

JGL Eye Column

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C HICAGO (*jGLi*) – Attorney Lawrence Gottfried of the Board of Veterans Appeal (BVA) pled guilty of removing documents from veteran case files in order to delay or preclude decisions on the merits of benefit applications, destroying portions of at least 32 out of 38 case files assigned to him for over a three-month period. This conduct continued over four years, possibly affecting the claims of over 1,000 United States veterans.

Another BVA attorney, Jill Rygwalski, also pled guilty to similar tampering with veteran case files, potentially affecting 1,100 veterans. Rygwalski was convicted of forging documents and destroying medical records while processing medical and benefit claims of veterans. About 70 veterans died after Ms. Rygwalski returned their cases to local veterans' office for further action necessitated by her own unlawful conduct, resulting in large forfeitures of accrued benefits.

Officials of the VA and the DOD (Department of Defense), together with the Department of the Army (DA) and other government entities responsible for the U.S. Armed Services, have taken inappropriate and improper measures to reduce budget outlays for service-connected death or disability compensation (SCDDC) to Iraq and Afghanistan war veterans. Their actions effectively deprive soldiers suffering from post-traumatic stress disorder (PTSD) of the opportunity to later apply for SCDDC.

**DESTRUCTION, ALTERATION OF VETS RECORDS
CONTINUE TODAY**

According to the complaint filed by the Veterans for Common Sense and Veterans for the Truth (collectively called "Veterans") against the Department of Veterans Affairs (VA) in 2007 before U.S. District Court of Northern California Judge Samuel Conti in San Francisco, despite the conviction of these BVA lawyers, "the destruction, alteration, and forgery of veterans' records and claim files and other illegal practices continue today."

While Judge Conti dismissed the allegations cited above by the Veterans, who filed a class action suit, seeking injunctive and declaratory relief to remedy delays in 1) provision of mental health care and 2) adjudication of SCDDC, the majority of the three-judge panel of the U.S. Ninth Circuit in San Francisco overturned Conti's ruling, citing VA's failure to provide adequate procedures for veterans facing prejudicial delays in the delivery of mental health care that violates the Due Process Clause of the Fifth Amendment of the veterans and that Conti erroneously denied Veterans the relief to which they are entitled under the Due Process Clause."

The opinion by Circuit Judges Procter Hug, Jr. and Stephen Reinhardt was challenged at the en banc oral argument last Dec. 13 by an 11-member Circuit judges. The en banc ruling is due next year.

U.S. Veterans and Filipino and Filipino American veterans would be waiting with bated breath the verdict of this case. A favorable ruling could stop the estimated 18 suicides per day among America's 25 million veterans, who could no longer wait because of the delay of their medical treatment.

1/3 OF FEMALE VETS HAD BEEN RAPED IN THE SERVICE

Out of the 1.6-M deployed in the Global War on Terrorism (Iraq & Afghanistan wars), 230,000 have sought medical treatment, and 83,000 of them were for mental conditions such as PTSD.

By June 2007, 3,810 died in those wars, 111 died of self-inflicted wounds and DOD does not report suicides among the vets of GWOT.

About 1,000 vets under care of VA commit suicide every year or 2.7 of them commit suicide a day (as of early May 2007). Outside the VA case, additional 5,000 commit suicide every year at 13.6 a day or 16.4 a day combined with percentage with PTSD unknown.

PTSD is psychiatric disorder in a person, who experiences, witnesses, or is confronted with traumatic event, often life threatening. It is the most prevalent mental disorder arising from combat.

It involves intense fear, helplessness or horror, exposed to trauma, re-experience of traumatic event, often thru flashbacks or nightmares; avoidance of anything associated with the trauma and numbing of emotions and increased arousal, often manifested by difficulty sleeping and concentrating and by irritability.

There is no cure of PTSD. But early identification and treatment of symptoms may lessen severity of the condition and improve the overall quality of life for service members and veterans. If left untreated, severe PTSD can lead to substance abuse, depression, and suicide.

Returning veterans with PTSD range from 15% to 50%.

Female vets are less likely to receive disability benefits for PTSD than male. The difference maybe a consequence of the relative difficulty of substantiating exposure to non-combat traumatic stressors – notably, military sexual assault. In 2003, DOD report, nearly one-third of female vets reported that they had been sexually assaulted during military service.

PRESIDENT OBAMA CALLS PTSD ONE OF TWO SIGNATURE WOUNDS

If the panel's ruling is affirmed by en banc judges, it will give veterans a collective sigh of relief and a silver lining that they will finally be treated for what President Obama calls the two "signature wounds of today's war" – the PTSD and the traumatic brain injuries.

It can also be cited as a precedent in the pending class action for declaratory and injunctive relief under the U.S. Constitution filed by Filipino American veteran Romeo R. de Fernandez, et al. of the Veterans Equity Center v. U.S. DVA et al. pending before the U.S. District of Northern California in Oakland

The Filipino veterans claim that the “use of the (National Personnel Records Center’s) Missouri List and Loyalty Challenges’ should be declared unconstitutional as they infringe on their property and liberty rights protected by the Due Process Clause of the Fifth Amendment of the U.S. Constitution, which provides that “No person shall be deprived of life, liberty, or property, without due process of law.”

They also claim that refusal by the VA to accept “alternate proof of WWII military service source if their names do not appear on the Missouri List and Challenging the loyalty of WW II Filipino veterans and their FVEC claims as unreliable evidence” are depriving them of meaningful access to the courts and their right to petition for a redress of grievances in violation of their First and Fifth Amendments to the U.S. Constitution.

A favorable ruling will also call into question the recent pronouncement of Army Deputy Undersecretary Thomas Hawley that there is an additional ground for denial of Filipino veterans’ benefit claim – if their names are found in the list of collaborators with the Japanese Imperial Army.

VA Secretary Erick K. Shinseki also opened the possibility of accepting the service records from the Adjutant General of the Philippines but limited it to documents issued “sometime immediately after the war (1947).”

Written by

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These two suggestions should be cited as “inappropriate and improper measures to reduce budget outlays.” Like Filvets, U.S. vets are “second class citizens, who must survive without the procedural protections and civil rights embodied in the U.S. Constitution and enjoyed by their fellow citizens,” according the 2007 complaint of the Veterans.

Happy New Year! # # #

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