

# THE VETERANS MONTHLY



VOLUME 1, ISSUE 3

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AUGUST 2010



## PTSD SERVICE CONNECTION Q&A

As we highlighted in last month's Caselaw Corner, on July 13th VA made effective its new rules for adjudicating disability compensation claims for posttraumatic stress disorder (PTSD) by relaxing (in certain instances) the evidentiary standard for in-service stressors. This results in the elimination of the requirement to provide supporting evidence of a Veteran's in-service stressor if it is related to their "fear of hostile military or terrorist activity."

With the goal of clearing up some of the confusion surrounding this development, this article will address a few of the questions that have come to light since last month's announcement.

*Q. In practical terms, what does this amendment mean for Veterans who expect to file PTSD claims in the future?*

A. As a result of this amendment, Veterans will in most cases no longer be required to locate witnesses to an event or track down official records that may be difficult to obtain in order to satisfy the stressor requirements concerning their PTSD. This amendment will have the effect of reducing the burden placed upon Veterans and is expected to help more people get the care they need.

*...Continued on Next Page*

*Q. Does this revision require that the Veteran have participated in combat or come under fire to prove service connection for their PTSD claim?*

A. No. A Veteran need only show that they experienced conditions that involved the threat of death or serious injury and his or her response to hostile military activity involved fear. This would be subject to the determination of a VA doctor.

*Q. Can a Veteran use a diagnosis from a private doctor to prove service connection for a PTSD claim?*

A. Yes, but only if your records show that you were in combat. If you were not in combat, you can only get service connection for PTSD if you were diagnosed by a VA doctor. However, the Veteran can use private mental health reports to support their claim that their PTSD was the product of a stressor experienced during their service.

*Q. If a Veteran's request for service connection was denied prior to this amendment on the grounds that the stressor could not be verified, will her request for service connection be granted provided she reopens her claim and has her stressor corroborated by a VA doctor?*

A. Yes. Although her request for service connection was correctly denied according to the previous standards, the evidentiary burden for establishing occurrence of an in-service stressor has been relaxed enough to help this Veteran and others like her. This is the case provided that their "fear of hostile military or terrorist activity" is found to be consistent with the "places, types, and circumstances" of their service.

*Q. Will a Veteran who has experienced difficulty obtaining a diagnosis of PTSD now find it easier to obtain this diagnosis?*

A. No. This development does not concern the evaluation of mental disorders; it only eases the evidentiary standards for service connection in some cases.

*Q. Would having served in a certain capacity in the military (as an infantryman, for example) automatically cause the reduced evidentiary standard for establishing a stressor to apply?*

A. No. While a Veteran's in-service role may help to establish evidence of an exposure to a stressor, it does not automatically establish a stressor. Keep in mind that a Veteran's stressor

account (based on the evidence of record) must still align with the "places, types, and circumstances" of their service, regardless of the their in-service role.

## LIVING FOR GIVING

### OHIO-BASED V.H.V.O. HELPS VETS

According to their website, Veterans Helping Veterans and Others, Inc. was started when John D. Foster "sat down with other veterans and decided it was time to join hands with our own and fight our war on poverty in America." In Mr. Foster's role as Commander of this Portsmouth, Ohio-based non-profit, he has worked with a number of capable and professional volunteers to provide several thousand needy Veterans and others with clothing, food, baby and child-care supplies, personal hygiene items, and cleaning supplies, among others. Working on Mr. Foster's right side is his Vice Commander, Mike Gifford. Mr. Gifford heads up the organization's civilian relations.

To learn more, please visit <http://www.veteranshelping.org/>



## MEDICAL MINUTE

### PTSD LINKED TO HEART DISEASE

In a recent study conducted by Dr. Joseph Boscarino of the Center for Health Research at the Geisinger Clinic in Danville, PA, a connection was found between PTSD and heart disease risk. Dr. Boscarino studied a group of 4,328 Vietnam Veterans with and without diagnosed PTSD. He found that those Veterans with PTSD in 1985 were much more likely than their non-PTSD counterparts to have died from heart disease in the year 2000. All the men in the study were free of heart disease in 1985 and under the age of 65 in 2000. Dr. Boscarino observes that chronic PTSD results in the release of stress hormones which may contribute to an unhealthy cardiovascular system. When combined with other unhealthy PTSD-related behaviors such as smoking and over-eating, these factors are likely to increase a person's risk of heart and premature death.



# WEB WATCH

THE POPULAR HADIT.COM

For T-Bird, it all started in December of 1990 with a post-Naval discharge separation seminar. At this seminar, she met with a Disabled American Veterans (DAV) representative by the name of Jim Milton to discuss the details of her medical file. As a result of Mr. Milton's counseling, she was introduced to a world that she now comfortably commands through her ever-popular informational website, HadIt.com.

T-Bird came to appreciate the mechanics of VA at a time when the web was still in its infancy and when information was much harder to come by. In the course of her conversations with Veterans and counselors, she started to gather the puzzle pieces that would fuel her passion for justice and combine to form what would later become an online community founded upon the principles of clear communication and assisting those in need.

HadIt.com is a collaborative project made possible through the efforts of many dedicated volunteers. Led by T-Bird, these volunteers work on behalf of their brothers and sisters-in-arms to break down barriers to communication and help Veterans and their dependants better understand the issues that many of them will have to confront in their civilian lives. A quick scan through the wealth of information on the website reveals that T-Bird and her staff have built up quite a large following. In fact, the website has such a loyal visitor base that one member even put HadIt.com's logo on the side of his boat (see below).



According to one of the site's many forum members, "This is a great site for someone who wants to be proactive with their claims." Considering the nature of the site and the masses of Veterans who stand behind it, it isn't too difficult to see why this is a very popular opinion.

HadIt.com has recently entered into a partnership with Surviving Veterans Resolve (SVR) Radio to reach an even larger audience of Veterans. SVR Radio is a Veteran-focused internet radio show hosted by Jerrel Cook and HadIt.com helps provide the technical tools and support necessary to ensure that the show broadcasts live every Wednesday at 5:30 PM CST. SVR Radio hosts a variety of guests from Veterans to Congressmen and will soon be open for callers wanting to call in and ask on-the-air questions of the guests and panel. A link allowing listeners to listen to the show live is on the SVR Radio website, as are links to previous shows.

Other developments for HadIt.com include a recent investment in a GoToWebinar subscription for use with the radio show and the addition of a live internet chat room for forum members. This chat room is designed to allow members to login 24/7 and engage in conversation with other online members. While still new and relatively unfamiliar to many members, T-Bird likens the atmosphere to that of an NCO club and lightheartedly observes that she has "high hopes that it will be a great social interaction tool for our housebound and insomniac members."

Future plans for the site include the formation of a special team of volunteers to write articles about VA disability claims, with HadIt.com providing the necessary collaborative tools. T-Bird says that while she has no shortage of ideas for HadIt.com, the lack of formal staff does make it occasionally difficult to implement ideas. However, she says that the great number of Veterans who donate their time to helping others is a truly beautiful thing and that she is daily humbled and honored by their dedication to the site and one another.

**"Leave No One Behind, Not On A Jungle Trail, Not On A Desert Trail, Not On A Paper Trail™"**

- hadit.com

For more information, please visit [www.hadit.com](http://www.hadit.com) and <http://svr-radio.com/svrradio.html>

# NATIONAL CEMETERY BURIAL POLICY REVISITED

H.R. 761 (a.k.a. the Corey Shea Act) is a bill that would amend title 38 of the United States Code that was introduced on January 28th, 2009 by Barney Frank of Massachusetts. According to the Library of Congress' Bill Text, H.R. 761 would "extend eligibility for burial in a national cemetery to the parents of certain veterans, provided that space is available and that the veteran does not have a spouse or child who has been buried or would be eligible." The bill has since become incorporated into the larger H.R. 3949.

According to law, only spouses and/or minor children of deceased Veterans may share the same plot as their loved ones. While the issue most certainly deserves and has received the utmost respect and sensitivity, VA has expressed concern about the potential reduction in the number of grave sites available to Veterans. In response to this, H.R. 3949 would require the VA Secretary to determine that sufficient available space exists within the cemetery for the "interment of the biological or adoptive parent(s) of the servicemember; that the servicemember died while engaged in combat, hostile action, or training related injuries; and, at the time of their death, there were no other eligible dependents, such as a spouse or ... child."

**"He didn't get a chance to get married, have children and he's my son."**

- Ms. Denise Anderson

The mother around whom all this centers is Ms. Denise Anderson. Ms. Anderson does not suffer from any illness, but wants to ensure that she will be laid to rest by her son's side. In a House floor speech given last November, Mr. Frank said that "we are grateful to [Ms. Anderson] for giving us one more chance to show in a small way how much we honor those who have lost their lives. I cannot think of a greater disproportion than what Denise Anderson gave to us, her son, and what she has asked us to give in return."

Specialist Cory Shea was a 2005 graduate of Mansfield High School in Mansfield, Massachusetts. He was killed by an Iraqi soldier working alongside American forces. He is now laid to rest at the Bourne National Cemetery.



*Cory Shea with his mother, Denise Anderson*

## STERILIZATION CONCERNS AT OHIO VA HOSPITAL

In March of this year the Office of Inspector General administered a Combined Assessment Program (CAP) review of the Dayton VA Medical Center in Dayton, Ohio. The purpose of this review is to ensure that Veterans are receiving high quality health care and to consider what if any improvements should be made in the areas of patient care administration and quality management. During the review, the OIG provided fraud and integrity awareness training to more than 260 medical center employees.

The CAP review included the assessment of eight operational activities. Five of the eight complied entirely with Veterans Health Administration (VHA) standards while the other three were identified as requiring special attention to ensure compliance. The three activities in need of improvement were (1) Reusable Medical Equipment; (2) Coordination of Care; and (3) Physician Credentialing and Privileging.

The CAP review's Reusable Medical Equipment concerns deal with the regular, inappropriate use of flash sterilization as a means for sterilizing surgical instruments. VA policy requires full sterilization procedures to be used for all

surgical instruments with flash sterilization being appropriate only for emergency situations (such as when a surgeon drops a sterilized instrument during an operation). While the hospital in question was in compliance with their own standards, these standards fell short of the more demanding VA guidelines which prohibit the use of flash sterilization in non-emergency situations. The problem has since been fixed and the medical center has aligned its internal policy with that of the VHA.

The Coordination of Care concerns surround the degree to which inter-facility transfers and discharges were aligned with VHA standards. VHA requires that medical centers have the policies in place to ensure that patients experience safe, timely, and appropriate transfers. The CAP review found that during the months of November and December of 2009, 7 out of 10 patients transferred from various medical center units to non-VA facilities with incomplete documentation. This issue has since been remedied, but the missing information included the behavioral stability of the patient, the equipment required during transfer, and discharge instructions that were not consistent with the patient's dietary orders.

Finally, the Physician Credentialing and Privileging issue concerned the medical center's Professional Standards Board (PSB) and the evaluation of physicians' credentials. PSB meeting minutes must reflect the documents reviewed and the reasons given for either the granting or denying of privileges. It was found that the meeting minutes concerning the physicians under review did not show that detailed discussions took place. In response to this, the medical center has since implemented a new form designed to fully document these discussions so as to ensure that future discussions of physicians' performance data is documented.

For more information, please visit:  
<http://www4.va.gov/oig/CAP/VAOIG-10-01173-203.pdf>

## FORMER TRLA MANAGER SENTENCED

In a particularly disturbing development out of Texas, 53-year-old Leo Alvarado was sentenced to four and a half years in federal prison for the theft of funds intended to serve the legal needs of impoverished Veterans.

United States District Judge Fred Biery entered a Monetary Judgment of Forfeiture against Alvarado totaling more than \$134,000. This money will be recouped through the sale of several properties owned by Alvarado. Prior to his termination in February of 2006, Alvarado worked as a team manager for Veterans services of Texas Rio Grande Legal Aid, a nonprofit agency that specializes in providing free legal services to the poor in a 68-county service area. In this position he was expected to travel throughout Texas assisting low income Veterans and widows with their VA claims.

Between November 2003 until his termination in February 2006, Alvarado submitted more than 500 trip vouchers for business trips that never took place. He claimed that the majority of trips were from his San Antonio home to visit clients in Midland, Big Spring, Waco and numerous other Texas cities. Prosecutors say that because he was a team manager who was not under the immediate oversight of anyone, he had no trouble getting his travel approved.

The investigation revealed that Alvarado had fabricated the names and contact information of clients in order to receive travel pay. In many instances he created entire identities including names, phone numbers, addresses, and social security numbers. The majority of the social security numbers were invalid, fraudulently attributed to Veterans, or belonged to deceased individuals. Among Alvarado's other fabrications were VA award letters and a self-described reputation as a 'VA claims expert.' The VA has confirmed that they had no awareness of Alvarado or any record showing that he in fact assisted any Veteran or widow in any way.

We have the good agents from the Department of Veterans Affairs' Office of Inspector General, Legal Services Corporation and the Social Security Administration to thank for bringing this individual to justice. Assistant United States Attorneys Judith Patton and Mary Nelda Valadez took the lead in prosecuting this case.

For more information, please visit:  
[http://www.justice.gov/usao/txw/press\\_releases/2010/Alvarado\\_SA\\_fraud\\_sen.pdf](http://www.justice.gov/usao/txw/press_releases/2010/Alvarado_SA_fraud_sen.pdf)

# DELAYS WITH NEW AGENT ORANGE PRESUMPTIONS

In October 2009, VA announced that based upon a study by the Institute of Medicine, three illnesses would be added to the list of conditions “presumed” to be due to herbicide exposure for Veterans who served in Vietnam, bringing the number of presumed conditions to 15. The three new conditions are: B cell leukemias (such as hairy cell leukemia), Parkinson’s disease, and ischemic heart disease. Veterans who served in Vietnam and later develop one of the presumed illnesses have an easier path to service connection, as they do not need to prove the link between their service and condition. Regulations require that once the Secretary determines that a new presumption is warranted, within 60 days proposed regulations will be issued and final regulations will be issued within 90 days of the proposed regulations. Proposed regulations for the new presumptive conditions were issued outside of this timeframe on March 25, 2010; however, final regulations still have not been issued.

While Veterans and their advocates were generally pleased with the announcement of the new presumptive conditions last Fall, some have become disheartened that VA has yet to publish a final rule in the Federal Register – a step necessary for the presumptions to actually go into effect. The Paralyzed Veterans of America, along with a few other Veterans organizations, decided to take legal action. They filed a “petition for writ of mandamus” – meaning, they asked a Federal court to issue an order to compel VA to issue a four-day order. On July 15, the U.S. Court of Appeals for the Federal Circuit ordered Secretary Shinseki to respond to the petition by noon on July 19, 2010.

The Secretary filed a timely 24-page response. Therein, the Secretary stated that the proposed rules were delayed due to the Office of Management and Budget’s (OMB) mandatory review. The Secretary also recognized that a final rule should have been published by February 17, 2010. The Secretary added that after reviewing close to 700 comments on the proposed rule, a draft of the final rule was approved and sent to the OMB for its review. The Secretary indicated that VA will publish the final rule in the Federal Register as soon as the OMB has cleared it.

The Secretary also argued that Paralyzed Veterans of America and the other petitioners had not met the strict requirements for a writ of mandamus. The Secretary argued that what the petitioners really are seeking is that the effective date of Veterans benefits for the new presumptive conditions will not be delayed because of delayed publication. The Secretary asserted that if Veterans file claims now, the delay in publication will not delay the effective date of their awards because the payment will be retroactive. In fact, the Secretary states that approximately 50,000 new claims have been filed for the three new presumptive conditions since the October 2009 announcement -- a staggering number for a nine-month period.

The Secretary’s response also touched upon another delay to issuing a final rule: the cost of the rule is estimated at \$42 billion over 10 years – this got Congress’ attention. Sen. Webb (D-VA) proposed an amendment to a bill that would freeze spending on any claims for the three new presumptive conditions by invoking the “Congressional Review Act,” which allows Congress to take 60 days to study VA’s decision to add these new conditions to the presumptive list more closely. The Senate already has accepted the amendment, but it still awaits House approval at the time of this newsletter’s publication. This potential move by Congress is not popular with many Veterans. However, some Congressional members, such as Sen. Daniel Akaka (D-Hawaii), Chairman of the Veterans affairs committee, are concerned about the impact of the new presumptive conditions upon services to all Veterans – that they will stretch VA’s adjudication and treatment resources too thinly. Given the number of new claims that have already been filed, this concern is not entirely unfounded. Some in Congress are also pushing to tighten government spending overall, given the state of the economy at large, and are thus concerned about the costs associated with the final rule.

At this point, only time will tell when a final rule will actually be published. If you are planning on filing a claim for service connection for any of the three conditions, do not delay doing so. Any local service organization should be able to help you file a claim with the appropriate Regional Office.

For more information, please visit:  
<http://www.vba.va.gov/bln/21/benefits/herbicide/>



# VETERAN EVENTS CALENDAR

HERE IS A LIST OF SOME EXCITING  
EVENTS HAPPENING NATIONWIDE  
THROUGHOUT SEPTEMBER

## **28th Annual Vietnam and All Veterans Reunion Camping Event**

Howard County Vietnam Veterans Association  
8313 East 400 South Greentown, IN 46936  
Telephone: (765) 628-2232  
September 17th - 19th, 2010  
<http://www.hcvvo.org/>

## **Poker Motorcycle Run for Disabled Veterans**

Starts at Old Bridge Elks Lodge  
67 Old Amboy Road  
Old Bridge, NJ 08857  
Telephone: (908) 812-7388 or (732) 616-2667  
September 18th, 2010 Registration 10 AM to 12 PM  
<http://www.oldbridgeelksride.com/>

## **Time of Remembrance Golf Tournament**

Columbia Point Golf Course  
225 Columbia Point Drive  
Richland, WA 99352  
Telephone: (509) 845-1442  
September 24th, 2010 - Shot Gun Start at 12:30 PM  
<http://www.timeofremembrance.org/soldiers/golf.aspx>

## **Black Hills Veteran March**

South Dakota National Guard Enlisted Association  
801 West National Guard Drive  
Souix Falls, SD 57104-0117  
Telephone: (605) 331-0030  
September 25th, 2010  
<http://blackhillsveteranmarch.com/index.html>



# CASELAW CORNER

## **PROBATIVE VALUE OF A MEDICAL OPINION**

The US Court of Appeal for the Federal Circuit in *Gardin v. Shinseki*, recently dealt with the issue of whether a medical opinion lacks probative value if a physician did not have access to or review a Veterans service medical records (SMRs). 2009-7120 (Decided July 16, 2010). Mr. Gardin submitted both lay and private medical evidence supporting his claim for service connection for diabetes. However, the Court of Appeal for Veterans Claims (CAVC) affirmed the Board's finding which discounted the medical opinion of Dr. Sexton explicitly because his opinion did not "suggest that actual service medical records were reviewed in determining that diabetes was present during service." *Id.* at 5. 38 U.S.C. § 5125 deals with the issue of private medical reports stating:

For purposes of establishing any claim for benefits..., a report of a medical examination administered by a private physician ... may be accepted without a requirement for confirmation by an examination by a physician employed by the Veterans Health Administration if the report is sufficiently complete to be adequate for the purpose of adjudicating such claim.

Both the statute and applicable regulation (found at 38 C.F.R. 3.159 (a)(1)) do not require a review of the Veteran's service medical records by a private physician in order for a medical opinion to be considered competent. In fact, the CAVC has already dealt with this issue in *Nieves-Rodriguez v. Peak*, stating that "a private medical opinion may not be discounted solely because the opining physician did not review the claims file." 22 Vet. App. 295, 304 (2008). The Federal Circuit in *Gardin* found that the fact that the Board discounted Mr. Gardin's private opinion just because his doctor had not reviewed the SMRs ran counter to the applicable regulations and the courts finding in *Nieves-Rodriguez* and vacated and remanded the matter for readjudication.

# VSO OF THE MONTH

**GARY FRESQUEZ, VETERANS SERVICE  
OFFICER FOR TWO NEW MEXICAN COUNTIES**



Established in 2003, there are 19 New Mexican Department of Veterans Services (NMDVS) Field Offices and numerous outreach sites across the state, each one staffed with an accredited Veterans Service Officer. NMDVS VSOs are committed to the care of New Mexico's Veterans. It is because of their hard work and professionalism that the NMDVS staff has been consistently ranked near the top of the list for successfully-filed VA benefits claims by states on behalf of Veterans. Expect to hear more from this dedicated team of professionals.

State Website: <http://www.dvs.state.nm.us/field.html>

National Website: <http://www.nacvso.com>

**Know a VSO who should be honored ? Email us at [drohde@vetlawyers.com](mailto:drohde@vetlawyers.com) and we'll feature them in a future issue.**

Bergmann & Moore, LLC  
7920 Norfolk Avenue, Suite 700  
Bethesda, MD 20814

***Q: How many counties/Veterans do you serve?***

A: I serve two counties, Colfax & Union. There are approximately 1,900 Veterans that reside in both counties. I serve around 30 Veterans/spouses per month.

***Q: Does each county in New Mexico have a dedicated Veterans Service Officer?***

A: No. There are currently 17 VSOs serving 33 counties. By doing outreach we are able to cover the entire state. We are state funded. The department was elevated to cabinet level status in 2003. This along with the leadership of Secretary Garcia has put Veteran issues at the forefront of state policy.

***Q: How long have you been a VSO, Mr. Fresquez?***

A: I will complete two years in September.

***Q: What is your favorite part of the job?***

A: Every aspect of the job is rewarding. As a Veteran, I can relate to the issues which Veterans deal with daily. As such, the empathy that I show is genuine and the Veterans can appreciate my commitment to assisting them. Perhaps their understanding of this is what makes my work extra rewarding!

***Q: What is your biggest challenge in assisting Veterans with their claims?***

A: My biggest challenge is getting the clients to communicate their needs. This communication encompasses everything from oral communication to providing supporting documentation. Once I have all the material, I can then work my 'magic' and submit a substantial and complete claim. Here in NM we have developed an extraordinary relationship with the POA organizations as well as with our local VA. Everyone has the Veteran's best interest at heart.