

LAW REVIEW¹ 11047
Update – May 2012

Judicial Remedy for VA Tardiness?

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

11.0—Veterans' Claims

On May 7, 2012, a federal appeals court reversed the ruling that the U.S. Department of Veterans Affairs must overhaul how it cares for veterans with combat-related mental health care illnesses.

By a 10-1 decision, a panel of the 9th U.S. Circuit Court of Appeals in San Francisco said it could not conclude that the VA's treatment of veterans, which sometimes causes claims to remain unaddressed for several years, was unconstitutional.

The panel said only Congress or the President had authority to direct changes to speed up how veterans are treated. Nonprofit groups contended the VA contributed to the despair that led to roughly 6,500 suicides a year by U.S. veterans.

¹I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

"As much as we may wish for expeditious improvement in the way the VA handles mental healthcare and service-related disability compensation, we cannot exceed our jurisdiction to accomplish it," Judge Jay Bybee wrote for the majority.

Citing President Abraham Lincoln's second inaugural address, he added: "There can be no doubt that securing exemplary care for our nation's veterans is a moral imperative. But Congress and the President are in far better position 'to care for him who shall have borne the battle.'"

Update – June 2022

The case discussed in the article is *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013 (9th Cir. 2012). There was a petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit, but it was denied.³

³*Veterans for Common Sense v. Shinseki*, 568 U.S. 1086 (2013).