

## RETURNING VETS - OUTRAGEOUS DELAYS IN VA CARE AND BENEFIT APPEALS.

Pending before the U.S. Ninth Circuit Court of Appeals now is the case of *Veterans For Common Sense v. Eric K Shinseki, et al*, captioned in the District Court below as *Veterans For Common Sense v. James B. Peace, M.D.*, 563 F. Supp. Ed 1049 (NS Cal. 2008) . The case raises the issue of the power of the federal courts to enter declaratory and injunctive relief to force the Veterans Administration to timely provide mental health benefits and to timely resolve administrative disability appeals for veterans. The trial court below abdicated all responsibility. It asserted that the sole remedy was up to the VA itself and Congress because of statutory limitations on judicial oversight of the VA. It said further that to solve the problem it would have to overhaul the entire system, which it was inadequately prepared to do. The facts are shocking and would not be accepted by the general populace without rioting in the streets (or at least at congressional town meetings). The trial court mentioned the following facts in its opinion.

There are approximately 25 million veterans in the U.S. 5 to 8 million veterans are enrolled in the VA. 154,000 Veterans are homeless. One out of three veterans returning from Iraq is seen at the VA for mental health visits within a year of their return stateside. According to Rand Corporation study, 18.5% of U.S. Service Members have Post Traumatic Stress Disorder (“PTSD”). Half of those who need it get it. Slightly more than half who get it, but slightly more than minimally adequate care. 300 thousand service members now deployed in Iraq and Afghanistan currently suffer from PTSD or severe depression. The suicide rate for returning G.I.s is 3.2 times higher than that of the general population. The VA experiences 4.5 suicides per day from its current patient population.

The VA Office of Inspector General reported in May, 2007 that 61.8% of VA facilities had not then implemented suicide prevention strategies for returning G.I.s. In April, 2008 there were 85450 veterans on VA waiting lists for mental health services. One veteran seeking help committed suicide after being told that he was number 26 on a waiting list to obtain mental health care. The fact that these soldiers come largely from lower economic and educational classes of people not skilled in understanding or maneuvering through the complex VA assistance system may be one of the reasons for lack of attention to the problem. 82% of the Army and 89% of the Marine Corps are composed of men and women with a high school education or less.

There is an appeal system within the VA for resolving benefit and disability claims disputes. Its record for efficiency and timeliness is appalling. Determinations are first made in the VA Regional Offices (“RO”s). It frequently takes a year for the RO to make a decision on an appeal. If denied a veteran can file a Notice of Disagreement (“NOD”) which commences an appeal to the Board of Veterans Appeals (“BVA”). It generally takes on average 4.4 years for the case to move from the RO to the BVA determination. The BVA affirms the RO decision only 20% of the time. It finds for the veteran 20% of the time. In the remaining 40% of cases it remands the case to the RO for further proceedings. Many if not most of these remands could have been avoided by the RO’s through competent documentation and policies. On remand, even though there is specific

statute that requires “expeditious” action on remand, there is an average delay of another 499.1 days before the matter is returned to the BV.

The question is whether the Ninth Circuit will wash its hands of the matter as well and leave this matter to the Congress which passes directives without remedies or the cultural lassitude of the VA for business as usual. This may be another of those intractable problems that are too big to resolve. Semper Fi.