in coverage have no effect under the new law." VETERANS BENEFITS ADMINISTRATION, H-29-98-1, SERVICEMEMBERS' AND VETERANS' GROUP LIFE INSURANCE HANDBOOK (Aug. 2009).

<sup>6</sup> UNITED STATES COAST GUARD, COMDTINST 7220.1A, SELECTED RESERVE (SELRES) ENLISTED BONUS PROGRAMS, Encl. (3) (1998).



The applicant's May 2006 LES (Tab P) stated the following:

- Your SGLI premium arrearage as of 31 MAR 06 is \$162.00.
- Your SGLI is over 60 days in arrears. Per law, your SGLI is being terminated.

The applicant's June 2006 LES (Tab P) stated the following:

- Your SGLI was administratively stopped by PPC for nonpayment of premiums in accordance with Public Law 104-106. You no longer have SGLI coverage. If you have questions, call 785-339-3610.

From July to mid December 2006, the applicant did not drill, and each of his LESes bore a notation about an SGLI premium arrearage of \$162.00.

In December 2006, the applicant returned to Charleston, S.C., and began working for the Coast Guard as a civilian employee. His LES for January 2007 LES shows that he began drilling again on December 19, 2006, and that \$162.00 was deducted from his pay because of his SGLI premium arrearage (Tab Q). Because his coverage had been stopped, however, no current deduction for SGLI was made from his pay. On January 30, 2007, the applicant signed the SGLV-8286 shown on page 2 of this decision (Tab E), in which he appears to have declined coverage.

The applicant's LESes for the remainder of 2007 and 2008 show no deductions for SGLI premiums. His LESes for July, September, and December 2007 and March, June, and September 2008 include a summary of his insurance coverage (Tab R), which appears as follows:

- Your coverage under SGLI/TSGLI/FSGLI is as follows:
  - (1) SGLI coverage on you: \$0
  - (2) TSLGI coverage on you: \$0
  - (3) FSGLI coverage on children: \$0
  - (4) FSGLI coverage on spouse: \$0

The applicant's original eight-year service obligation was slated to end on November 27, 2008. Although he was dying, the command apparently unsuccessfully attempted to reenlist him in the Reserve for two years on November 13, 2008 (Tab T23). The applicant died on December 9, 2008, after having signed and submitted his BCMR application. Thereafter, his father, who would be the applicant's beneficiary, agreed to represent him in this case as next of kin.

## **VIEWS OF THE COAST GUARD**

On April 30, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case (Tab H).

The JAG stated that the Coast Guard did not err by not transferring the applicant to the IRR in November 2005 because the applicant never requested transfer to the IRR. He argued that under Chapter 5.B.2. of the Reserve Policy Manual (RPM),<sup>7</sup> the "onus was on the applicant to request transfer to Standby Reserve status when he became aware he was too sick to drill. The

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<sup>7</sup> UNITED STATES COAST GUARD, COMDTINST M1000.28A, RESERVE POLICY MANUAL (Change 2, 2003).

[Coast Guard] was under no obligation to automatically transfer the applicant.” The JAG argued that because the Service is only in touch with reservists once per month and during their two-week annual training, it “only stands to reason that if a reserve member cannot drill due to a disability (sickness) the onus should be on the member to inform his/her reserve unit and request a temporary transfer if necessary” in accordance with Chapter 5.B.2. The JAG argued that because the applicant submitted no evidence that he tried to initiate a transfer when he became too sick to drill, he has not shown that the Coast Guard erred by keeping him in the SELRES. The JAG argued that the applicant’s “failure to avail himself of the above-listed reserve transfer procedures does not constitute an error or injustice by the [Coast Guard].”

The JAG argued that the regulation cited by the applicant, Chapter 4.B.2.a.(2) of the RPM, did not apply to his circumstances because he “did not fail to participate; he was unable to participate due to his admitted sickness.”

The JAG stated that the Coast Guard properly disenrolled the applicant for non-payment of premiums in 2006 after notifying him through his LESEs of the arrearages and of the pending termination of his SGLI coverage. The JAG noted that 38 U.S.C. § 1969 requires termination of a member’s insurance if the member fails to remit the cost of advanced premiums to the Secretary.

The JAG argued that the applicant’s claim “regarding the signed SGLI form dtd 30 January 2007 [Tab E] is without merit and of no legal moment because his SGLI was terminated back in May of 2006.” He concluded that although the circumstances of this case are extremely unfortunate, the ultimate burden to pay his SGLI premiums was on the applicant and he failed to do so. In addition, the JAG noted that SGLI is administered by the Department of Veterans’ Affairs (DVA), not the Coast Guard, and that in BCMR Docket No. 2007-004, which concerned a claim for Family SGLI, the Board stated that it “is not aware of any correction that it could make to the applicant’s Coast Guard record that would bind the DVA/OSGLI or that would entitle the applicant to a sum of money under a Coast Guard regulation as a substitute for the loss of benefit he expected to receive under FSGLI.” The JAG stated that the Board has no jurisdiction to correct the records of the SGLI office (OSGLI) at the DVA, to demand that it ignore certain facts, or to insist that it pay the applicant.

The JAG attached to his advisory opinion, but did not adopt, a memorandum from the Chief of the Office of Reserve Affairs, who recommended that the Board grant full relief (Tab I). This officer stated that the applicant should have been assigned to the IRR from November 27, 2005, to November 28, 2006, but that his unit did not do so “because they wanted to ensure that he had a [SELRES] billet to return to when well enough to drill again.” He stated that his consultations with the Reserve Program Management “indicated that the actions taken by the Coast Guard Command were improper and not in accordance with Reserve Policy Manual assignment policy.”

The JAG also attached a statement signed by YN1 K (Tab S), to whom the applicant gave the SGLV-8286 that he signed on January 30, 2007. She stated that she has no recollection of her conversation with the applicant and cannot explain why “Reduce the amount of your insurance coverage is checked vice the Decline insurance coverage.” YN1 K stated that when she “encoun-

ter[ed] a member that was declining coverage for SGLI, I would let them know if they decided in the future to elect coverage again they would have to fill out a SGLV 8285 and have it signed by the command, risking not being covered again if they were not insurable due to health reason. I otherwise do not try to persuade a member to elect or not to elect coverage as it is a personal decision they make on their own.”

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On May 11, 2009, the Chair sent the applicant a copy of the views of the Coast Guard. The applicant’s representative requested and was granted extensions of the time to respond to the views of the Coast Guard and submitted a response on May 5, 2010 (Tab T). Although the applicant died in 2008, his representative’s allegations and arguments, summarized below, are attributed to him.

The applicant stated that he was diagnosed with leukemia after he went to a hospital in Charleston, South Carolina, on November 21, 2005, complaining of “fullness of the abdomen, flu-like symptoms, decreased appetite, diarrhea, and weight loss.” He remained in the hospital until December 16, 2005, for treatment, including a splenectomy, and upon discharge, went to Iowa to be near his parents. From January 18 to February 17, 2006, the applicant was admitted to a hospital in Iowa. For the first ten days of this hospitalization, he underwent chemotherapy in preparation for a bone marrow transplant with stems cells from a sibling, which occurred on January 28, 2006. Because the chemotherapy affected his heart, he was given intravenous steroids. Upon his discharge from the hospital, a doctor noted that “[t]hroughout his hospitalization, his appetite remained poor. His caloric intake was only approximately 500 – 8000 cc daily. He still had residual nausea.” The doctor also noted that the applicant was “[p]erforming activities of daily living without difficulty” and that he was encouraged to perform mild exercise, such as walking. Thereafter, he “continued to make weekly visits to the Hematology and Oncology clinics during the course of his recovery, which included continued chemotherapy, treatment for graft vs. host disease, treatment against opportunistic infections, and treatment for the side-effects of anti-rejection medications.” In July 2006, he suffered another “blast crisis” and underwent a third leukocyte infusion. He had a fourth infusion on October 16, 2006. However, he returned to South Carolina and resumed drilling in December 2006 after he was found to be in “complete molecular remission.” (Medical records at Tabs T3-T6, T10.)

The applicant noted that while he was in Iowa in 2006, he was not drilling in the SELRES although he was retained on the SELRES rolls. He submitted a copy of an email (Tab T8) sent by a Payment Approving Official in the Servicing Personnel Office for Sector Charleston to a chief in the applicant’s command on September 18, 2006, which notes that the applicant had not been drilling and asks whether “the unit started the process to either get him to complete drills or release him from the SELRES.” In response, on September 29, 2006, ESU Miami requested a waiver of the participation requirements for the applicant in 2006, noting that the applicant had been diagnosed with leukemia and received several surgeries and bone marrow transfusions in Iowa but was medically cleared to return to Charleston in October 2006 (Tab T9). ESU Miami stated that “[m]ember’s desire is to continue in the reserves at ESD Charleston.” ESU Miami noted, “It was believed that he would be able to return sooner to complete his drills but the leukemia treatment took longer than expected.”

The applicant stated (Tab B) that after returning to drilling in December 2006, he received a bill for back premiums. Therefore, he called and spoke to an SGLI spokesperson and “asked if the policy was any good if he was not on active duty, and the spokesperson said that it was not. ... Based on the advice he received, he told the Coast Guard to drop his insurance.” (The applicant did not identify this spokesperson or state whether he called a Coast Guard or DVA SGLI office.)

The applicant stated that because of his leukemia, the Coast Guard convened a medical board in 2008 (Tab T13), which concluded that he was unable to serve in the military and would “never be fit for full duty.” The applicant rebutted the medical board’s findings and argued that he was fit for full duty and should be retained (Tab T14-15). His command favorably endorsed this request and found that his leukemia was incurred in the line of duty (Tab T16). The applicant asked the Board to consider, when deciding whether his records should be corrected to make him eligible for SGLI, that his leukemia might have begun prior to his release from active duty.

The applicant stated that in June 2008, before he reported for his two weeks of annual training, he began to feel ill. On June 20, 2008, while serving on annual training, he was diagnosed with a relapse of the leukemia (Tab T18). He did not drill thereafter. The applicant alleged that no one at his command raised the issue of his life insurance until November 2008.

The applicant submitted a copy of an email dated November 10, 2008, from his supervisor at ESD Charleston stating that a YN2 had told him there was no SGLI paperwork for the applicant and that he had not been paying premiums (Tab T19). The supervisor stated that he did not know if that was because the applicant had declined SGLI or for some other reason.

When members of the applicant’s unit learned that he had no SGLI coverage, they raised the money needed to pay the premiums he had not been charged after his coverage was terminated (Tab T25). However, the PSC would not allow his record to be corrected to show that he was still enrolled in SGLI so that the money raised could be used to pay his premium arrearages and he would have SGLI coverage (Tab T27).

The applicant submitted several emails and communications between Coast Guard personnel, which he alleged show that the Coast Guard admitted they had erred:

- On November 10, 2008, an ETC at ESD Charleston stated that the unit had no SGLI paperwork for the applicant and that no premiums were deducted on his most recent LES. He stated that the unit was “trying to determine if there is no SGLI because he declined it or for some other reason. Unfortunately, he is still being carried on the PAL for ESU Miami and I don’t think that’s helping.” (Tab T19)
- The Miami Integrated Support Command responded by forwarding documents from the applicant’s record, including the SGLV-8286 dated January 30, 2007. (Tab T20)
- On November 12, 2008, the ETC sent an email stating that the applicant’s “enlistment ends on [November] 27<sup>th</sup>. Any reason I should have him reenlist? Also, he declined

SGLI in January of 2007. He was under the impression that he had to be in a drilling status for someone to receive the money. Once you decline, you have to ask for the insurance. The form asks for a command endorsement stating, basically, he is fit for full duty. Any ideas? His dad broke down with me yesterday saying that on top of everything else, he's out of money." (Tab T22)

- On November 13, 2008, the ETC wrote an email noting that a lieutenant was working on the applicant's SGLI issues and that they had had him sign a statement explaining why he declined SGLI in January 2007. (Tab T25)
- In response, someone at the ESD noted that the applicant's colleagues "are ready to donate funds for the SGLI arrears payments if needed." (Tab T25)
- Also on November 13, 2008, the ETC wrote an email noting that the applicant's SGLV-8286 dated on January 30, 2007, had been rejected and therefore the applicant was merely in arrears on his premiums. He stated that the command would be "passing around the hat" to collect the money. (Tab T25)
- On November 15, 2008, the Command Master Chief at ESU Miami advised his commanding officer that money had been collected to cover the applicant's SGLI premiums. (Tab T25)
- On November 17, 2008, the Command Master Chief wrote an email stating that sufficient money had been collected to pay the applicant's SGLI arrearages and asking for information about the exact amount due and to whom the money should be sent. An Assistant Branch Chief for Military Accounts Support replied that a lieutenant had approved their effort and that his team was working on the matter. The Command Master Chief stated that they could pay by credit card. (Tab T25)
- Also on November 17, 2008, the ETC sent emails stating that they had raised more than \$1,000, that he had given the Personnel Service Center his credit card to pay the applicant's arrearages of \$860 but that the payment would not be processed until Wednesday. In response, a chief warrant officer working in decedent affairs stated that he should ensure that the applicant completed a new SGLV-8286 and that SGLI deductions are started. (Tab T25)
- On December 10, 2008, Commander, Personnel Command advised a Rear Admiral that the applicant had died and that his command had "taken steps to 're-enroll' the member in SGLI following a reenlistment." The Rear Admiral responded by stating that something "went wrong with Sector Charleston's attempt at reenrolling [the applicant] in SGLI. It may be worthwhile for someone in (rpm) to talk with [stricken] who is a bit distraught that no one called him about properly getting [the applicant] back into the SGLI coverage arena. It appears that it was not done correctly. It's a complex tale of good intentions/too many errors. He was going to talk with CDR [stricken] CG-13 next and then consider talking to the BCMR attorney to see if their decision can be expedited." (Tab T27)

- The same day someone wrote an email in response stating that “[a]s far as service line within PSC, SGLI is mentioned only in the PSD FS functional statement. However, it is one I am teeing up for realignment either to CG-122 or PPC. I see the execution of such personnel actions as command and SPO responsibilities. The policy oversight remains at CG-122 while execution and processing would be a PPC service line. But again, one of the functions that I expect will require some arbitration.” Someone responded to this email stating, “As it may be necessary to respond to the indication of ‘good intentions/too many errors’ in trying to reenlist [the applicant] with new SGLI election, please provide me with candid input on any and all direct participation/influence or sideline observations you or any (adm) staff may have had.” (Tab T27)
- Also on December 10, 2008, Commander, Personnel Command sent an email asking “What CGPC/PSC lessons can be learned on this incident? Let’s think about this one in a Service Line context and what word we’d need to put out to the PSSUs on an issue like this. Also, we need to gain the background to quickly handle the BCMR.” (Tab T29)
- Someone else responded that his staff was creating a timeline and that he is “concerned that RPM is characterized as the main action office by CG-12 and that we somehow ‘dropped the ball’ when this is not the case. My understanding is this situation had the involvement, and was influenced by, the action of several offices at CGHQ/CGPC other than CGPC-rpm. I believe this situation has been evolving over the last several weeks. In response, Commander, Personnel Command stated that he did not believe that RPM had “dropped the ball” but that CG-12 was “looking for his action arm regarding reserve issues.” (Tab T29)
- On December 11, 2008, the Commanding Officer of the Personnel Service Center in Topeka, Kansas, stated in an email that the unit’s attempts to reenroll the applicant in SGLI were disallowed because his coverage had been terminated based on non-payment of premiums and he had submitted an SGLV-8286 declining coverage. He stated that he is “the first one to want to help a shipmate in need, but we will always keep things above board and legal in doing so. ... [T]he initial approach to doing ‘something to help’ was not on target. PPC involvement with SGLI is really minimal—this is mostly a SPO function with members, although we may get involved as it relates to pay and/or direct access related issues. Of course depending on SPO service line management in the future, we may take a larger role.” (Tab T27)

The applicant alleged that he was denied SGLI because of a failure in leadership at his command in November 2005 when he was diagnosed with leukemia. He alleged that

[a]t that point, or sometime thereafter, but long before Applicant ever cancelled his SGLI policy, his command should have recognized that it had an SGLI-eligible member with a potentially fatal illness who was in danger of having his SGLI lapse for non-payment of premiums and in need of *individualized counseling* regarding his SGLI options. It does not appear that Applicant was ever counseled by his command about any of these options, and he was left to fend for himself. Later,

rather than ensure that he was adequately advised, his command permitted him to cancel his SGLI based on erroneous advice. Moreover, his command should have followed Coast Guard policy and placed Applicant in the IRR or the Standby Reserve when it was apparent that he was too sick to drill, and transferred him back to the SELRES upon recovery. Had it done these things, it is unlikely that Applicant would have died without SGLI coverage.

Regarding the JAG's argument that Coast Guard regulations reasonably place the burden on a reservist to notify the Coast Guard that he needs to transfer out of the SELRES because of an illness, the applicant argued that no statute allows the Coast Guard

to exercise less diligence with respect to its reserve members [than its active duty members]. To suggest that there is any correlation between the Coast Guard's obligation to its reserve members and the amount of contact it has with them both ignores the Congressional mandate and marginalizes the relationship the reservist has with the Coast Guard, relegating members of the Coast Guard Reserve to the status of "second class citizens." ... In this regard, it does not "stand to reason" that a reservist too sick to drill, in and out of a hospital far away from his unit, should be held to some rigid standard, including a requirement to submit an e-resume in Direct Access, when he has a chain of command who should be helping him to make informed decisions about whatever elections he might make regarding his status, and who are required to follow Coast Guard policy irrespective of the amount of contact they have with him.

The applicant repeated his argument that Chapter 4.A.2.a.(2) of the RPM did apply to him in 2006 because he was not drilling satisfactorily. Moreover, he alleged, the Coast Guard could have transferred him to the IRR or the Standby Reserve under Chapters 5.B.2. and 5.B.5., and he would have requested transfer back to the SELRES in December 2006. In addition, he stated, "it does not appear that [the applicant] was ever counseled regarding his ability to 'request' transfer to the Standby Reserve."

The applicant argued that the Coast Guard had a duty to ensure that he received proper counseling when he inquired about his SGLI entitlement in January 2007 but failed to do so. He alleged that YN1 K may be the SGLI spokesperson he spoke to on the telephone in January 2007 and pointed out that, if she was the person he spoke to, she did not deny in her statement having told him that he was not entitled to SGLI because he was not on active duty and she did not claim that she normally counsels SELRES members about their eligibility for SGLI (Tab S). The applicant claimed that his statement that he was misadvised about his SGLI eligibility in January 2007 by an SGLI spokesperson (Tab B) overcomes the presumption of regularity accorded whoever counseled him. He argued that as soon as he was diagnosed with a potentially fatal illness, the Coast Guard should have counseled him about his life insurance plan and the Accelerated Benefit Option that provides resources prior to death if a doctor states that one has less than nine months to live. He argued that the fact that no regulation requires SGLI counseling under such circumstances is irrelevant because it is a fundamental benefit of military service and the consequences of not counseling a member are so great.

The applicant argued that his command should have known or learned that his SGLI coverage was ending due to non-payment of premiums, counseled him about the matter, and done whatever they could within policy to protect him, such as transferring him to the IRR or Standby Reserve. He further argued that even if the Board finds that the Coast Guard committed no error in this case, it certainly shocks the sense of justice that a reservist was permitted to die without

SGLI because he was misadvised about his eligibility and the Coast Guard failed to do the things that it should have done to prevent it.

## APPLICABLE LAW

### *Regulations Regarding Reservists' Failure or Inability to Drill*

Chapter 2.B.3. of the Reserve Policy Manual (RPM) in effect in 2005, COMDTINST M1000.28A,<sup>8</sup> concerns members' absences from scheduled drills and states the following:

a. Reservists who are unable to perform scheduled inactive duty must inform their supervisors immediately. Usually, schedule conflicts for reasonable reasons (such as temporary civilian employment conflicts) may be worked out between the command and the reservist and the drill rescheduled. If a notification of a scheduled drill conflict occurs within 48 hours of the start of the scheduled drill, the drill may be rescheduled only for the following reasons:

(1) Illness or injury of reservist. ...

b. If a reservist is absent from a scheduled drill for any other reason than listed above, the absence must be recorded as unexcused and may not be rescheduled ... . Unit commanders may grant an excused absence based on a reservist's prompt notification and submission of adequate justification.

Chapter 4.A. of the RPM states that satisfactory participation in the SELRES requires, *inter alia*, attendance at 90% of scheduled drills per fiscal year and completion of 12 days of annual training per fiscal year. Unsatisfactory participation is defined as follows:

Unsatisfactory participation is the failure to comply with any of the contractual obligations or program requirements listed above. Participation is also considered unsatisfactory when members of the SELRES acquire at least nine unexcused absences from scheduled training within a 12-month period or fail to meet standards prescribed for annual screening, training for advancement, or performance of duty.

Chapter 4.B. of the RPM concerns the counseling and administrative and disciplinary measures to be taken when members fail to drill satisfactorily, fail to undergo required physical or dental examinations, or fail to respond to an annual screening questionnaire.<sup>9</sup> Chapter 4.B.2.a. states that

Ready Reservists who have not fulfilled their statutory military service obligation (MSO) under 10 U.S.C. 651, and whose participation has been unsatisfactory, may be processed as follows:

- (1) They may be ordered involuntarily to active duty ...
- (2) They may be transferred to or be retained in the IRR for the balance of their statutory MSO if they still possess the potential for useful service if mobilized.
- (3) Enlisted members may be discharged for unsatisfactory participation. ...
- (4) [Their entitlement to educational benefits may be suspended.]

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<sup>8</sup> UNITED STATES COAST GUARD, COMDTINST M1000.28A, RESERVE POLICY MANUAL (Change 2, 2003).

<sup>9</sup> Form CG PPC-3799R, the Reserve Annual Screening Questionnaire, requires Reserve a member to notify his chain of command of anything, even a temporary condition, that prevents him from mobilizing on short notice on the questionnaire itself and further requires the reservist to agree to notify his command immediately in writing if his deployment ability changes due to a medical condition.



## *Regulations Regarding Reserve Assignments and Transfers*

Chapter 5.A.1. of the RPM concerns the assignment of Reserve members to SELRES billets. It states that certain Coast Guard units are allocated SELRES positions on the Reserve Personnel Allowance List (RPAL), that reservists are assigned to vacant RPAL positions for which they are qualified within their region, and that in making assignments, “Service needs come first.”

Chapter 5.B.2. of the RPM, entitled “Transfers to the IRR,” states that members with no remaining SELRES obligation may request transfer to the IRR at any time and may request transfer back to the SELRES “once the reason for the transfer to the IRR no longer applies. If the reason for transfer is due to temporary physical disability or hardship, the member shall be transferred to the Standby Reserve and not to the IRR (see 5.B.5).” Chapter 1.C.3.a.(1) states the following about transfers to the active status list of the Standby Reserve:

Members who have been transferred from the Ready Reserve because of temporary hardship, disability, or other cogent reasons, and who intend to return to the Ready Reserve. Members with a military service obligation may temporarily be placed in the Standby Reserve, but shall be transferred back to the Ready Reserve at the earliest possible date.

Chapter 5.B.3.a. of the RPM, entitled “Transfers from the Ready Reserve,” states the following:

All SELRES reservists shall be retained in SELRES assignments for the entire period of their statutory SELRES obligations or voluntary contracts. All Ready Reservists shall be retained in the Ready Reserve for the entire period of their statutory military service obligations. Exceptions to this policy are reservists who are temporarily not physically qualified to participate in regular training, [emphasis added]... . They shall be transferred to the Standby Reserve at their request or as a result of annual screening, subject to the following conditions:

- (1) Members shall be transferred back to the Ready Reserve [which includes the SELRES and the IRR] as soon as the reasons for transfer no longer exist; they generally shall remain in the Standby Reserve for no longer than two years, with subsequent return to the SELRES;
- (2) Members are required, after returning to the SELRES, to satisfy their original obligation; ...

Chapter 5.B.5. of the RPM concerns “Temporary Physical Disqualification” as that phrase is used in Chapter 5.B.3. and states the following:

a. Temporary physical disqualification, for the purpose of transfer to the Standby Reserve, is defined as a disability that is temporary in nature but is expected to last for 4 months or more. If the disability is expected to last less than 4 months, the reservist shall be retained in the SELRES and the command shall either schedule the reservist for IDT training in a limited duty status (ADT, ADOT or mobilization must still be deferred until the member is in a fit for full duty status), or shall reschedule drills for when the member is fit for full duty. Reservists who are not physically qualified to participate in training and who are not expected to return to a fit for duty status shall not be transferred to the Standby Reserve, but instead shall be transferred to the Retired Reserve or separated.

b. For transfer back to the Ready Reserve from the Standby Reserve when a temporary physical disqualification no longer exists, documentation from a civilian healthcare provider can be used to

support the transfer, or an RMP without pay can be issued by the servicing ISC (pf) to provide an evaluation to support the transfer.

### ***Law Regarding SGLI***

Title 38 U.S.C. § 1969(a)(2)(B) states the following:

If an individual who is required pursuant to subparagraph (A) to make a direct remittance of costs to the Secretary concerned fails to make the required remittance within 60 days of the date on which such remittance is due, such individual's insurance with respect to which such remittance is required shall be terminated by the Secretary concerned. Such termination shall be made by written notice to the individual's official address and shall be effective 60 days after the date of such notice. Such termination of insurance may be vacated if, before the effective date of termination, the individual remits all amounts past due for such insurance and demonstrates to the satisfaction of the Secretary concerned that the failure to make timely remittances was justifiable.

Chapter 5-A-9 of the Personnel and Pay Procedures Manual<sup>10</sup> states that “[r]eservists enrolled in SGLI who do not drill temporarily, but remain in a good pay status, will accrue a negative SGLI premium. Upon resumption of a drilling status, the system will deduct the negative premium balance from the member’s pay. If the member does not drill for pay within five months and no SGLI payments is made SGLI coverage will be administratively terminated.”

The Servicemembers’ and Veterans’ Group Life Insurance Handbook (SGLI Handbook),<sup>11</sup> published by the Veterans Benefits Administration, provides contact information for members needing SGLI advice and also contains the following pertinent provisions:

Chapter 1.01.d. of the SGLI Handbook states that “[m]embers on active duty, active duty for training or inactive duty for training and members of the Ready Reserve or National Guard are automatically covered for \$400,000, the maximum amount of coverage.”

Chapter 1.01.f. of the handbook states that “[m]embers who elect to be insured for less than the maximum amount, or elect to decline coverage entirely, must also complete form SGLV 8286, Servicemembers’ Group Life Insurance Election and Certificate.”

Chapter 1.03 of the handbook states that members of the SELRES are eligible for full SGLI coverage, whereas members of the IRR are only eligible when they are mobilized under Title 10.

Chapter 1.04 of the handbook defines the effective date of insurance as follows:

b. For members who previously declined coverage or elected to be insured for less than the maximum amount, the effective date of coverage is the date an application electing coverage or an increase in coverage is received by the member’s branch of service. If it is necessary for such application to be forwarded to the OSGLI for review, the effective date of coverage will be the

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<sup>10</sup> UNITED STATES COAST GUARD, HRSICINST M1000.2A, PERSONNEL AND PAY PROCEDURES MANUAL (CHANGE 8, 2002).

<sup>11</sup> VETERANS BENEFITS ADMINISTRATION, H-29-98-1, SERVICEMEMBERS’ AND VETERANS’ GROUP LIFE INSURANCE HANDBOOK (Aug. 2009).

date the application was received by the service. However, premium deductions will not begin until OSGLI has approved the application.

Chapter 1.06 of the handbook concerns the extension of SGLI benefits based on a member's disability and states the following:

a. Full-time Coverage. If a member who has full-time SGLI coverage, is totally disabled at the time of separation or release from active duty, Ready Reserves or National Guard, SGLI coverage will continue for as long as the member remains totally disabled, up to a maximum of two years from the date of release or separation, but in no event less than 120 days from the date of separation or release. Hereafter, this coverage is called the SGLI Disability Extension.

An application for the SGLI Disability Extension may be obtained at the [forms download page](#) on this site. It is recommended that members apply for the SGLI Disability Extension within 120 days from discharge so that if they are found ineligible for the SGLI Disability Extension they will be automatically approved for Veterans' Group Life Insurance coverage without any health review.

Chapter 1.08.a. of the SGLI Handbook states the following:

(1) Elections and designations for members insured under full-time coverage are effective only during the period of duty in which a member is serving and for 120 days thereafter. (If a member is totally disabled, this period is extended to two years following separation or release.)

• • •

(6) An election to be insured for a reduced amount or an election not to be insured does not apply to a new period of coverage. Unless a new election to be insured for a reduced amount or an election not to be insured is filed with the member's uniformed service, a new period of coverage begins in the amount of \$400,000 and any prior election not to be insured or to be insured for a reduced amount is canceled.

Chapter 1.09.a. of the handbook states the following about SGLI counseling:

Under the provisions of the Veterans Benefits Improvements Act of 1996 (Public Law 104-275), the uniformed services are required to furnish members general information regarding life insurance whenever a member has the opportunity to make an election not to be insured or to be insured in an amount less than the maximum amount of \$400,000, and at other times periodically.

Chapter 3.01 of the handbook states the following:

a. Members reporting for duty in one of the uniformed services who do not want to be insured or who prefer less than \$400,000 maximum coverage must complete and file a form SGLV 8286, Servicemembers' Group Life Insurance Election and Certificate, with their uniformed service. (See [appendix A](#))

b. Insured members who desire a lesser amount of insurance coverage or no insurance must request a change by completing a new form SGLV 8286 and filing it with the uniformed service. Requests for reduced coverage or no coverage made prior to any legislated increase in coverage have no effect under the new law.

c. A reduction or cancellation of insurance coverage is effective at midnight of the last day of the month in which the form is received by the uniformed service.

Chapter 4.01.a. of the handbook states that “Maximum coverage, previously declined or reduced, is automatically restored without evidence of good health when a member re-enters on duty (in the same or another uniformed service).”

Chapter 13.01.a. of the handbook states that the Department of Veterans’ Affairs makes the following conclusive policy determinations:

- (1) The status of any person as a member as defined in chapter 1, or as a veteran and whether or not a person is insured for SGLI or VGLI at any point of time.
- (2) The fact and date of a member’s separation or release from active duty or active duty for training.
- (3) The fact, date, and hours of a member’s performance of inactive duty for training.
- (4) Whether a member eligible for part-time coverage suffered disability or death while on active duty, active duty for training or inactive duty training or while proceeding directly to or returning directly from such duty so as to be insured at death or for 120 days after the date of the termination of such duty.
- (5) The fact and dates with respect to a member’s absence without leave; confinement by civil authorities under a sentence adjudged by a civil court; or confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowances.
- (6) The enforcement of the provisions as set forth in paragraph 1.10 with respect to any member or veteran.
- (7) Whether an individual is a member of or is eligible for assignment to the Individual Ready Reserve or the Inactive National Guard.

## **FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions on the basis of the applicant’s military record and submissions, the Coast Guard’s submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application is timely.

2. The applicant alleged that when he fell ill with leukemia in November 2005, his command erroneously failed to transfer him to the IRR or the Standby Reserve and that this failure caused him to be unjustly disenrolled from SGLI. The Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>12</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”<sup>13</sup> For the reasons stated below, the Board finds that the applicant has proved by a preponderance that the Coast Guard’s failure to transfer him temporarily to the Standby Reserve when he was temporarily physically disqualified for SELRES duty was contrary to Reserve assignment policy and therefore erroneous.

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<sup>12</sup> 33 C.F.R. § 52.24(b).

<sup>13</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The applicant cited Chapter 4.B.2.a.(2) of the RPM<sup>14</sup> in support of his claim that he should have been transferred to the IRR when he was diagnosed with leukemia. The Board agrees with the JAG, however, that Chapter 4.B. applies to reservists who willfully fail to drill, not to those who are temporarily too ill to drill. Because the applicant's absences were excused due to his illness in accordance with Chapter 2.B.3.a.(1), Chapter 4.B.2.a.(2) did not apply to his situation. Moreover, Chapter 4.B.2.a.(2) states that such unsatisfactory performers may be transferred to the IRR "for the balance of their statutory MSO," which means that the applicant would not have been able to return to the SELRES under this provision. Therefore, had he been transferred to the IRR for the remainder of his MSO pursuant to Chapter 4.B.2.a.(2), he could not have had SGLI coverage automatically restored under Chapter 4.01.a. of the SGLI Handbook.<sup>15</sup> The Board also notes that Chapter 5.B.2. of the RPM, which was cited by the JAG, did not apply to the applicant's situation because he had affiliated with the SELRES for the remainder of his MSO to receive a bonus and therefore had a remaining SELRES obligation.<sup>16</sup>

4. Although not cited by the JAG, the Board finds that Chapter 5.B.3. of the RPM applied to the applicant's situation in 2006. Under Chapter 5.B.3.a., members who cannot drill because of a temporary physical disqualification shall be temporarily transferred to the Standby Reserve upon their request or if an annual screening reveals they are unfit for mobilization. Under Chapter 5.B.3.a.(1), such members shall be returned to the SELRES when they are no longer physically disqualified. Chapter 5.B.5. states that a temporary physical disqualification is a disability that "is expected to last for 4 months or more" and that members with shorter-term disabilities should be retained in the SELRES. There is little evidence regarding how long the command expected the applicant to be absent when he revealed his diagnosis in November 2005. On September 29, 2006, ESU Miami sent a memorandum stating that they had retained the applicant because his "desire is to continue in the reserves at ESD Charleston. ... It was believed that he would be able to return sooner to complete his drills but the leukemia treatment took longer than expected." (Tab T9) Thus, the command appears to have acted initially with the expectation that the applicant would be absent for less than four months and would be able to make up his drills before the end of the year, and that expectation was presumably based on what the applicant told them since he was receiving civilian medical care. Therefore, the Board finds that the applicant has not proved that his command erred by retaining him in the SELRES during the four months following his diagnosis in November 2005.

5. However, upon the expiration of the four months, the applicant's command did nothing even though the applicant clearly was not going to be well enough to drill for at least several more months. The Chief of the Office of Reserve Affairs at the Personnel Service Center stated in an attachment to the advisory opinion (Tab I) that by doing nothing when it was clear that the applicant would be too sick to drill for many months, the applicant's command violated Reserve assignment policy. The Chief of the Office of Reserve Affairs did not cite a specific provision of the RPM, and Chapter 5.B. does not expressly require a command to transfer a

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<sup>14</sup> UNITED STATES COAST GUARD, COMDTINST M1000.28A, RESERVE POLICY MANUAL (Change 2, 2003).

<sup>15</sup> VETERANS BENEFITS ADMINISTRATION, H-29-98-1, SERVICEMEMBERS' AND VETERANS' GROUP LIFE INSURANCE HANDBOOK (Aug. 2009).

<sup>16</sup> See applicant's September 2005 LES; UNITED STATES COAST GUARD, COMDTINST 7220.1A, SELECTED RESERVE (SELRES) ENLISTED BONUS PROGRAMS, Encl. (3) (1998).

SELRES member to the Standby Reserve when he does not return to drill within four months. However, Chapter 5.B.5. of the RPM clearly indicates that SELRES members who are unfit to drill for more than four months are supposed to be transferred to the Standby Reserve, pursuant to Chapter 5.B.3. of the RPM, whether upon the member's request or upon the command's discovery of the member's unfitness pursuant to an annual screening or, presumably, other communication. The Board notes that the JAG argued that SELRES members are only transferred to the IRR or the Standby Reserve if they request it, but this argument ignores the provision in Chapter 5.B.3.a. that states that the member *shall be* transferred to the Standby Reserve if the command discovers he is temporarily physically disqualified during an annual screening. The Board does not believe that these regulations can reasonably be interpreted as permitting reservists to retain their SELRES billets even if they are too sick to drill for many months unless they request transfer to the Standby Reserve. Take the case, for example, of a reservist who, one week after annual screening, acquires a disability that will prevent him from drilling for a year. Moreover, under 10 U.S.C. § 10149, SELRES members who are not fit for mobilization must be transferred to the Standby Reserve, discharged, or retired.<sup>17</sup> Form CG PPC-3799R, the Reserve Annual Screening Questionnaire, not only requires a reservist to notify his chain of command of any illness that prevents him from mobilizing on short notice on the questionnaire itself, but also requires a reservist to notify his command immediately in writing if his deployment ability later changes due to a medical condition.<sup>18</sup> (Tab X) Therefore, it is not reasonable to interpret Chapters 5.B.3. and 5.B.5. as not having required the applicant's command to transfer him to the Standby Reserve just because the command may have learned of his long-term disability through some means other than the annual screening questionnaire.

6. The Board also notes that Chapter 5.A.1.c.1. of the RPM states, "In distributing and assigning members, Service needs come first." Leaving a SELRES billet unfilled for more than a year is clearly not in the interest of the Service.<sup>19</sup> The Board acknowledges that the applicant's command might have thought they were doing him a favor by ignoring his failure to return and retaining him in the SELRES. However, the command's good intentions do not negate the fact that they violated Reserve assignment policy by retaining him in the SELRES for more than a year when he was too sick to drill. Therefore, the Board agrees with the Chief of the Coast Guard Office of Reserve Affairs that the applicant's command erred by failing to transfer him to the Standby Reserve pursuant to Chapters 5.B.3. and 5.B.5. of the RPM when he did not return to his unit within four months of his November 2005 diagnosis—i.e., by April 2006—and was clearly too sick to return for many more months.

7. If the applicant's command had properly transferred him to the Standby Reserve in April 2006, his SGLI coverage would not have been terminated due to failure to pay premiums at the end of May 2006. Instead, his coverage would have extended for 120 days past the date of his transfer from the SELRES, and he would have received a notice about how to convert his SGLI coverage to veterans' VGLI coverage through the DVA, in accordance with Chapter 1.06

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<sup>17</sup> Title 10 U.S.C. § 10149 requires the Coast Guard to continuously screen Ready Reserve (SELRES and IRR) members to ensure they are properly skilled and able to report for active duty if mobilized and to discharge, retire, or transfer to the Standby Reserve those who are not.

<sup>18</sup> Title 10 U.S.C. § 10205 requires reservists to report any medical condition, even a temporary condition, that would prevent the reservist from mobilizing.

<sup>19</sup> Title 10 U.S.C. § 10149 requires continuous screening to avoid member attrition during a Reserve mobilization.

of the SGLI Handbook. Because the Coast Guard improperly failed to transfer him to the Standby Reserve in April 2006, however, his SGLI coverage terminated for failure to pay premiums in May 2006 (Tab P), when he was still undergoing intensive treatment for leukemia (Tabs T3–T6). The Board notes that the applicant’s LESes during this period of intensive leukemia treatment included warnings about the termination of his SGLI coverage (Tab O). However, the mailing address on the LESes is in Charleston, S.C., even though his command knew he was living at home in Iowa in 2006. Moreover, in light of his serious illness through most of 2006, the Board does not believe that the LES notices should be dispositive of this case.<sup>20</sup>

8. The record shows that when the applicant went into “complete molecular remission” in December 2006, he returned to Charleston, S.C., took a civilian job with the Coast Guard, and began drilling in his SELRES billet again (Tab T6). Even if the applicant had been properly transferred to the Standby Reserve, however, he would have been transferred back to the SELRES to fulfill his obligation when he was healthy enough to do so. Under Chapters 5.B.3.a.(1) and (2) of the RPM, when the reason for the transfer to the Standby Reserve no longer exists, members shall be returned to the SELRES to complete their obligation. The applicant had affiliated with the SELRES to receive a bonus in 2004 and therefore had a four-year SELRES service obligation.<sup>21</sup>

9. Chapter 5.B.5.b. of the RPM requires a member who was transferred to the Standby Reserve because of a temporary physical disqualification to provide documentation from a civilian health care provider to support the transfer back to the SELRES. Although the applicant had been diagnosed with chronic leukemia, his medical records show that in December 2006 he was in “complete molecular remission.” (Tab T6) Chapter 3.F.18. of the Medical Manual states that chronic leukemia is only disqualifying for military service “[w]hen response to therapy is unsatisfactory, or when therapy requires prolonged, intensive medical supervision.” Moreover, the applicant did, in fact, return to drilling on December 19, 2006, and he drilled for another eighteen months before his relapse. (Tabs Q and R) Therefore, the Board finds that if the applicant had been properly transferred to the Standby Reserve in April 2006, he would and should have been transferred back to the SELRES in December 2006. Although the applicant alleged that he should have been counseled to complete a SGLV-8285 form to acquire SGLI coverage in 2007, the Board notes that he would have had to report his cancer (leukemia) on the form, and his commanding officer would have had to certify his fitness to perform unrestricted military duty. (Tab V) Although the command allowed him to drill, he has not proved by a preponderance of the evidence that his commanding officer would have certified his fitness or that the DVA would have allowed his coverage just because his leukemia was in remission.

10. Under Chapter 4.01.a of the SGLI Handbook, when members re-enter on duty, they are automatically covered under SGLI with the maximum coverage unless they decline coverage or request a reduced amount. Therefore, upon his transfer to the SELRES in December

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<sup>20</sup> In this regard, the Board notes that in BCOMR Docket No. 2002-148, the Chief Counsel of the Coast Guard recommended granting relief and backdating health insurance coverage for an applicant’s dependent even though the applicant could have but failed to notice that no deductions for the premiums were shown on his LESes, and the applicant in that case was serving on active duty and was not disabled by any serious illness or injury.

<sup>21</sup> UNITED STATES COAST GUARD, COMDTINST 7220.1A, SELECTED RESERVE (SELRES) ENLISTED BONUS PROGRAMS, Encl. (3) (1998).

2006, it appears that the applicant would have been automatically covered under SGLI. However, whether the applicant would have been covered under SGLI with the maximum coverage is not up to the Board. As Chapter 13.01.a of the SGLI Handbook states, the DVA makes the conclusive determination of a member's status and SGLI coverage at any point of time.

11. The applicant asked the Board to correct his record to show that he did not decline or reduce SGLI coverage in January 2007 and elected full coverage and so was covered at the time of his death in December 2008. On its face, the SGLV-8286 form that the applicant submitted on January 30, 2007, appears to be a formal declination of coverage. (Tab E) The applicant alleged, however, that he was confused because of poor advice he received from a "SGLI spokesperson" in January 2007 and only declined coverage because he thought he was ineligible unless he was on active duty. (Tab B) Although there is no evidence to support his claim that he was miscounseled, the preponderance of the evidence does show that he was mistaken because in January 2007 there was no reason for him to decline coverage that had already been terminated in May 2006. (Tab P) On the other hand, the applicant had paid SGLI premiums throughout 2005 when he was a member of the SELRES (Tab M), and the information that he was covered as a member of the Reserve was available at the top of the SGLV-8286 form and on the page of instructions for servicemembers attached to the form (Tab U). The form also advised him of his right to free legal counsel if he had any questions. Moreover, while it seems illogical for someone with chronic leukemia to decline SGLI coverage, the applicant had no wife or children and was apparently beginning a civilian job with the Coast Guard (Tab T6) through which he may have been eligible for FEGLI, the Federal Employees' Group Life Insurance.

12. The applicant argued that the January 30, 2007, SGLV-8286 must be considered erroneous and invalid because not only was he confused about his eligibility but he did not complete the form consistently. (Tab E) He pointed out that in the first block he indicated that he wanted to reduce the amount of his SGLI coverage but in a lower block he wrote that he did not want the insurance at all. In light of the applicant's clear handwritten statement that he did not want the insurance, however, the Board is not persuaded that the inconsistency necessarily renders the form invalid. Moreover, whether the SGLV-8286 form is deemed valid and honored is not up to the Board. As Chapter 13.01.a. of the SGLI Handbook states, the DVA makes the conclusive determinations of a member's status and SGLI coverage at any point of time.

13. The applicant made many allegations with respect to the actions of the Coast Guard. Those allegations not addressed above are found to be not dispositive of the case.<sup>22</sup>

14. Therefore, the Board finds that partial relief should be granted because the preponderance of the evidence shows that the applicant's command erred by not transferring him to the Standby Reserve in April 2006 and that, if he had been transferred to the Standby Reserve, he would have been transferred back to the SELRES upon the remission of his leukemia and his return to drilling in December 2006. However, the applicant has not proved by a preponderance of the evidence in the record before the Board that he is entitled to any other correction of his military record.

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<sup>22</sup> See *Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that "appear frivolous on their face and could [not] affect the Board's ultimate disposition").



**ORDER**

The application of ET3 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR (deceased), for correction of his military record is granted in part as follows:

The Coast Guard shall correct his record to show that on April 30, 2006, he was transferred from the SELRES to the Standby Reserve and that on December 1, 2006, he was transferred from the Standby Reserve back to the SELRES.

No other relief is granted.

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Nancy L. Friedman

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Robert S. Johnson, Jr.

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Lynda K. Pilgrim