

Gus Solomon Inns of Court
Talk November 20 , 2012
World Trade Center – 1st floor conference room

Closing Presentation Handouts

Topic #1	General Veterans' (and USDVA) issues
Topic #2	Common claims against the USDVA
Topic #3	Veterans Law theory re Compensation claims
Topic #4	Flow of a VA compensation case (not unique timeline)

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Topic #1: General Veterans' (and USDVA) issues
(Suicide Hotline: 1-800-273-Talk; 400,000 calls; 15,000 lives saved)

- I. **Homeless vets**
 - A. 5 year USDVA plan to lessen homeless vets problem
 - B. case management to provide job training, housing, & counseling
 - C. Concentrations of homeless vets (national count in January)
 - Urban – West Burnside
 - Suburban – wooded areas near stores
 - Forests - they see you; you don't see them (100 -200 in coast range): map
- II. **USDVA claims backlog**
 - A. 1 million cases backlogged; goal= catch up by 2015
 - B. 1st time claims (age range: 18 – 93); ½ are Vietnam War vets
 - C. Time range to resolve each case: 8 months to 8 years
- III. **Female vets**
 - A. 7500 served in Vietnam; 200,000 Iraq/Afghanistan
 - B. Women's health center at Portland VA Hospital
- IV. **Who is a vet?**
 - A. Eligible for VA benefits: "other than dishonorable discharge"
 - B. Oregon National Guard VA eligibility: discharge after being called to Federal service (e.g., deployment overseas).
- V. **General veterans' benefits (www.va.gov)**
 - A. USDVA **Compensation** (service-connected illness/injury): \$1 Billion tax-free for Oregon vets; surviving spouses also; \$125-\$3000/month tax-free
 - B. USDVA **Pension**: war-time service / vets & surviving spouses; \$9-1800
 - C. Miscellaneous:
 - **GI Bill** education (1-888-GIbill1) & Vocational Rehab (ages 18- 70's)
 - **National Cemetery** system (Willamette national, etc); spouses too
 - **Home loan** guaranty from USDVA (can be lower rate for vet borrower)
 - **VA Medical** system (Hospital by OHSU; categories for eligibility; clinics)
 - **Records**: National Personnel Records Center (St. Louis); DD-214
 - D. **Oregon Dept of Veterans Affairs (ODVA) – Salem & Portland**:
Assistance with USDVA claims; Oregon Veterans Home (nursing home; The Dalles & now Lebanon); emergency assistance; *direct home loans*
 - E. **Claims assistance** (claims filed against the USDVA):
 - USDVA Regional Office (1st & Main building in Portland): 1-800-827-1000
 - ODVA Portland (1st & Main building in Portland): 503-412-4777
 - Washington County veterans office: 503-846-3060
 - Multnomah County veterans office: 503-988-3620
 - Clackamas County veterans office: 503-650-5631
 - Columbia County veterans office: 503-366-6580
 - American Legion, Veterans of Foreign Wars; Disabled American Veterans

Topic #2 Common claims against the USDVA

- I. **Pension** (20% of claims filed)
 - For vets & surviving spouses; lessens asset drain if in Assisted Living.....
Examples: \$1000/mo single vet -*basic*; \$2000/mo vet & spouse – *aid & attendance*
 - Vet had war-time service (vet in Germany during Vietnam; not if shot in Grenada)
 - Unable to *sustain gainful employment* if <65 (& few assets); age 65 & older is just..
 - Means tested:
 - - less than \$80,000 in non-home assets
 - - “net” income (after medical deductions) -> monthly income low?
- II. **Compensation** common issues claimed (80% of claims filed are for “comp”)
 - Most common: **hearing loss** & tinnitus
 - 10 – 30% of claims include: **Post Traumatic Stress Disorder** (PTSD)
See 1 page diagnostic checklist in DSM-IV
Note: PTSD can arise from:
 - Being part of or witnessing combat incidents
 - Involved in or witnessing wartime/peacetime accidents.
 - Military sexual trauma (rape, ...) against women or men
 - TBI: **Traumatic Brain Injury** (mild to severe)
 - **Agent Orange** (Vietnam, Korea, U.S.) list of illnesses: 38 CFR 3.309(e):
 - Diabetes
 - Prostate Cancer
 - Lung cancer
 - Ischemic heart disease
 - 13 total
- III. Cluster of issues by era
 - Vietnam
 - hearing loss
 - PTSD
 - Joints (knees, ...)
 - (agent orange) – diabetes & Secondary conditions
 - Asbestosis (Navy,..)
 - Hepatitis C (combat medic)
 - Iraq/Afghanistan & Gulf War (1990’s)
 - Hearing loss
 - PTSD
 - TBI (Iraq/Afghanistan – IED’s)
 - Joints (knees, ...)
 - Gulf War Syndrome (symptom clusters; no diagnosis)
 - Korea & WWII
 - Hearing loss
 - PTSD
 - Cold weather injuries/illnesses
- Coast Guard rescue swimmer: arthritis / depression / ...

Topic #3 Veterans Law theory re Compensation claims

1. Lawyers may be paid for vet law work after a Notice of Disagreement filed
2. It is all federal law: 38 USC & 38 CFR
3. **Resources:** www.va.gov ("Federal Benefits for Veterans, Dependents, and Survivors")
 - LexisNexis (Matthew Bender): Veterans Law Manual (2000 pages)
 - LexisNexis: Federal Veterans Laws, Rules & Regulations (38 USC & 38 CFR) - both books plus CD – about \$140 annually
 - Oregon State Bar CLE: Veterans Law: Representing Former Service Members and Their Disability Claims (March 14, 2008)
 - Covers about 200 separate points (County Service Officers handle about 180 of these points)
4. How **different** from other areas of law?
 - Burden of proof: "*as likely as not*" – 50%-50%
 - No *statute of limitations* – have reversed VA denials from the 1940's
5. To receive Compensation, you must satisfy the **3 elements** for "service-connection" of your illness/injury:
 - 1) Present diagnosis of illness (e.g., diabetes) or injury (bad knee)
 - 2) documented event in service
 - 3) medical opinion linking present diagnosis to event in service
6. **5 ways** in which **service-connection** arises:
 - 1) **Direct** – e.g., fall & hit knee on training run
 - 2) **Aggravation** – e.g., Army accepted your damaged knee; now worse
 - 3) **Presumptive** – exposed to hazard (e.g., agent orange); now ill (e.g., diabetes); VA presumes you are now ill because you exposed years ago
 - 4) **Secondary** – e.g., have diabetes from Korean agent orange exposure but now 5 years later you have peripheral neuropathy
 - 5) **38 USC 1151 claim:** o.k. upon leaving military, but had bad result from VA hospital operation (can sue in federal tort claim action also)
7. Retro payments; disability %'s; unemployability; surviving spouses
 - a) **Disability %'s** (all disabilities combined) – single vet, tax-free monthly:
Note: if any %, then can get into VA health system without means test.
10%- \$125 / 20% - \$250 (voc rehab also) / 30% - \$390 / 40% - 4560 (OR partial prop tax exempt also) / 50% - \$800 (Category 1 at VA hospital) / 60% - \$1000 / 70% \$ 1275 (can apply for unemployability also) / 80% - \$1475 / 90% - \$1660 / 100% - \$2770 (might be "permanent & total" – has implications)
 - b) **Unemployability:** If at 70%, 80%, or 90% - You can be paid at 100% if you cannot sustain substantially gainful employment due to your VA disabilities.
 - c) **Retroactive payment:** Lump sum paid after claim approved (from date of claim to approval). Approval may not come for years, yielding retro payments of:
\$500 - \$5000 most common; to \$50,000 frequent; to \$100,000 sometimes; \$100,000+ rare

Topic #4: Flow of a VA compensation case (not unique timeline)

Day 1: Vet walks into your county veterans' office and says he is over income to get into the VA health system, but he understands that if his hearing loss is service-connected, he could get small compensation and VA health system enrollment. Claim is filed for hearing loss on **VA Form 21-526**, and you tell vet to obtain hearing exam to submit

3 months: VA sends vet a "*Development letter*" stating what is needed.

You also claim residual of **rheumatic fever** suffered in the Army 50 years ago

4 months: VA schedules **C&P exam**. Examiner concludes that hearing loss is "**likely as not**" service-connected

7 months: Vet receives VA Rating Decision awarding **10%** for **hearing loss** & a **retro** of \$750.

8 months: VA schedules C&P exam; examiner concludes that his present symptoms are not a result of his Army documents rheumatic fever in the 1950's.

12 months: VA issues **Rating Decision** denying rheumatic fever

2 years: Vet was working in the hurricane clean-up in the Gulf Coast; came back to discuss denial. One year after denial is deadline to file an appeal (**Notice of Disagreement** – i.e., NOD)

3 years: Vet obtains a private opinion linking his current symptoms to the rheumatic fever.

3 ½ years: Decision Review Officer (**DRO**) Hearing at Portland VA Regional VA Office (**PVARO**). DRO says that VA C&P examiner had benefit of reviewing the entire vet's military & VA file. Denies claim (accepts VA examiner over private opinion)

3 years & 7 months: VA (DRO) issues a **Statement of the Case** (SOC) denying the claim but attaches a blank **Form 9** (must submit within 60 days of claim dies) saying that you want to appeal to the Board of Veterans Appeals (**BVA**). Vet files Form 9.

4 years: Vet has enrolled in VA medical system. Obtains VA 'Progress note' showing that the treating VA physician suspects that the vet's symptoms are linked to rheumatic fever.

Physician's supervisor enters note saying that it might be from another cause. You submit this.

4 ½ years: VA again denies by issuing a Supplemental SOC. Says doctors' phrasings do not amount to "likely as not statements". Case remains on appeal to BVA.

5 years: Vet has had bad dreams for years, and he finally seeks help in counseling. Counselor determines PTSD from witnessing multiple crashes on an aircraft carrier. File a **PTSD claim**.

5 years to 5 years & 8 months: VA processes but denies the PTSD claim from events 50 years ago. You file a NOD.

6 years & 8 months: BVA hearing by video link to **Veterans Law Judge** in Washington, D.C.

7 years & 4 months: BVA to send the case to University of Alabama Medical School for an opinion.

7 years & 5 months (VA has split vet's file): DRO Hearing at PVARO re PTSD – denied

7 years & 8 months: U of Ala opinion linking residuals to rheumatic fever. BVA judge finds "*service-connection*" and **remands** to PVARO for C&P exam to set disability %'s.

8 years: Rating Decision setting rheumatic fever symptoms at **50%** (combined 55% - rounds to 60%)

8 years & 2 months: DRO denies the PTSD claim. You file Form 9 anticipating a BVA hearing at the 11 year point.

8 years & 3 months: Vet is diagnosed with **Depression secondary** to fever residuals; claim filed.

9 years: After the usual process, he is rated at 50% depressed (**combined** 78%; rounds to 80%)

9 years & 1 month: Vet struggles with his own business; due to all his conditions, has not cleared more than the federal poverty rate in net income in last 3 years. Files for "**individual unemployability**" (I/U).

9 years & 8 months: VA denies the I/U claim, but the Rating Specialist has said that each condition by itself does not make him unemployable. County Service Officer sees this as an error by the VA. Contacts the VA Compensation supervisor, who refers matter to a senior rater.

9 years & 10 months: VA **Rating Decision** awarding 100% based upon I/U.

10 years: You withdraw the PTSD claim as you figure that the Depression is worse than the PTSD (can't receive comp for both mental conditions – take the worse).

10 years & 1 month: County Service Officer decides to retire.