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If Veterans don't help Veterans, who will?

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Court - VA must pay Agent Orange Victims

By Scott Lindlaw, Associated Press Writer | July 19, 2007

SAN FRANCISCO --An appeals court chastised the Department of Veterans Affairs on Thursday and ordered the agency to pay retroactive benefits to Vietnam War veterans who were exposed to Agent Orange and contracted a form of leukemia.

"The performance of the United States Department of Veterans Affairs has contributed substantially to our sense of national shame," the opinion from the 9th U.S. Circuit Court of Appeals read.

It was not immediately known how much the department would have to pay under the order or how many veterans would be affected.

VA spokesman Phil Budahn said late Thursday that officials were reviewing the ruling, and declined further comment.

The VA agreed in 2003 to extend benefits to Vietnam vets diagnosed with chronic lymphocytic leukemia, known as CLL. U.S. troops had sprayed 20 million gallons of Agent Orange and other herbicides over parts of South Vietnam and Cambodia in the 1960s and '70s to clear dense jungle, and researchers later linked CLL to Agent Orange.

But the VA did not re-examine previous claims from veterans suffering from the ailment, nor did it pay them retroactive benefits, which was at the heart of the latest dispute.

Thursday's opinion was on a technical matter involving whether a lower court had properly interpreted a landmark agreement in 1991 on benefits, stemming from a class-action lawsuit originally filed in 1986.

The appeals court sided with veterans groups who said the veterans were entitled to retroactive benefits.

"We would hope that this litigation will now end, that our government will now respect the legal obligations it undertook in the consent decree some 16 years ago, that obstructionist bureaucratic opposition will now cease, and that our veterans will finally receive the benefits to which they are morally and legally entitled," Judge Stephen Reinhardt wrote in the court's opinion.

Richard Spataro, a lawyer with the National Veterans Legal Services Program, said Thursday's ruling could finally halt years of legal battles -- if the VA does not appeal to the U.S. Supreme Court.

Spataro said if researchers link other disabilities to Agent Orange the decision will prevent the VA from denying retroactive benefits for those veterans, to.

Now what does this really mean and how the bureaucratic layers at the VA of constant and continuous denying Veterans their legal rights operating at the Behest of White House after White House and even some members of our own elected Congress will react and the effect it will have on our "government caused" dead and dying Veterans is anyone's guess.

I am no fan of the 9th Circuit but in this case, I have to agree with them and there is much more that needs to be resolved, especially in the area of presumptive disorders.

The 9th Circuit has made rulings before, 1989, against the VA. This Executive Branch Agency has found ways to ignore or render the rulings useless. Such as, not reviewing the disorder pronouncement in lieu of the courts rulings of what constitutes a presumptive disorder. Instead of reviewing, what the court wanted and had ordered the IOM was then contracted to give VA what they thought was evidentiary findings of what was associated and what was not. The issue is and continues to be we do not know what that process is or to what levels of certainty the IOM is either working - based on VA mandates or their own subjective mandates, previous professional conclusions and public statements, and interpretations.

The court ruling was that Veterans only needed to have a "significant correlation" or (NOT AND) an increased risk of incidence. Increased risk of disease or disorder is normally referred to as Risk Ratio or Odds Ratio. In many disorders creating death and disability, Veterans have meet this increased risk of incidence for decades and studies both civilian as well as Vietnam Veterans confirm disorders either by disease, syndrome, or separate ICD code.

We know in 2000 the NAS/IOM refused to tell congress in oversight what levels they were working and said that was up to the VA. Yet, the government portrayed assumption is that VA is approving all that NAS/IOM is recommending. In other words, a total circle of Government/VA deceit as to what is actually going on in what they call "a legal system" and a legal process in deciding our Nation's Veterans fate in government caused death and disability.

If the Veterans Disability Commission has achieved nothing else for Veterans, the meeting that was supposed to be held on July 18 in DC to discuss presumptive disorders by IOM has to be the most important discussion in the last 40 years on our dead, dying, and disabled government caused Vietnam Era Veterans.

This IOM presentation and meeting should be followed by all Veterans and their families since this is by default our separate legal system for Veterans in Mass Veteran Issues caused by our own government.

As you know, this presentation was postponed until August 9th. The why, since this agency has been making by default legal decisions for us since 1991. I am at a loss to explain? I would have thought that the processes would be at least set in wet concrete since 1991.

August 9, 2007, if the IOM presents as scheduled, will certainly be the most important discussion for not only Vietnam Veterans but also any other era Veterans that may have been damaged by DoD neglect and incompetence, all of it protected by the Feres Doctrine.

These revelations of how these IOM defacto legal decisions are made for millions of Veterans should be reviewed by both VAC's in the House as well as the Senate. Maybe even a separate presentation by IOM in front of the congress. Nevertheless, that probably will never happen unless we pressure them to do so. I would hope that Congressman Filner is going to pay particular attention to this most important discussion to all Veterans, widows, and surviving offspring.

The second most significant meeting in the past 40 years for Veterans was in 2000 when congress in oversight reviewed the gold standard for denying our dead and disabled Veterans the Ranch Hand Study.

Out of 32 members on this oversight committee, four bothered to show up to even pose any questions. In reviewing the transcripts, it was a sham nothing but a sham. I think Veterans deserve more than that little show of concern by our elected officials of how that now freely admitted to flawed study was being conducted the last 25 years.

I think most veterans and families agree with the pronouncement of the court that is indeed a shame and in most cases as in the BVA decisions nothing but a VA sham.

Ten cases with only the name, rank and serial number of the plaintiff at the top different and yet the BVA decisions are from remand, approved, or disapproved for the identical

disorder. Not much of a consistent legal system and our congress needs to address that as well.

What ever happened to legal precedence?

Source: Steve Burns