

# THE VETERANS MONTHLY



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## HENDERSON V. SHINSEKI

### THE SUPREME COURT ADDRESSES THE QUESTION OF THE 120-DAY TIME LIMIT FOR FILING AN APPEAL WITH THE VETERANS COURT

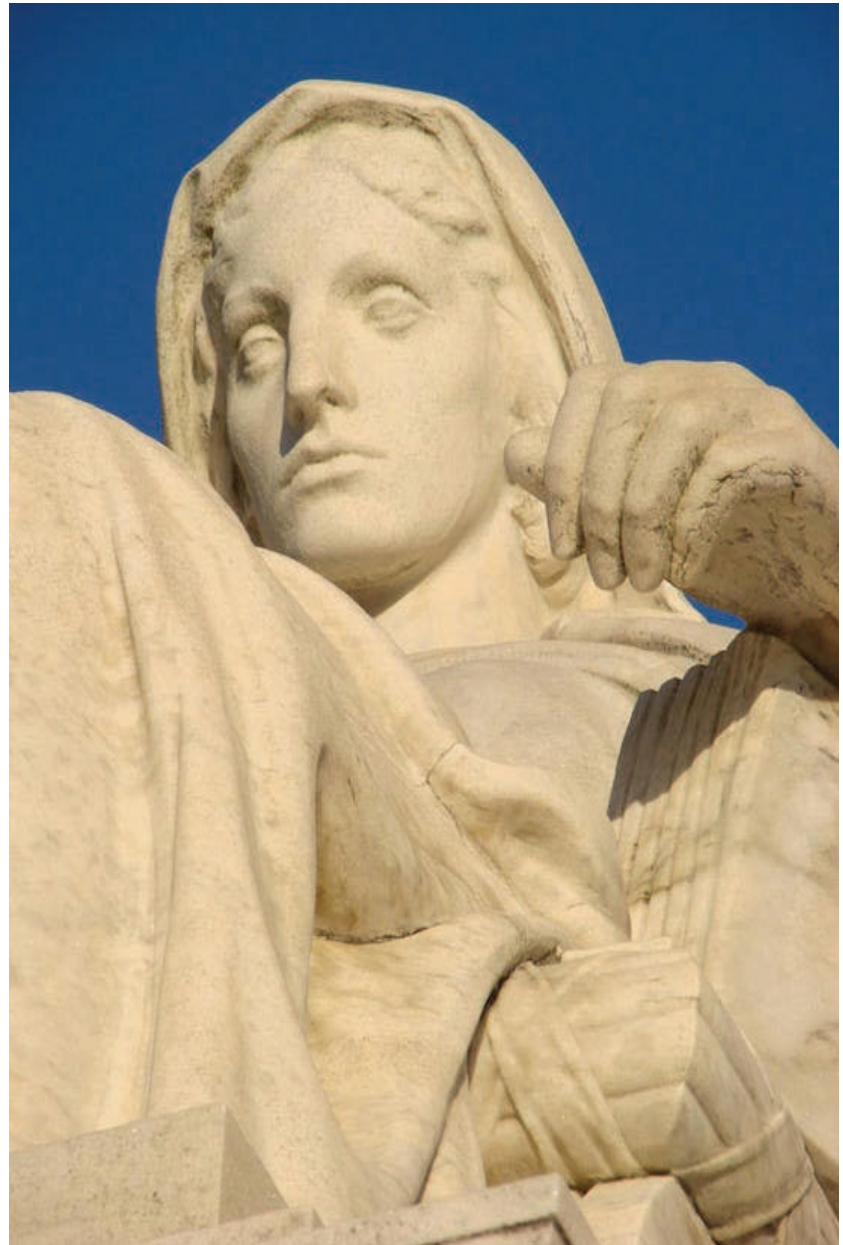
Recently, the Supreme Court granted a writ of certiorari for *Henderson v. Shinseki*, which means that it has agreed to hear the Veteran's appeal of the denial of his claim by the U.S. Court of Appeals for the Federal Circuit ("Fed Circuit"). It is not expected for the Supreme Court to issue a decision until at least early next year.

The issue that the Supreme Court will consider is whether the statutory 120-day time limit for filing a notice of appeal ("NOA") (found at 38 U.S.C. § 7266(a)) to the Court of Appeals for Veterans' Claims ("CAVC") constitutes a statute of limitations subject to the doctrine of equitable tolling (meaning, exceptions to the filing deadline can be made) or whether the time limit is jurisdictional and does not allow any exceptions.

To begin with, the government does not dispute that:

- VA has millions of Veterans disability claims awaiting decision or settlement and that Veterans prevail in 80% of the cases decided on the merit;

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- The vast majority of the Veterans behind these claims are not represented by counsel;

- Indeed, many circumstances beyond a Veterans' control prevent him or her from filing a timely notice of appeal. Some of these circumstances include serious mental disabilities (often service-connected and the cause of their filing for benefits) and VA claim misconduct or mishandling.

In Mr. Henderson's case, the BVA denied entitlement to special monthly compensation in August 2004. More than 120 days after the BVA decision was mailed to him, his NOA was received in January 2005. He was ordered to show cause why his appeal should not be dismissed as untimely. He asked for an extension to file his NOA because his service-connected disability had prevented him from filing it on time. He provided a letter from a psychiatrist to support this and in a single-judge decision, the Court dismissed his appeal for lack of jurisdiction.

The Supreme Court's review is needed so that exceptions to the court's filing deadline for certain legitimate circumstances are recognized.

For more information on this topic, please see:  
<http://www.supremecourt.gov/qp/09-01036qp.pdf>

## HONOR FLIGHT

The inaugural Honor Flight took place in May of 2005. Six small planes flew out of Springfield, Ohio taking twelve World War II Veterans on a visit to their memorial in Washington, DC. Since then over 40,000 Veterans have been provided free flights to Washington, DC to visit their memorials.

For more information, please visit [www.honorflight.org/](http://www.honorflight.org/)



## MEDICAL MINUTE

Do you grind your teeth at night? If so, you may suffer from bruxism. Bruxism can be service connected and is defined as the grinding and clenching of the teeth. People are often not aware that they suffer from Bruxism.

People with bruxism may suffer from a number of dental and medical conditions, which can get worse over time if the condition is not addressed. Regular clenching of the jaw can cause pain in the jaw, face, or ears, as well as headaches and muscle soreness. Additionally, bruxism can damage the teeth through erosion or chipping. The teeth of someone who suffers from bruxism can become more sensitive and more prone to cavities as the enamel wears away. Bruxism can even affect one's sleeping partner, as the noise can be loud enough to prevent him or her from enjoying a restful night.

For more information on this topic, please see:  
<http://www.stopgrindingteeth.net/bruxism-treatment>

## VA ANNOUNCES PLANS TO DEVELOP NEW ONLINE CLAIMS SYSTEM

According to VA Secretary Shinseki, the type of automation that this system would introduce would substantially reduce processing times and increase accuracy while simplifying the way that Veterans navigate the claims process. Surely it is a noble effort and in keeping with the trend to leverage technology to increase efficiency levels, but many Veterans are skeptical of VA's ability to pull this off in a way that won't compromise service quality levels.

The new system will be designed to guide Veterans through computerized, program-assisted menus that will capture relevant information and medical evidence with the goal of driving faster claims decisions. VA estimates the new system may assist as many as 100,000 Veterans during its debut alone.

An IBM team will be working closely with VA personnel to get the new system operational by this November. This new system represents VA's efforts to modernize the department and meet the increasingly demanding conditions of the 21st century.

For more information on this topic, please see:  
[http://www.informationweek.com/news/government/enterprise-apps/showArticle.jhtml?articleID=225702441&cid=RSSfeed\\_IWK\\_News](http://www.informationweek.com/news/government/enterprise-apps/showArticle.jhtml?articleID=225702441&cid=RSSfeed_IWK_News)



# VETERAN EVENTS CALENDAR

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

## **Wounded Warrior Project's Chicago River and Lake Michigan Fundraiser Boat Cruise**

Shoreline Sightseeing Star of Chicago  
Sears Tower Dock, Chicago, IL 60606  
Telephone: (708) 533-7111  
\$45 to \$65  
August 5th, 2010 6:45 PM to 9:00 PM  
<http://posts.same.org/Chicago/calendar.htm>

## **Walking Point Charity Vet Golf Tournament**

The Reserve Vineyards and Golf Club  
4805 SW 229th Avenue  
Aloha, OR 97007  
Telephone: (503) 784-3718  
August 20th, 2010 Registration at 6:45 AM  
<http://walkingpointfarms.com/golftourney.html>

## ***Wings Over Wine County***

### **Pacific Coast Air Museum Air Show**

2200 Airport Boulevard  
Santa Rosa, CA 95403  
Telephone: (707) 566-8380  
August 21st - August 22nd, 2010  
<http://www.wingsoverwinecountry.org/>

## **Kentucky Heartland Festival Honoring Vietnam Veterans**

Freeman Lake Park  
Elizabethtown, KY 42701  
Telephone: (270) 765-4334  
August 26th – August 29th, 2010  
<http://www.etownchamber.org>



# CASELAW CORNER

## VA'S REGULATION CHANGES FOR PTSD SERVICE CONNECTION

President Obama's weekly address on July 10th focused exclusively on issues facing Veterans and those active military personnel currently serving in Iraq and Afghanistan. Much of the address centered on obstacles facing Veterans trying to obtain VA benefits for post-traumatic stress disorder (PTSD). The president emphasized the problems associated with having to provide a verifiable in-service stressor before PTSD benefits are granted.

Because of this, VA has amended its regulations regarding service connection for PTSD. According to VA, "This amendment takes into consideration the current scientific research relating PTSD to exposure to hostile military and terrorist actions. The amendment acknowledges the inherently stressful nature of the places, types, and circumstances of service. With this amendment, the evidentiary standard of establishing an in-service stressor will be reduced in these cases. The amendment will facilitate the timely processing of PTSD claims by simplifying development and research procedures..." 75 Fed. Reg. 39843 (July 13, 2010) (to be codified at 38 C.F.R. § 3.304).

VA's changes to PTSD regulations could affect hundreds of thousands of Veterans and in theory make it easier to prove PTSD service connection. The new rules, effective July 13, 2010, which apply to Veterans of all wars, allow service connection for PTSD if "the claimed stressor is adequate to support a diagnosis of PTSD and that the veteran's symptoms are related to the claimed stressor..."

VA Secretary Eric Shinseki was quoted in the New York Times as saying, "This nation has a solemn obligation to the men and women who have honorably served this country and suffer from the emotional and often devastating hidden wounds of war. This final regulation goes a long way to ensure that veterans receive the benefits and services they need." The new standard of proof applies to all PTSD claims received on or after July 13, 2010; were received prior to that date but have not been decided by a regional office; appealed to the BVA on or after July 7, 2010, not yet decided by the BVA; or pending before BVA because of a Court remand.

However, opponents of the proposed regulation note that it requires that a VA or VA-contracted clinician confirms that the Veteran's claimed stressor is adequate to support a diagnosis of PTSD. Additionally, the regulations do not specifically deal with PTSD claims for military sexual trauma, which means that the burden will still be on Veterans in these cases to provide enough information from service or from medical staff establishing that such sexual trauma in service resulted in PTSD.

# Q&A WITH A VSO

SHANNON JOHNSON, VETERANS SERVICE  
OFFICER FOR LANE COUNTY, OREGON



The Lane County Veterans Service Office is honored to help Veterans and their families apply for VA benefits and to help ensure that the Veteran and their family receives the maximum benefit to which they are entitled under law. They travel to Florence, Cottage Grove, and Oakridge, on at least a monthly basis to serve Veterans and their families directly in those communities.

County Website: [www.co.lane.or.us](http://www.co.lane.or.us)

State Website: [www.oregon.gov/odva/vsodirect](http://www.oregon.gov/odva/vsodirect)

National Website: [www.nacvso.org](http://www.nacvso.org)

**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.**

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Bethesda, MD 20814

***Q: How many Veterans do you serve in Lane County?***

A: We have approximately 35,000 Veterans in Lane County, not counting dependents and widows. We typically have around 3,000 that we are actively assisting with an open claim at any given time.

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

A: All but two counties in Oregon have a dedicated VSO. The two exceptions are the counties housing the State Capitol, which are served by the Oregon Department of Veterans Affairs.

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

A: I started informally helping Veterans with their claims when I retired from the Air Force in 1998, and advocated my own claim for the most part. I became an official, certified VSO with Lane County in 2005.

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

A: My favorite part of the job is the look on my people's faces when the claims go through, faster and bigger than they thought, and they realize the difference that it will make in their lives. The satisfaction of being able to help so many people has made a huge difference in my life.

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

A: The biggest challenge for me is being able to keep things in perspective, knowing that the VA makes a huge positive difference in people's lives but that sometimes it doesn't happen as fast as we would like. The patience required is hard for me.

*For questions regarding this mailer or to subscribe to our email list please contact our office at [drohde@vetlawyers.com](mailto:drohde@vetlawyers.com)*