

# Update on NVLSP's Lawsuit Challenging the New VA Standard Forms Regulations



# Lawsuit Summary



- NVLSP, The American Legion, AMVETS, Military Order of the Purple Heart, and the Vietnam Veterans of America filed a lawsuit challenging the new VA rules changing the process for how claimants can initiate the claims process
- Lawsuit was filed on March 20, 2015 in the U.S. Court of Appeals for the Federal Circuit

# Lawsuit Summary



- The VSOs in this lawsuit are asking the Federal Circuit to declare these regulations unlawful
- This lawsuit is only challenging the new VA regulations that require the use of a standard form to initiate a claim, not the regulations requiring the use of the Notice of Disagreement (NOD) form
  - ✦ **Other VSOs, however, have filed lawsuits challenging the required use of the NOD form**

# Issues Addressed in Lawsuit



- Whether the elimination of a veteran's long-recognized ability to establish the effective date for VA benefits through an informal submission is contrary to law, arbitrary, or capricious
- Whether the VA promulgated the Intent to File framework in violation of the Administrative Procedure Act's procedural requirements because the final rule is not a logical outgrowth of the proposed rule
- Whether the new rule's restrictions on the types of claims and benefits that VA deems "reasonably raised" by a veteran is contrary to law

# VSOs' Arguments



- For over 80 years, it has been established (and Congress has intended) that an informal submission can preserve an effective date for benefits, but these new rules get rid of this bedrock principle
  - ✦ The VA has stated that approximately half of claimants have used an informal submission to initiate a claim; thus these new rules may adversely affect hundreds of thousands of claimants
  - ✦ These new rules conflict with Congress' mandate that the veterans system be as informal as possible

# VSOs' Arguments



- ✦ VA has failed to provide an explanation for how these new regulations will improve administrative efficiency and adjudication wait times
  - The only “benefit” appears to be it will reduce the number of claims pending so it will improve VA’s performance metrics

# VSOs' Arguments



- These rules go against the well-settled principle that VA is to address all potential claims raised by the evidence of record
  - ✦ By stating that the VA will only adjudicate disability conditions that are specifically identified by the claimant (and related complications from those conditions), these rules violate VA's duties to claimants
  - ✦ This also goes against the non-adversarial, pro-claimant nature of the VA claims adjudication process
- These new rules will especially affect elderly and impoverished veterans

# The VA's Response



- VA submitted its brief to the Federal Circuit on June 15, 2015

# The VA's Arguments



- The VA has the authority to specify how a claimant must initiate a benefits claim
  - ✦ 38 U.S.C. § 501(a)(2) gives the VA the authority to “prescribe all rules and regulations” governing application forms used by claimants
- The new regulations are *more pro-claimant* than the prior regulations
  - ✦ Submitting an intent to file through a phone call is less burdensome on the claimant than submitting an informal claim which had to be in writing
  - ✦ Unlike with an informal claim, an intent to file does not require the claimant to identify the specific benefit he or she is applying for

# The VA's Arguments



- ✦ “A system allowing claimants to hold an effective date with as little as a phone call that provides *zero* substantive information specific to the claim is hardly a ‘trap for the unwary.’”
- ✦ “The fact that this process begins by filing a standard application form, or a placeholder communication later perfected by the filing of a standard application form, does not convert the process into an adversarial one.”
- The VA had rational reasons for issuing these new regulations
  - ✦ VA is in “the best position to determine what efficiencies will improve the provision of benefits to the veteran community”

# The VA's Arguments



- ✦ Requiring standard forms will improve the VA claims system through ease of identification and repeatability
- ✦ These regulations reduce the amount of administrative work that needs to be done
  - VA will just have to check the standard forms when setting an effective date
  - The VA will not have to re-review and interpret informal written submissions when setting an effective date
- ✦ “By controlling the possibility that any document might contain an overlooked claim, adjudicators can focus on developing and deciding the claims before them.”

# The VA's Arguments



- ✦ In disputing the contention by the VSOs that these new rules will have a particularly negative effect on elderly or vulnerable veterans, the VA stated that the informal claims process presented similar issues (such as obtaining the correct mailing address for veterans to submit their informal claims)
  - In its brief, the VA went on to say “the fact that VA did not design around the least common denominator does not render the final rule arbitrary and capricious”

# The VA's Arguments



- “The final rule reflects VA’s interpretation, and implementation, of the relevant statutes. It also reflects VA’s considered reconciliation of the sometimes competing fundamental interests in providing veterans with an accessible, informal, sympathetic and pro-claimant claims process, on the one hand, and efficiently producing an enormous volume of timely and accurate benefits decisions on the other.”
  
- Response to VSOs’ contention about inferred claims:
  - ✦ **“Veterans do not approach the Veterans Benefits Administration . . . for any and every condition they may experience as they might their personal physician, but only for those disabilities that have a detrimental effect upon their employment.”**

# The VA's Arguments



- ✦ **When members of the armed forces are discharged due to physical disability, they are informed of their right to make a VA claim for compensation or pension**
- “The final rule will significantly improve the operation of the veterans’ benefits system by introducing numerous processing efficiencies that will enhance VA’s ability to monitor the procedural and substantive status of a claimant’s entire file, thereby benefitting individual veterans and the veteran community as a whole.”

# The VSOs' Reply Brief



- The VSOs filed a reply brief on June 25, 2015

# Arguments in Reply Brief



- In response to VA's contention that submitting an ITF by phone call makes the process easier for claimants:
  - ✦ The VSOs acknowledge the new rules may make it easier for *some* veterans in *some* cases, but in aggregate, these new rules will be burdensome and result in lost benefits for the large portions of veterans who are elderly and/or disabled
  - ✦ Submitting an ITF by phone call does not help veterans who suffer from hearing loss, brain injury, or other diseases that make telephone contact difficult or unrealistic

# Arguments in Reply Brief



- In response to VA’s “least common denominator” comment
  - ✦ These final rules do not just adversely affect a few isolated veterans
  - ✦ It potentially affects
    - 9 million vets who are 65 years or older
    - 5.5 million vets who suffer from disabilities
    - 17% of disabled vets under the age of 65 who live below the poverty line

# Arguments in Reply Brief



- In response to VA's argument that members of the armed forces who are discharged due to physical disability are informed of their right to file a VA claim
  - ✦ Lapses in recordkeeping can make it difficult to verify that such veterans were advised of their rights to file a claim
  - ✦ The VA's argument does not address the countless situations where a veteran who was discharged due to a physical disability, files a claim for that disability, but does not mention unrelated psychiatric issues that are due to the veteran's service (even though this psychiatric issues are of record)

# Questions?

