

THE VETERANS MONTHLY



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DISABLED VETERANS CAREGIVER PROGRAM EXPANDED

**IMPROVEMENT TO PROGRAM DESIGNED TO PROVIDE HELP
FOR POST 9/11 VETERANS**



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.

Beginning on May 9, 2011, VA began to accept applications for its new Program of Comprehensive Assistance for Family Caregivers aimed at severely disabled OIF/OEF Veterans. VA is optimistic that this program will help to alleviate the strain and financial burden families face when caring for severely disabled Veterans. VA Secretary Shinseki said VA is aware “that every day is a challenge for our most seriously injured Veterans and their Family Caregivers.” He urges Veterans or their caregivers to submit applications for the program as soon as possible “so they can receive the additional support they have earned.” It is hoped that the additional support offered by the program will enable a greater number of Veterans to stay in their own homes for care, surrounded by family and a familiar environment designed to give them comfort.

Eligible Veterans must have sustained a serious injury (such as traumatic brain injury, psychological trauma, or other mental disorders) incurred or aggravated in the line of duty on or

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after September 11, 2001, and be in need of personal care services due to an inability to perform one or more daily living activities and/or be in need of protection or supervision based on symptoms of neurological impairment. All Veterans must be enrolled for VA Health Services. If the Veteran is not currently enrolled for VA health services, the VA Form 10-10 EZ may be completed concurrently with the caregiver application to enroll.

The application for the caregiver program (Form VA CG 10-10) will be available for download at www.caregiver.va.gov. Caregiver Support Coordinators will be available at every VA medical center to assist Veterans and their caregivers with the application process. Assistance is also available via phone at 877-222-VETS (8387).

Approval to participate in the program is a multi-step process. Once the initial application is received by VA, a Support Coordinator will contact the Veteran and the primary caregiver to make arrangements for any necessary exams and training in order to complete the application. The Veteran will need to complete a clinical eligibility assessment meant to evaluate the Veteran's needs for assistance with routine tasks like eating, bathing, and grooming.

Once it is determined that the Veteran meets the clinical criteria, the primary caregiver will need to complete mandatory training by either attending Family Caregiver classroom training at a local VA center, completing the training online, or by self-study with a workbook and DVD mailed to the caregiver. When the caregiver training is completed, a VA clinician will make a home visit to ensure that the caregiver and Veteran have everything they will need to be safe and successful at home care. After the home visit is complete, the caregiver will begin to receive a monthly stipend and health insurance benefits (if not already covered), which will be retroactive to the date of initial application. VA expects to begin mailing the first checks in July 2011.

Although the program is currently limited to Veterans injured in the post-9/11 conflicts, Congress specified that VA Secretary Shinseki must report back in two years whether Veterans from all eras would benefit from a similar program. In the meantime, caregivers of Veterans from the pre-9/11 era are left with VA's existing programs. Time will tell if this new program is able to exceed the quality of existing programs.

The programs available to all Veterans and their families can be divided five major areas: In-Home and Community

Based Care, including home health care, homemaker services, and adult day health care; Respite Care options designed to relieve the primary caregiver from the challenge of constantly caring for a chronically ill or disabled Veteran; Caregiver Education and Training Programs that offer an array of medical resources and instructions can be accessed at www.myhealth.va.gov; Caregiver Support Groups that offer face-to-face or telephone counseling, spiritual care, and recreational outlets; and Other Medical Services, such as the provision of durable medical equipment and transportation assistance, to ensure the Veteran is receiving the best possible on-going medical care.



MEDICAL MINUTE

GLAUCOMA AND OLDER VETERANS

Glaucoma is defined as a group of eye diseases in which the normal fluid pressure inside the eyes slowly rises. This condition can lead to vision loss or even blindness. Glaucoma is known as the "silent thief of sight" due to the fact that the loss of vision occurs gradually over years and is often only diagnosed during its advanced stages.

The highest risk group for Glaucoma is Veterans over the age of 60. Although there are few if any early symptoms, the later stages can be recognized by a loss of peripheral vision. Objects straight ahead are seen well enough, but objects to the side are missed. As the disease worsens, the ability to see objects on the side is increasingly lost, and eventually the impairment moves to the center of vision. The test for glaucoma is easy and painless. Your VA doctor will test the pressure in your eye by placing an instrument on the eye's surface. If there is a suspicion for glaucoma, the appearance and function of the optic nerve are tested with a visual field test and a special retina camera, both of which are capable of detecting damage to the optic nerves.

Glaucoma is usually treated with eye drops, but in some cases, eye surgery can prove necessary to lower the eye pressure to healthy levels. These treatments work to either reduce fluid, or to improve its drainage out of the eye. Veterans should take preventative steps by getting regular check-ups by an ophthalmologist to watch for changes in pressure and side vision. ■

VETERANS BENEFITS WORKSHOP TO BE HELD IN SAN JUAN

A Veterans Benefits Workshop will be held on Saturday, June 25, 2011, at the San Juan YMCA. The event, which is free and open to all Veterans, will be lightly catered, handicap accessible, and is expected to run from 9 AM to 4 PM. It will be held at the conveniently-located San Juan YMCA at #800 Blvd. Sagrado Corazón. The location is easily accessed by both car and public train. The workshop will feature a number of Puerto Rico-based government agencies and Veteran service organizations to include representatives from the Ponce Vet Center, U.S. Department of Labor, AARP, and The Silent Warrior. Attorneys from Bergmann & Moore, LLC, a law firm specializing in assisting Veterans in their disability claims against VA, will also be available to provide free legal advice relative to VA claims.

Mr. Angel Torres, president of The Silent Warrior, has been advocating on behalf of Puerto Rican Veterans for years and is enthusiastic about the workshop. "I am very excited about this many services being brought together to help Veterans," he says. "Puerto Rico has a very large Veteran population and few among them are aware of the benefits they have earned through their military service. This event is all about education. We want people to come with their questions and encourage people to bring their family, friends, and neighbors."

"Puerto Rico has a very large Veteran population and few among them are aware of the benefits they have earned..."

According to recent statistics released from the Department of Veterans Affairs, if Puerto Rico were a state it would host one of the highest percentages of Veterans aged 65 and older and one of the lowest for Veterans aged 25 and under. These realities, combined with a general unawareness of benefit eligibility, mean that there are likely to be a great number of older Veterans who have either never filed disability claims or appealed the denials they received.

Attendees are asked to bring in their most recent VA decisions for review. Veterans advocates will be on hand to review these decisions and advise the Veterans and/or dependents on their claims. ■

NAVY RESEARCHER LINKS WAR-ZONE DUST AND AILMENTS

Navy Captain Mark Lyles, chair of medical sciences and biotechnology at the Center for Naval Warfare Studies at the Naval War College in Newport, R.I., found that dust particles gathered in Iraq and Kuwait contain 37 metals, including aluminum, lead, manganese, strontium, and tin. The metals have been linked to an array of physical disorders, such as neurological disorders, cancer, respiratory ailments, depression, and heart disease. Lyle believes his research "may be the smoking gun" for explaining Gulf War Syndrome and a host of similar ailments suffered by Veterans of the current wars. Since 9/11, the military has seen a 251% increase in the rate of neurological disorders, a 47% increase in respiratory disease, and a 34% increase in cardiovascular disease.

Research indicates that the toxic dust is smaller and easier to inhale than most dust particles. In addition to metals, the dust also contains 147 different kinds of bacteria and fungi that could spread disease.

The Department of Defense is aware of Lyles' research, but contends that the dust is "not noticeably different from samples collected in the Sahara Desert and desert regions in the U.S. and China." Experts disagree. Harry Fannin, a chemistry professor at Murray State University, analyzed Lyles' samples. "You wouldn't see metal like that in the U.S....Any time you have respirable particles, it's bad." Catherine Cahill, an associate professor at the Geophysical Institute at the University of Alaska, notes that she's "done sampling since 1986, and I've never seen anything that bad – not even in China," which is known for its high levels of pollution. Cahill says that the everyday fine particulate matter levels in Iraq were three times greater than what the EPA says is healthy within a 24-hour period.

Lyles contends that more samples need to be taken, long term studies of combat troops performed, and more toxicology and animal studies completed before a definitive link can be made. But Lyle wants the military to take notice of preliminary indications now, saying that "this has to be confronted."

For more information, please visit www.veteranstoday.com/2011/05/12/navy-researcher-links-toxins-in-war-zone-dust-to-ailments

VA UNVEILS NEW MILLION VETERAN PROGRAM

An ambitious and unprecedented VA research program dubbed the Million Veteran Program (MVP) promises to advance the sophisticated science of genomics.

The MVP started national expansion on May 5th and is a VA effort to consolidate genetic, health, military exposure, lifestyle, and other information together into a single database. The database will be used in as secure a manner as possible by VA researchers, federal health agencies, and academic institutions within the U.S. The data will allow these researchers to conduct health and wellness studies to study genetic variations and determine which ones are connected with particular health issues.

MVP started life in January of this year at a single VA Medical Center and has plans to include all recipients of VA care over the next seven years. Among the participants are VA Secretary Eric Shinseki, Deputy Secretary W. Scott Gould, and Chief of Staff John Gingrich.

While VA is confident that through learning more about how genes are related to health they will be able to improve the screening, diagnosis, and prognosis of diseases and develop more effective, personalized therapies, it should be remembered that VA has a history of inadvertently disseminating Veterans' personal information. Despite the upbeat tone used to present initiatives like MVP, Veterans should temper the optimism with a good dose of skepticism. Due in part to some of VA's high-profile information security breaches, patient information security has been touted as one of the top priorities in MVP. To ensure the safety of this information, blood samples containing genetic material and health information collected for MVP will be stored securely in a barcode instead of being written out. The few researchers who are allowed access to the samples will not receive any personal information about Veterans.

MVP has been developed in close coordination with the VA Genomic Medicine Program Advisory Committee. This committee is comprised of professionals associated with the Department of Defense, and the National Institutes of Health, and a number of service organizations.

For more information, visit www.research.va.gov/mvp

VA HIRES CRITICAL BLOGGER

Alex Horton began writing a blog that was immensely critical of VA and its functioning shortly after his return from a 15 month deployment to Iraq in 2009. Frustrated by a delay in GI Bill benefits that he was counting on to buy college textbooks and pay rent, Horton wondered "how many obscene scandals, misappropriations and misdiagnoses does it take to see there's a rotten core at the center?" He maligned his VA counselor, comparing the aid he received to "the same level of care you would expect from a Tijuana back alley vasectomy." Horton's anger and frustration about all things VA was palpable.



VA Blogger Alex Horton during his service in Iraq

Then the unexpected happened. In spring 2010, VA's new media director approached Horton with a job offer to continue blogging about VA – from an insider's perspective. By hiring Horton, VA hopes that employing

a critic will help "to turn around its reputation as obstructionist, antiquated, and overwhelmed" by opening the bureaucracy to greater "scrutiny." Fans of Horton's first blog, Army of Dude, were initially concerned that his move to the VA would mean that his blogs about problems facing Veterans would be replaced with "government propaganda."

While Horton has had to change the tone of his posts, he believes he still retains the spirit of his initial blog. Horton's VA blog, called Vantage Point, is written with the aid of four additional VA employees. It receives about 3,000 hits a day and tries to focus on issues that are supremely important to Veterans, such as the massive claims backlog, VA's paperbound culture, the increase in mental health problems, access to health care, soaring rates of suicide, and homelessness among Veterans. Horton's strategy for writing is simple: "I wait until something upsets me and [then I] write." ■

To see the blog, please visit www.blogs.va.gov/Vantage

To see the B&M blog, visit www.vetlawyers.com/vetblog

ARNESON V. SHINSEKI

CAVC HOLDS THAT CLAIMANTS HAVE A RIGHT TO A PERSONAL HEARING BEFORE ALL BOARD MEMBERS WHO ULTIMATELY DECIDE THE APPEAL

Mr. Arneson is a Navy Veteran seeking service connection for conditions of the feet and knees. After the Regional Office (RO) denied his claim in September 2005, he appealed to the Board of Veterans Affairs (BVA). In September 2006, he testified at a hearing before Judge Sabulsky, who remanded his claims to the RO in October 2007. When the RO only partially granted his claims in January 2008, he again appealed to the BVA and had a hearing before Judge Herman in June 2008. In October 2008, the Chairman of the Board assigned Mr. Arneson's claim to a panel of three judges for adjudication. A panel composed of members Sabulsky, Herman, and Sullivan denied his claims in November 2008. Mr. Arneson was not provided the opportunity to have a personal hearing with Board member Sullivan before he was denied.

The Veteran (Appellant) then appealed his BVA denial to the U.S. Court of Appeals for Veterans Claims (CAVC). After Appellant's counsel and the Secretary's counsel submitted their briefs, the Court ordered the Secretary to file a memorandum responding to several questions regarding the assignment of the Board panel and Mr. Arneson's hearings. After the Secretary provided the supplemental memorandum and Appellant's counsel provided a response to it, the Court ordered the case to be assigned to a panel of three CAVC judges and scheduled an oral argument because it presented the "novel question" of "whether a claimant is entitled to the opportunity for a personal hearing in front of all Board members that decide his appeal." *Arneson v. Shinseki* Slip. op. at 2.

The Court's opinion, written by Judge Schoelen, explains the "[p]urpose and [i]mportance of the Board [h]earing" is that "it is the veteran's one opportunity to personally address those who will find facts, make credibility determinations, and ultimately render the final Agency decision on his claim." *Arneson v. Shinseki* Slip. op. at 4. The Court's opinion then proceeded to interpret the statutes related to Board hearings. The Court recognized significant changes to the pertinent statutes made in 1994 – before which BVA decisions were made by a panel of three, though a hearing could be conducted with just one Board member. The Court found that the post-1994

statute did not provide a clear answer to the issue at hand, so it turned to VA's implementing regulation. The Court rejected the Secretary's argument that a claimant would be entitled to a Board hearing in front of all members adjudicating the claim if it was assigned to a panel from the beginning – but not if the assignment was made later.

The Court thus held that "the pertinent statutes and implementing regulation regarding Board hearings entitle a claimant to an opportunity for a hearing before all the Board members who will ultimately decide his appeal" – regardless of the timing of the assignment of the Board panel. *Arneson v. Shinseki* Slip op. at 9-10. The Court clarified that this did not require that the claimant have a hearing before the complete Board panel at one time, just that he be given the chance to be heard by each member.

Regarding Mr. Arneson's claim, the Court concluded that the Board erred when it did not provide him the opportunity to have a hearing with Board member Sullivan. It further found that there was a "perception in unfairness" even if unintended. *Arneson v. Shinseki* Slip op. at 11. The Court also agreed with Appellant's argument that not allowing a hearing before all Board members of the panel "undermines the claimant's ability to personally impress his credibility upon his fact finders." *Arneson v. Shinseki* Slip op. at 11. Mr. Arneson's credibility was an important part of the Board's analysis as to one of his arguments for service connection – that he had continuous symptomatology since service – and so the Court found that not allowing him to personally testify before all the adjudicators could have significantly affected the outcome.

Chief Judge Kasold provided a concurring opinion where he indicated that he agreed with the majority that a claimant is entitled to a personal hearing before all the Board members who decide the claim, but he explained that he found this right was warranted by statute (created by Congress) rather than regulation (created by VA).

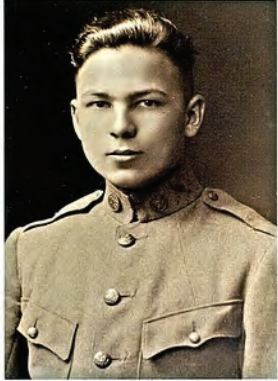
"This decision is about fairness," said Glenn Bergmann, Mr. Arneson's attorney. "We knew that once the judges looked at the process, they would make the right decision. We are happy to have played a role in it." As a result of this decision, the Chairman of the Board of Veterans Appeals issued a memorandum on May 12 2011. ■

For more information, please visit *Arneson v. Shinseki*, No. 09-953, 2011 U.S. App. Vet. Claims LEXIS 833, at *3-*4 (U.S. App. Vet. Cl. Apr. 20, 2011).

THE LIFE OF MR. BUCKLES

THE LAST AMERICAN WWI VETERAN

Nearly five million Americans served in World War I, called “the war to end all wars.” The last American survivor of this war, Frank Woodruff Buckles, recently passed away of natural causes on February 27, 2011 at the age of 110.



Mr. Buckles was born by lantern light in a farmhouse in Bethany, Missouri on February 1, 1901. His given name was Wood Buckles, but when he joined the Army he adopted his uncle’s name of Frank Woodruff Buckles. A sergeant had insisted that he have middle initial. He joined at the tender age of 16 after convincing an Army recruiter

that he was old enough to enlist. He had previously attempted to enlist in the Marines and the Navy.

Mr. Buckles served in both England and France during the war. He was a rear-echelon ambulance driver behind the trenches of the Western Front. While his position kept him from the worst of the fighting, he “saw the results” as he would say. After Armistice Day, he helped prisoners of war return back to Germany. He returned to the United States in January 1920 as a Corporal.

After returning home, Mr. Buckles took a job as a purser with a steamship company. He travelled the world, regularly making port calls in Germany where he once saw Adolf Hitler in a hotel lobby. In December 1941, his employment with the shipping company took him to Manila in the Philippines. When Japanese invaders landed in Luzon after the attack on Pearl Harbor, Mr. Buckles was captured and held as a civilian prisoner of war in POW camps in Santo Tomas and Los Banos. He was imprisoned for over three years before being freed in an assault by U.S. paratroopers and Filipino guerillas.

Mr. Buckles returned to the United States and married Audrey Mayo in 1946. The couple then bought the Gap View Farm near Charlestown, West Virginia where they raised cattle. The couple’s daughter, Savannah, was born in 1955. Audrey Mayo Buckles passing away in 1999.

Mr. Buckles remained active on the farm even as a centenarian. He also remained active in causes important to

him. In 2007, he went to Washington, D.C. to serve as grand marshal of the national Memorial Day parade. He devoted his last years to campaigning for greater recognition for his former comrades. He served as the Honorary Chairman of the World War I Memorial Foundation and ardently championed for a proposal to refurbish the District of Columbia’s World War I monument and rededicate it as the National World War I Memorial. He appeared before a U.S. Senate Panel in 2009 in support of the proposal. Mr. Buckles spent his last days on his farm cared for by his daughter, Savannah Buckles Flanagan. He frequently asked her about the progress of the national memorial. He also worked with David DeJonge on a biography.

“He joined at the tender age of 16 after convincing an Army recruiter that he was old enough to enlist.”

Mr. Buckles was buried at Arlington National Cemetery on March 15. Before the burial his body lay in honor inside the Arlington Memorial Amphitheater Chapel, guarded by an Old Guard soldier in full dress uniform. Hundreds came to pay their respect, including President Obama and Vice President Biden. Dozens of Veterans from the Patriot Guard Riders and Rolling Thunder rode through the cemetery on motorcycles. Veterans Affairs Secretary Eric Shinseki attended the funeral. Mr. Buckles’ grave is located 50 yards away from that of General John Pershing, under whose command Buckles served, along with a plaque commemorating the 116,516 Americans who died in World War I.



At the time of Mr. Buckles’ death, there were only two other known survivors of the approximately 65 million people mobilized by the worlds’ militaries during World War I, Ms. Florence Green in Great Britain and Mr. Claude Choules in Australia. Mr. Choules just passed away on May 5, 2011. ■

For more information, please visit www.wwimemorial.org.



VETERAN EVENTS CALENDAR

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

Steppin' Up: Break Free From PTSD

Community PTSD classes at Salem Hospital
890 Oak St. S.E., Bldg. D, 1st floor • Salem, OR 97301
Telephone: (503) 814-2432
Thursdays, 3:30 - 5:00 p.m.
www.salemhealth.org/chec

Green Bay Veterans Job Fair

Army National Guard Armory
800 North Military Avenue • Green Bay, WI 54303
Telephone: (920) 448-6776
June 8th, 2011
<http://dva.state.wi.us/Docs/JobFairGreenBay0611.pdf>

25th Ann. Chicago Vietnam Veterans Parade

Welcome Home 2011 Committee
PO Box 2323 • Chicago, IL 60664
Telephone: (312) 925-5506
June 17th - 19th, 2011
www.serviceandhonor.org

Puerto Rico Veterans Benefits Workshop

San Juan YMCA
#800 Blvd. Sagrado Corazon • San Juan, PR 00909
Telephone: (877) 838-2889 or (877) 367-5310
June 25th, 2011
www.vetlawyers.com



CLAIMS PROCESS ADVICE

VA CLAIMS PROCESS 101: Presumptive Service Connection

Presumptive service connection is established when a disease or illness is incurred within a specific period of time after service (even if no in-service evidence is available). Over the course of many years, statutes have been created that conclude that certain conditions for certain Veterans are presumed to be connected to their military service. It is important to observe that in many instances a Veteran must have served at least 90 days on active duty to qualify for presumptive service connection.

Some chronic diseases that manifest within one year of discharge are presumed by VA to be the result of military service. These include, but are not limited to, conditions such as arteriosclerosis, arthritis, brain hemorrhage, cirrhosis of the liver, diabetes, epilepsy, leukemia, psychosis (e.g. schizophrenia), and malignant tumors (38 C.F.R. § 3.309(a)). Manifestation must take place within three years for tuberculosis and Hansen's disease (leprosy) (38 C.F.R. §§ 3.307 (a)(3), 3,309 (a)). Finally, manifestation must take place within seven years for multiple sclerosis § 3.307 (a)(3).

Vietnam War Veterans who served in-country and develop one or more of the many conditions listed on the Agent Orange (AO) Presumptives list may be entitled to service connection (see below). The VA has designated the conditions it will accept for presumptive service connection and their time periods. Be aware, however, these regulations are changed and added to periodically.

To learn more about AO-related conditions, please visit www.publichealth.va.gov/exposures/agentorange/diseases.asp

VSO SPOTLIGHT

**LARRY ALLEN, VETERANS SERVICE OFFICER
FOR YANCEY COUNTY, NORTH CAROLINA**



Yancey County was established in 1833 from Buncombe and Burke Counties. It was named for Bartlett Yancey, who served in the U.S. Congress from 1813 to 1817. Yancey County is surrounded by the Blue Ridge area of the Appalachian Highlands and has the highest average elevation of any county in North Carolina. Mt. Mitchell, for example, has an elevation of 6,684 feet. Firmly rooted in the past and advancing toward the future, Yancey County is a great place to live and visit.

Website: www.yanceycountync.gov/veterans-services

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

Q: What inspired you to help Veterans professionally?

A: Serving and giving back has always been a goal of mine. Helping the individuals and families that have made the ultimate sacrifice in some instances for our freedom. I'm a Vietnam 3rd Battalion 4th Marines 1968 Veteran. When Veterans come into my office and realize that I can relate first hand to what they have been through, this is common ground, and you can see them relax. I believe I can relate to and understand the problems that Veterans face when applying for either compensation or medical benefits.

Q: When did you get started in this position?

A: I began working as a VSO in March of 2010.

Q: Do you believe that the need for VSOs is growing?

A: Every day the need for VSOs is growing and will continue to increase with the state of the economy and the many thousands of troops in Afghanistan and Iraq that will eventually filter back to civilian life.

Q: Do you have any advice for Veterans who have just filed?

A: Be patient, the VA has had cutbacks and the volume of work has greatly increased but your claim will be processed.

Q: What gets you really excited about your work?

A: I get excited when a Veteran comes into my office and has favorably received compensation.

Q: What is the biggest challenge facing today's Veterans?

A: Finding employment when their military duty is completed. ■

