

THE VETERANS MONTHLY



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ARE YOUR BENEFITS SAFE?

WHAT YOU NEED TO KNOW ABOUT THE VA SECRETARY'S RECENT CONTROVERSIAL PROPOSAL

On May 26th, 2010, VA Secretary Eric Shinseki submitted to Congressional leaders a 25 page legislative proposal entitled the "Veterans Benefit Programs Improvement Act of 2010."

A quick read through much of the online dialogue surrounding this proposal shows that Veterans are worried. According to critics of the newly-proposed legislation, Veterans would face an even steeper uphill battle to realize justice if the majority of these proposals become law. The legislation proposes drastic changes to the status quo as laid out in the Department of Veterans Affairs Act of 1988. These changes include:

- Limiting the length of time that Veterans have to file a Notice of Disagreement (NOD) to an original rating decision from one year to 180 days. According to the VA, this change would streamline the appeals process and better serve Veterans interests. But one wonders how this would help the many Veterans who for a variety of legitimate reasons cannot file on time.

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- Eliminating the requirement that the Board of Veterans' Appeals (BVA) provide reasons or bases for its decision. This would invariably result in almost no Board decisions being overturned at the Court. Claims would likely be denied and closed without explanation.
- Restricting the receipt of EAJA (Equal Access to Justice Act of 1948) fees to the prevailing party only in cases where the claim ultimately results in a financial payout. This means that legal advocates would have to wait sometimes years to receive fees, if at all. Without legal advocates standing at their side, many Veterans would likely be exposed to an even more difficult claims process.

Secretary Shinseki has said before that he would work to reduce the backlog of claims. And actions like this would surely do it. But the direction he would have us take as outlined in his proposed legislation may not be in the interest of Veterans. The bottom line is that Veterans might face more roadblocks on the path to getting their claim approved, while the VA will be given yet more capacity for frustrating Veterans' efforts to realize justice. ■

For more information on this topic, please see:
<http://www.vawatchdog.org/10/nf10/nfmay10/may10files/SecyLegislation.pdf>

BVA DOCKET DATE

The purpose of the BVA is to review benefit claims determinations made by local VA offices and issue decisions on appeals. The median docket date for the BVA as of June 2010 is May 2009. This means that on average, Veterans who filed their appeal to the BVA around May of 2009 – usually a VA Form 9 – are now being adjudicated by the BVA. ■



MEDICAL MINUTE

Do you experience ringing in the ears? If so, you may suffer from tinnitus. Research suggests that by electrically stimulating the vagus nerve, the condition can be better controlled.

Tinnitus is the perception of a ringing or other false sound that affects the ear and is often associated with hearing loss. It is common in soldiers subjected to loud noises. The concept for treating tinnitus in this study is to play all sound frequencies except the one corresponding to the person's current frequency, forcing the brain to be more responsive to the other sounds. Upcoming trials will be held in Belgium to determine if this approach will help improve this condition. ■

For more information on this topic, please see:
<http://www.technologyreview.com/biomedicine/25370/page1/>

VA SWITCHES TO SHORT FORM FOR DISABILITY BENEFITS APPLICATIONS

Under pressure to simplify their 23 page long benefits claims form, VA's Office of Management and Budget has recently approved a new 10 page form. The goal is to lessen the procedural steps that Veterans must undertake when applying for disability benefits.

Congressman John Hall (D-Dover Plains), chairman of the House Veterans' Affairs Subcommittee on Disability Assistance, championed the legislation and is pleased that Veterans will finally face fewer obstacles when applying for disability benefits.

"We are talking about trying to get help for our veterans more quickly because we have homeless veterans, because we have veterans who face bankruptcy or some of them dealing with suicidal thoughts and so on," he said. "One of the reasons that happens is because of the strain on the individual veteran and their family."

Hall claims that the new 10-page form will drastically cut down on the time between filing for disability benefits and receiving them. ■

For more information on this topic, please see:
<http://www1.va.gov/opa/pressrel/pressrelease.cfm?id=1912>



VETERAN EVENTS CALENDAR

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

American Legion Veterans Rally

Sault Ste. Marie, MI 49783
Telephone: (906) 632-2881
July 8th – July 10th, 2010
www.vetsrally.alr3.com

USASA Veterans Cup

Citizens Bank Fields at Progin Park
512 Old Union Turnpike
Lancaster, MA 01523
Telephone: (800) 852-8111
July 13th – July 18th, 2010
<http://www.veteranscup.us/>

2010 National Veteran Small Business Conference

Caesar's Palace Hotel
3570 Las Vegas Boulevard South
Las Vegas, Nevada 89109
Telephone: (877) 837-8623
July 19th – July 22nd, 2010
<http://www.nationalveteransconference.com/>

Disabled American Veterans National Convention

Hyatt Regency Atlanta on Peachtree Street
265 Peachtree Street NE
Atlanta, GA 30303
Telephone: (404) 577-1234
July 31st – August 3rd, 2010
\$129.00 Single/Double
<http://www.dav.org/news/UpcomingEvents.aspx>



CASELAW CORNER

LAY TESTIMONY USED TO ESTABLISH A NEXUS FOR EXAMINATION PURPOSES

The US Court of Appeals for the Federal Circuit in *Colantonio v. Shinseki*, 2009-7067 (Decided June 1, 2010), recently dealt with the language of 38 U.S.C. § 5103A(d)(2). That statute requires the Secretary to provide a medical examination or obtain a medical opinion on behalf of the Veteran if the evidence of record:

- (A) contains competent evidence that the claimant has a current disability, or persistent or recurrent symptoms of disability; and
- (B) indicates that the disability or symptoms may be associated with the claimant's active military, naval, or air service; but
- (C) does not contain sufficient medical evidence for the Secretary to make a decision on the claim.

38 U.S.C. § 5103A(d)(2). Mr. Colantonio argued that the intent of the statute was to not require competent evidence of a nexus to service per paragraph B since Congress chose to use the word "competent" in paragraph A, but only require that the evidence "indicate" a nexus to service. Mr. Colantonio argued that his lay testimony linking his back condition to service was sufficient to "indicate" that the condition was associated with service and therefore VA erred when it did not provide him with a medical examination. The Court pointed to its determination in *Waters v. Shinseki*, 601 F.3d 1274 (Fed. Cir. 2010), which dealt with the same question of statutory interpretation. In *Waters* the Court found that these paragraphs did contain different evidentiary standards, but still found that Mr. Waters "had not shown any factual basis for his claim." *Colantonio* at 6. Clarifying the language and decision in *Waters*, the Court found that "medically competent evidence is not required in every case to 'indicate' that the claimant's disability 'may be associated' with the claimant's service." *Colantonio* at 6-7. But the Court went on to note that lay evidence may not be sufficient in all cases to satisfy the standard set forth by paragraph B as in the case of *Waters*.

Q&A WITH A VSO

**JOE AULIK, VETERANS SERVICE OFFICER FOR
KEWAUNEE COUNTY, WISCONSIN**



r. Aulik indicated that a Veterans first point of contact should be at the county level – for not only VA benefits, but federal, state, and local benefits. If a Veteran does not have a county representative that handles Veterans issues, there may be a state representative or a phone number located at the back of the phone book that a Veteran can use as a resource for services.

County Website: www.kewauneeco.org

State website: www.wicvso.org

National website: www.nacvso.org

Know a VSO who should be honored ? Email us at ohde@vetlawyers.com and we'll feature them in a future issue.

Bergmann & Moore, LLC
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Bethesda, MD 20814

Q: How many Veterans do you serve in Kewaunee County?

A: There are approximately 2,000 Veterans, dependents and widows in Kewaunee County.

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

A: Yes, each county in Wisconsin has a CVSO (County Veterans Service Officer) responsible for Veterans in that area. Each service officer has had military service.

Q: How long have you been a VSCO, Mr. Aulik?

A: 11 years, also served in the US Air Force from 1983 to 1990, winning 9 awards during my service.

Q: What is your favorite part of the job?

A: I enjoy changing people's lives and having a positive effect by winning claims or basic benefits for Veterans.

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

A: The inefficiency of the VA system. *Notes a claim that was recently denied because VA said that the appropriate paper work wasn't filed although it had been. ☒

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