

The Veterans Monthly



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VA EXECUTIVE BONUS ISSUE BACK IN THE NATIONAL SPOTLIGHT

**VA LEADERSHIP REFUSES TO SURRENDER BONUSES AS MEDICAL STAFF STRUGGLE
TO WORK THROUGH LABOR ISSUES AND A GROWING DEMAND FOR SERVICES**



Bergmann & Moore, LLC provides premium legal services to Veterans and their dependents. While consultations and other services are offered free of charge, fees are charged for representation before VA on the condition that the case is won. The firm encourages Veterans and their dependents to make full use of the free services available to them through local Veterans Service Officers and/or Veterans Service Organizations.

The American Federation of Government Employees (AFGE) has recently spoken out against VA for continuing to pay “exorbitant bonuses” to managers at VA Medical Centers and in benefits offices as well as VA’s failure to provide full bargaining rights to some VA health care professionals. The AFGE is the largest federal employee union, representing over 625,000 workers – including more than 200,000 VA employees. Two-thirds of AFGE’s members within VA work in the Veterans Health Administration (VHA).

In 2009, Alma Lee, president of AFGE’s National Veterans Affairs Council explained that, “[t]he idea that frontline employees have to stretch resources with limited staff, while executives continue to receive large bonuses is mindboggling. If the VA is serious about recruiting and retaining highly trained and capable staff, it should reinvest in frontline staff, not top level bureaucracy.” AFGE’s disagreement with VA executive bonuses is not new. AFGE felt “Congress rightly

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reprimanded” VA in 2007 in response to widespread media reports indicating that VA was providing executive bonuses in the face of an increasing claim backlog, suspicion of poor care, and questionable deaths in VA hospitals.

In recent testimony before the House Committee on Veterans’ Affairs, James R. Swartz, Jr., a decision review officer and president of a local AFGE union, indicated that “[m]anagers at my RO and many others continue to receive large bonuses regardless of performance, at the expense of taxpayers, veterans and workplace morale.” AFGE claims such executive bonuses continue to be the norm, even though a recent audit by the VA Office of the Inspection General (OIG) estimates that the rating staff incorrectly processes 23 percent of the 45,000 claims inspected. The inspection focused on five types of claims: 1) temporary 100 percent ratings; 2) PTSD; 3) traumatic brain injuries; 4) herbicide exposure; and 5) “blue water” Vietnam Veterans. Of these claim types, the OIG found the highest error rating in claims for temporary 100 percent ratings, projecting that 82 percent of these claims were not adequately processed. The OIG report also identified weaknesses in processing notices of disagreement, failing to safeguard Veterans’ personally identifiable information, and failing to make timely decisions as to whether a Veteran is competent to manage his or her benefits.

Mr. Swartz also indicated that managers at many Regional Offices (ROs) are abusing their positions. His testimony states that “[t]he number of labor-management problems at ROs is skyrocketing. Rather than working with employees and their representatives, RO managers are threatening many hardworking employees with terminations and “performance improvement plans. . . . Holding front line employees responsible for management failures is not going to solve the backlog.” AFGE has also come out against proposed legislation that would increase the maximum amount of nurse incentive pay to \$100,000 and pharmacist incentive pay to \$40,000. One proposed amendment allows VA executive nurses who are not involved in direct patient care to receive a 400% increased in incentive pay.

On another note, AFGE also maintains that VA is not following its own rules on pay for front line medical employees. AFGE asserts that for eight years VA has interpreted Title 38 bargaining rights law too broadly, which has resulted in other types of VA employees as well as medical professionals at other federal agencies having more rights than VA doctors and nurses. AFGE alleges that the medical professionals who

fall under this regulation have been deprived off their full bargaining rights – such as bringing grievances and negotiating routine pay matters. AFGE National Secretary-Treasurer J. David Cox recently testified to the Senate’s Committee on Veterans’ Affairs regarding VA’s rejection of its own pay regulations. According to Cox, Secretary Shinseki “has acknowledged that there is widespread pay abuse at the VA for Title 38 health care professionals. The VA makes the rules and all we are asking is that the VA start to live by its own rules.” AFGE supports a current bill in the Senate that would provide full bargaining rights to VA medical professionals. ■



Medical Minute

PROSTATE CANCER IN MALE VETERANS

Prostate cancer is cancer that starts in the prostate gland. The prostate is a small, walnut-sized gland that makes up part of the male reproductive system. It wraps around the urethra, the tube that carries urine out of the body. It is also the second most common cancer among men, is difficult to detect and even more difficult to treat.

Since this cancer grows very slowly, doctors are often faced with the choice of leaving or removing the tumor. Neither option is ideal, as surgical removal can be a serious and complicated procedure with a high risk of dangerous complications. That is why the common approach is to leave the tumor and treat it in place using radiation therapy, which can also result in negative side effects. With this process, estrogen is often administered to reduce harmful side effects.

VA allows for presumptive service connection for Agent Orange-related prostate cancer. This was not without controversy as prostate cancer is quite common among older men. Studies indicate, however, that Vietnam Veterans disproportionately suffer from elevated risk levels.

The best treatment for your prostate cancer may not always be clear. Sometimes, your doctor may recommend one treatment because of what is known about your type of cancer and your risk factors. Other times, your doctor will talk with you about two or more treatments that could be beneficial. ■



MARYLAND CENTER FOR VETERANS EDUCATION AND TRAINING

AN INTERVIEW WITH ROSLYN HANNIBAL- BOOKER, DIRECTOR OF DEVELOPMENT

Q. How did MCVET get started?

A. The Maryland Center for Veterans Education and Training (MCVET) was the brainchild of four Veterans, all of whom were members of various Veteran service organizations. The founders were Art Lego, Blair Cross, Chester Silverman and F. Douglass Johnson. With financial support from the Veteran service organizations and the administrative expertise of fellow Veteran Clarence Harris, MCVET was started in 1993.

Q. What is MCVET's mission?

A. The mission of MCVET is to provide homeless Veterans and other Veterans in need with comprehensive services that will enable them to rejoin their communities as productive citizens.

Q. What services does MCVET offer to Veterans?

A. Each Veteran is assigned a case manager and receives individual counseling and on-site assistance for problems such as Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), substance abuse and family problems. They are also assigned to a benefits counselor who assists with VA entitlements and facilitating the recovery of official documentation to include birth certificates, driver's licenses, social security cards, and educational transcripts. Job training at MCVET provides access to continuing education and vocational and employment training opportunities through on-site Maryland State Department of Labor and Licensing and Regulations Job Services. All Veterans have access to health care services. Physical health problems are



A room designed for a single occupant

referred to and treated at the local Veterans Affairs Medical Centers or through private physicians retained by Veterans. MCVET's program includes a strong AA/NA component. All Veterans attend regular meetings. Various life-skills courses are offered through the day to assist with issues that have led to homelessness to include substance abuse recovery, financial classes, health classes, and spirituality classes, among others.

Q. What will MCVET look like in ten years?

A. MCVET is proud to be a leader among non-profit organizations designed to help homeless Veterans. Our mission will always remain the same and our focus will adapt to meet the demographics of homeless Veterans. Currently, we are addressing the needs of homeless females. Homeless female Veterans are the fastest growing group among all homeless in America. Our program has expanded its services to meet this rising demand. ■

To learn more, visit www.mcvet.org



Maryland Governor Martin O'Malley with a MCVET student

NEW SYSTEM SCREENS PATIENTS FOR SLEEP APNEA

Ali A. El Solh, a University of Buffalo physician, has recently developed a new computer screening tool to detect severe obstructive sleep apnea in cardiovascular patients. It is estimated that as many as 30 to 50 percent of cardiac patients suffer from obstructive sleep apnea, although many are not diagnosed with the potentially fatal condition.

Obstructive sleep apnea prevents a sufficient amount of air from entering the lungs during sleep, causing blood oxygen levels to drop. All individuals who suffer from sleep apnea are at a higher risk for car accidents, work-related accidents, and other medical problems, such as post-surgical complications. The threat to cardiovascular patients is particularly severe. Sleep apnea can also trigger cardiovascular events like heart attacks, atrial fibrillation, and stroke.

El Solh notes that because cardiovascular patients with sleep apnea often go undiagnosed, “it makes sense for us to try and screen them for sleep apnea as early as possible so that if they are diagnosed with sleep apnea, we can start treating them before they suffer another [cardiovascular] event.”

El Solh developed the computer screening tool in partnership with Dr. Brydon J. Grant, professor emeritus of medicine at the University of Buffalo. The tool diagnoses sleep apnea based on a patient’s answers to questions concerning anthropomorphic and clinical symptoms such as body mass index, neck size, and the presence of hypertension. If the screening tool is successful, it offers the promise of diagnosing sleep apnea in a much faster manner than existing methods allow.

The screening tool is currently undergoing a clinical test at the Veterans Affairs Western New York Health System. Notably, the study is also being funded by VA. The goal of the study is to evaluate the accuracy of the screening tool’s diagnosis as compared to the accuracy of overnight sleep studies, the current “gold standard” for diagnosing sleep apnea. The study is scheduled to be completed in December 2011 with preliminary results released in early 2012.

For source information, visit www.buffalo.edu/news/12623

NEW CLASS ACTION SUIT AGAINST VA

A class action lawsuit against VA was filed in a California U.S. District Court on Wednesday. The suit alleges that VA’s failure to provide stable housing to Veterans suffering from severe PTSD and other mental conditions leaves many of them homeless. The lawsuit requests that a federal judge order VA to use empty buildings on the campus of its West Los Angeles Medical Center as housing for Veterans whose psychiatric conditions require a stable home environment.

The lead plaintiff in the case is Greg Valentini, a Veteran of the 101st Airborne Division who was involved in the assault on Tora Bora in Afghanistan in 2001 and the invasion of Iraq in 2003. Valentini was diagnosed with a severe form of PTSD following discharge. He was briefly housed in a short-term treatment program, but has since slept on the streets or in a tent near the airport and eaten out of garbage cans.



Greg Valentini outside of his room in Hollywood, California.

The lawsuit alleges that Veterans of Iraq and Afghanistan are at a higher risk of homelessness than Veterans from earlier conflicts due to the length and number of deployments, in addition to the traumatic nature of the conflicts. The lawsuit, however, is intended to fight for stable housing for Veterans from all conflicts. The ACLU, which, in addition to the Vietnam Veterans of America, is actively involved in the suit, notes that between 44,000 and 66,000 Veterans are believed to be chronically homeless. Veterans as a group are 50 percent more likely than other Americans to become homeless.

For more information, visit www.latimes.com/news/local/la-me-0609-lopez-vetlawsuit-20110609,0,8043.story

Ninth Circuit Indignant, But Right?

VETERANS FOR COMMON SENSE V. SHINSEKI

The non-profit group Veterans for Common Sense (VCS) recently asked Court of Appeals judges to overturn the lower court's ruling, which lacks the authority to require VA to provide timely medical care and disability benefits to hundreds of thousands of waiting Veterans. The lawsuit was filed in July of 2007 on behalf of all Veterans suffering from traumatic brain injury (TBI) and post traumatic stress disorder (PTSD), conditions that impact more than 600,000 Iraq and Afghanistan wars service members.

Whether the Ninth Circuit guaranteed Veterans improved care with *Veterans for Common Sense v. Shinseki* remains a hot topic (No. 08-16728, slip op. 6293 (9th Cir. May 11, 2011)). Chief Judge Kozinski's often-wry dissent highlights its shortcomings, questioning the relevance of the evidence and even the threshold requirements of jurisdiction (the Court's authority to adjudicate the dispute) and standing (the plaintiffs' ability to claim an injury).

The plaintiff organizations, for instance, can sue only if individual Veterans could do so themselves. This in turn means they must claim a specific harm, a rule based on the inherent injustice of non-specific accusations. However, the plaintiffs' argument hinges on generalities like averages and aggregates. Even the majority conceded that the case only contested "system-wide conduct, divorced from challenges to individual benefits determinations," *id.* at 6353.

The reason why the groups cannot simply "be more specific" - why their case requires generality - is because the Veterans Judicial Review Act (VJRA) precludes most courts, including the Ninth Circuit, from reviewing the Secretary's decisions on benefits (38 U.S.C. § 511(a) (2006)). If made on behalf of individuals, the case would fall within the scope of the VJRA's jurisdictional barrier. The plaintiff's attempt to avoid this limitation by specifically *disavowing* the intent to remedy *individual* wrongs, arguing that a generalized lack of procedural safeguards deprives Veterans of their benefits.

The dissent counters that this strategy creates an irresolvable tension between standing and jurisdiction. Because of the VJRA, one necessarily comes at the cost of the other. The only way to keep the case within the Ninth Circuit's jurisdiction is to make it so general that it no longer meets the requirements for standing. While these doctrines might strike

an observer as keeping a "good case" out on a technicality, they go to the basic fairness of courts, and the plaintiffs themselves invoked the rules.

Chief Judge Kozinski meanwhile convincingly develops the theme that even the merits might not carry the case. A long *average* wait time does not itself say much. For example, a mildly depressed Veteran can wait longer for treatment than one severely afflicted by PTSD. The average may be intolerably long for the latter but not for the first. The relevant issue is where the *individual* case lies, not whether procedural safeguards say anything about timing. The trial record did not contain any evidence that VA's lack of procedural safeguards caused urgent cases to wait too long. Thus, the Court did not have the facts to decide either way.

Moreover, much of the data that the majority - and much of the press - cites predates the Feeley Memo, which recommended a suite of reforms to VA's mental health services. Since then, VA has hired over 3500 providers, increased suicide prevention training, and set shorter deadlines for evaluating patients. In fairness, the plaintiffs sued only a month after the memo's release, but as a result, the majority opinion sometimes reads as belated shock, like outrage over asbestos long since removed. Consider their assertion that only a physical walk-in would guarantee a medical evaluation for a suicidal patient. The dissent calls them out, noting that the 24/7 crisis hotline had its 10,000th rescue *last year*.

To be precise, the Court's order did not baldly tell VA "to do better," but rather that it must implement procedural safeguards to avoid depriving Veterans of Due Process. At first glance, this recalls an exercise of judicial power like that in *Nehmer v. U.S. Veterans Administration*, (712 F. Supp. 1404 (N.D. Cal. 1989)), where a federal district court struck down a VA regulation impeding Agent Orange claims. However, that ruling sought to enforce Congress's intent. The majority here criticizes Congress for its apparent inaction. The dissent draws the opposite conclusion: the VJRA and Veterans' Benefits Act of 2010 actually reiterated judicial limitations.

Nevertheless, the majority's opinion resonates with the need to do better by our Veterans. Despite the suicide hotline's rescues, 113 Guardsmen killed themselves in 2010 - up 82% from 2009. In that light, Chief Judge Kozinski's position feels more academic than realistic. ■

For more information, please visit <http://www.ca9.uscourts.gov/datastore/opinions/2011/05/10/0816728com%20.pdf>

ARMY RANGER EARNS THE MEDAL OF HONOR

On July 12, 2011, President Barack Obama will award Sergeant First Class Leroy Petry the Medal of Honor for conspicuous gallantry during combat operations on May 26, 2008 against enemy fighters in Paktya, Afghanistan.

The Army News Service recently released details concerning the heroism which merits Sgt. 1st Class Petry the award of the nation's highest medal. At the time of his actions in Afghanistan, Petry was assigned to Company D, 2nd Battalion, 75th Ranger Regiment at Joint Base Lewis-McChord, Washington. Petry's actions came as part of a rare daylight raid to capture a high-value target. Petry was to locate himself with the platoon headquarters in the target building once it was secured. Once there, he was to serve as the senior noncommissioned officer at the site for the remainder of the operation.

When he learned that one of the assault squads needed help clearing their assigned building, Petry told the platoon leader that he was moving to that squad to provide additional supervision and guidance. After the squad cleared the residential portion of the building, Petry took Pfc. Lucas Robinson to clear the outer courtyard. At least three enemy fighters, positioned at opposite ends of the courtyard, were waiting for them.

When Petry and Robinson entered the courtyard and crossed an open area, an enemy fighter opened fire. A bullet went through both of Petry's legs. Robinson was hit in his side plate by another round. Petry led Robinson to cover behind a chicken coop while the enemy continued to fire. Petry reported that they had made contact and that he and Robinson were wounded. Sgt. Daniel Higgins, a team leader at the building, moved to the outer courtyard to provide assistance to his fellow Rangers.

As Higgins evaluated the two wounded soldiers, an enemy fighter threw a grenade that landed about 10 meters away from the three soldiers. The explosion knocked them to the ground and wounded Higgins and Robinson. Two more Rangers, Staff Sgt. James Roberts and Spc. Christopher Gathercole, entered the courtyard and moved to help.

The enemy threw yet another grenade. This time, it landed just a few feet from Higgins and Robinson. Petry, despite his own wounds and with complete disregard for his own

safety, moved toward the grenade, grabbed it and threw it away from his fellow Rangers. The grenade detonated as Petry released it to throw it back at the enemy. His right hand was catastrophically amputated. Petry remained calm and even placed a tourniquet on his own arm and reported his injury over the radio.

Meanwhile, Roberts began engaging the enemy with small arms fire and a grenade. He suppressed the enemy behind the chicken coop but another enemy fighter on the east end of the courtyard began firing and fatally wounded Gathercole. Higgins and Robinson returned fire, killing the enemy, according to the Army.



SFC Leroy Petry outside of his Ranger battalion

Sgt. 1st Class Petry, 31, is a native of Santa Fe, New Mexico who enlisted in the Army in 1999 after graduating from St. Catherine Indian School. He has deployed eight times since September 11, 2001—twice to Iraq and six times to Afghanistan

totaling 28 months of deployment. His previous military awards include two bronze stars and a Purple Heart. Sgt 1st Class Petry is married and he and his wife Ashley have four children.

Although he now has a prosthetic arm and would be eligible for a medical discharge, Sgt First Class Petry chose to remain on active duty. He reenlisted in 2010 and is currently assigned as a liaison for the SOCOM Care Coalition, which involves working with wounded Rangers returning from combat operations.

Sgt. 1st Class Petry will be the second living Medal of Honor recipient from the wars in Iraq and Afghanistan. Staff Sgt. Salvatore Giunta received the award in late 2010 for action in Afghanistan. Seven Medals of Honor have been awarded posthumously to Iraq and Afghanistan Veterans. ■

For more information, visit: www.csmonitor.com/USA/Military/2011/0601/Medal-of-Honor-Ranger-who-grabbed-grenade-in-Afghanistan-to-receive-award



Veteran Events Calendar

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

Boston Pops Fireworks Spectacular

The nation's premier 4th of July celebration
47 David G. Mugar Way • Boston, MA 02114
July 3rd - 4th, 2011
www.july4th.org

25th Annual River of Fire Festival in Columbia Park

Tri-City Regional Chamber of Commerce
Columbia Park • Kennewick, WA 54303
Telephone: (509) 736-0510
July 4th, 2011
www.applewoodestateshoa.com/events.php

Freedom Over Texas 4th of July Event

Welcome Home 2011 Committee
Eleanor Tinsley Park • Houston, TX 77002
Telephone: (832) 393-0868
July 4th, 2011
www.houstontx.gov/july4/2011pressrelease.html

Cloquet's 4th of July Veterans Celebration

Cloquet Avenue & Highway 33 • Cloquet, MN 55720
Telephone: (218) 390-3789
July 4th, 2011
www.visitcloquet.com



CLAIMS PROCESS advice

VA CLAIMS PROCESS 101: Secondary Service Connection

Secondary service connection requires that a Veteran already have a service-connected disability. To be service connected in this way, the secondary medical condition must be proven to have been caused or aggravated by the first. The medical evidence must demonstrate that it is at least "as likely as not" that the medical condition for which the Veteran is seeking service connection is the result of an existing service-connected disability.

For instance, take a Veteran who is service-connected for a knee injury to her left leg. As a result of the injury to the left leg, she suffers from additional complications with her right leg. If the Veteran is able to produce evidence to show that the issues affecting her right leg are a result of her service-connected left leg, then she would be in the position to possibly become secondarily service-connected for her right leg's problems.

In these types of claims, it is important to know beforehand that VA will require medical evidence of the link (or nexus) between the service-connected disability and the medical condition that the Veteran is attempting to characterize as being caused by the service-connected disability. Because of the inherent difficulty in establishing a secondary service connection, a strong and detailed opinion letter from your doctor will go a long way to help VA appreciate the nature of the connection between the two conditions.

For more information, visit: www.vetlawyers.com



VSO SPOTLIGHT

**ERLE DRANE, VETERANS SERVICE OFFICER
FOR ADAMS COUNTY, MISSISSIPPI**



The Adams County Veterans Service Office provides excellent service to area Veterans and achieve the highest levels of customer satisfaction. They strive for high quality, prompt and seamless service to Veterans and have a dedicated staff to help Veterans get the services they have earned. Rich in history, Adams County boasts more antebellum structures than any other city of its size in the United States with 13 National Landmarks and over 1,000 buildings.

Website: www.adamscountymiss.net/departments

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

Q: Why did you decide to become a VSO?

A: After retirement from the Army in 1981, I participated in community patriotic events, organizing parades, Fourth of July, "Happy Birthday, America" picnics, Veterans' Day, Flag Day, etc. I saw an opportunity to continue serving in a more useful level of patriotism. My birthday was November 11, 1934 so all my birthdays were celebrated community-wide.

When the Board of Supervisors reviewed the 15 applicants, they told me that they would pick the top 5 and call us in for an interview. The next thing I heard about it was when the local newspaper called my wife and asked for me to come in and be interviewed about my new job!

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

A: About 3,000 in this county, but I serve about 5,000 in a region known as the Miss-Lou.

Q: What can you tell us about the book you are working on?

A: It all started when I wrote a short story about my father in WWI and it sort of grew into an effort to get a Veterans' Home in this area. Stories have arrived from many states and different era conflicts. Governmental agencies and Congress are aware of this effort.

Q: How long have you been a VSO?

A: 2002 to the present.

Q: What is your favorite part of the job?

A: When we receive approval of a claim after it has been appealed. Also, the successful effort in having Veterans' reunions of national organizations and Navy crews come to Natchez and being invited to speak at their banquet!

Q: What started you down the path to becoming a VSO?

A: First, my father was in WWI. My uncle was in the Mexican War in 1916, WWI, WWII, and Korean War. Our family was very involved in local and State issues and afforded a very patriotic upbringing.

Q: What advice do you have for Veterans who are just filing?

A: First, this is a slow train. Second, if you don't ask you will never know! Get your stuff together so we can get this train out of the station.

But most importantly of all is briefing units that are about to deploy, etc. Get everything in writing - keep a journal, take pictures, keep in touch with your comrades. You may someday need a statement of an event that would prove a claim. ■

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