

FACT SHEET: *VCS, et al. v. Nicholson, et al.*



Case Information

Case Name: *VCS, et al. v. Nicholson, et al.*

Court: United States District Court, Northern District of California

Date filed: July 23, 2007

Case Type: Class Action lawsuit for declaratory and injunctive relief only (no damages)

Claims: First and Fifth Amendments to the United States Constitution;
38 U.S.C. § 1710(e)(1)(D); and
Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794

Plaintiffs: Veterans for Common Sense and Veterans United for Truth

Defendants: R. James Nicholson, Secretary of Department of Veterans Affairs;
United States Department of Veterans Affairs;
James P. Terry, Chairman, Board of Veterans' Appeals;
Daniel L. Cooper, Under Secretary, Veterans Benefits Administration;
Bradley G. Mayes, Director, Compensation and Pension Service;
Dr. Michael J. Kussman, Under Secretary, Veterans Health Administration;
Pritz K. Navara, Veterans Service Center Manager, Oakland Regional Office,
Department of Veterans Affairs;
United States of America;
Alberto Gonzales, Attorney General of the United States; and
William P. Greene, Jr., Chief Judge of the United States Court of Appeals for
Veterans Claims

Plaintiffs' Attorneys:

Disability Rights Advocates (www.dralegal.org) is a non-profit law center dedicated to protecting the civil rights of people with all types of disabilities, including mobility, hearing, vision, learning and mental disabilities, and is located in Berkeley, California. DRA advocates for disability rights through high-impact litigation, as well as research and education.

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Q & A

Q: Why is this suit important?

A: This suit is critical because the present system for providing disability and health care benefits to veterans is ineffective and unlawful:

- The VA has a backlog of over 600,000 claims for disability benefits (and most veterans must have disability claims approved before they can receive ongoing health care);
- Bureaucrats have incentives to delay and deny applications;
- There is no timeline for decisions to be made (many take years);
- Most claims are denied, requiring appeals, but troops are trained to accept decisions without question and veterans with PTSD may be unable to comply with the burdensome paperwork and procedures required; and
- Facilities for treatment are woefully insufficient and veterans face wait lists and denials of care even after they are deemed to be eligible.

Veterans coming back from Iraq and Afghanistan with PTSD are being deprived of critical mental health services, especially in the early phases of the illness when identification and treatment are crucial. Left untreated, severe PTSD can lead to substance abuse, depression and even suicide. Without both an overhaul of the VA's claims procedure and immediate treatment for veterans with PTSD, another cycle of homelessness, broken families, and unemployment among veterans will be created.

Q: What is the basis of the suit?

A: The suit is challenging the constitutionality of provisions in the Veterans Judicial Review Act of 1988 (VJRA) and other federal statutes, and a pattern of illegal policies and practices of the Department of Veterans Affairs (VA). The VJRA establishes the procedures by which veterans can appeal decisions by the VA regarding death and disability benefits.

- First, restrictions on veterans' procedural rights contained in the VJRA, statutory prohibitions that limit veterans' access to counsel, and VA policies and practices -- such as delays in adjudication of claims and providing medical care to PTSD claimants, destruction and alteration of records, and premature denials of disability claims -- deprive Plaintiffs of their property and liberty interests without the due process required by the Fifth Amendment to the United States Constitution.
- Second, the restrictions on veterans' procedural rights contained in the VJRA -- such as the complete absence of neutral judges or trial-like procedures at the critical

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regional office level; the veterans' inability to obtain discovery to support disability claims; and the veterans' inability to compel the attendance of any VA employees or most other witnesses to testify at hearings and support their claims -- and the statutory prohibitions that limit veterans' access to counsel, deprive Plaintiffs of meaningful access to the courts and the right to petition the courts for a redress of grievances in violation of the First and Fifth Amendments to the United States Constitution.

- Third, defendants have violated their mandatory statutory duty under Chapter 17 of Title 38 of the United State Code to provide meaningful medical care to returning OEF/OIF veterans for two years from their date of separation from the military.
- Fourth, Plaintiffs, because of their PTSD, have been excluded from participation in, denied the benefits of, and been subjected to discrimination in their attempts to receive full and equal access to the programs, services and activities offered by the VA, in violation of Section 504 of the Rehabilitation Act of 1973.

Q: Who is in the Class?

A: The class consists of all veterans who have applied for or are receiving service connected death or disability compensation for PTSD and all veterans who are eligible for or who requested VA medical care based on PTSD.

Q: Who are the defendants?

A: The defendants include:

- The Department of Veterans Affairs ("VA"). The VA is one of fifteen executive departments, established on March 15, 1989 (succeeding the Veterans' Administration), and is responsible for providing a variety of federal benefits to eligible veterans and their dependents. The principal arm of the VA responsible for service connected death or disability compensation is the Veterans Benefits Administration ("VBA"), while the principal arm responsible for health care is the Veterans Health Administration ("VHA").
- R. James Nicholson. Mr. Nicholson is currently the Secretary of the VA, and is named herein solely in his official capacity. While he indicated last week that he intends to step down, Mr. Nicholson's resignation is not yet effective and no successor has been appointed.
- James P. Terry. Mr. Terry is the current Chairman of the Board of Veterans Appeals, and is named solely in his official capacity.
- Daniel L. Cooper. Mr. Cooper is the Under Secretary of the Veterans Benefits Administration (VBA), and is named solely in his official capacity. As Under Secretary, he directs the VBA through regional offices in 50 states, the District of Columbia, Puerto Rico, and the Philippines. He is responsible for the administration

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of benefits provided by the Department to veterans and dependents, including compensation, pension, education, home loan guaranty, vocational rehabilitation, and life insurance.

- Bradley G. Mayes. Mr. Mayes is the Director of the Compensation and Pension Service, which is part of the VBA, and is named solely in his official capacity. The Compensation and Pension Service is a sub-part of the VBA, located in Washington, D.C., that administers a variety of benefits and services for veterans, their dependents, and their survivors, including both service connected death and disability benefits and non-service-connected benefits such as pensions
- Michael J. Kussman. Dr. Kussman is an Under Secretary for the VHA, and is named solely in his official capacity, and is responsible for the VA's medical programs.
- Pritz K. Navara. Mr. Navara is the Veterans Service Center Manager for the Oakland Regional Office of the VBA. He is responsible for the management of that office and is named solely in his official capacity.
- William P. Greene. Mr. Greene is Chief Judge of the United States Court of Appeals for Veterans Claims (CAVC), and is named in his official capacity as the person responsible for the administration and management of CAVC.
- Alberto R. Gonzales. Mr. Gonzales is the Attorney General of the United States of America, and is named solely in his official capacity. Attorney General Gonzales is charged with responsibility for enforcing criminal penalties associated with violations of statutory prohibitions that limit veterans' access to counsel.

Q: Who are the named plaintiffs?

A: Plaintiffs in the case are two non-profit organizations, Veterans for Common Sense and Veterans United for Truth

- Veterans for Common Sense is a voluntary, non-profit corporation based in the District of Columbia. Its approximately 11,500 members include many veterans from OEF/OIF. The purpose of VCS is to raise the voices of veterans, and to protect and help veterans.
- Veterans United for Truth is a voluntary, non-profit corporation based in Santa Barbara, California. Its members include veterans from the wars in Iraq and Afghanistan. The purpose of VUFT is to serve all veterans of the Armed Forces of the United States, and one of its primary missions is to ensure that upon return from service, veterans and their families receive the benefits to which they are entitled.

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Q: What are the goals of this lawsuit?

A: In addition to seeking a declaration from the court that certain laws that govern the VA, and certain VA practices, violate the constitutional and statutory rights of the Plaintiffs, the lawsuit seeks an injunction preventing Defendants from:

- Failing or refusing to provide in a timely manner medical examinations or treatment to claimants and recipients of disability benefits based on PTSD;
- Failing and refusing to process PTSD claims and issue initial decisions within such period of time as meets the requirements for due process;
- Deciding claims at VA Regional Offices based on instructions or directives or instructions from the Veterans Benefits Administration or other government officials in Washington, D.C. instead of based upon the facts and evidence of record;
- Failing or refusing to honor a claimant's request for a hearing, discouraging claimants from requesting hearings, or failing and refusing to schedule a hearing within a reasonable period of time to claimants who have requested hearings;
- Prematurely denying PTSD claims before required development has taken place;
- Continuing to administer or carry out aspects of the VA's incentive compensation program which encourage VA employees to violate veterans rights or circumvent VA rules and regulations; and
- Continuing to enforce the provisions of the statutory prohibitions that limit veterans' access to counsel.

Q: Will this lawsuit solve all of the problems that veterans with PTSD currently face?

A: While this lawsuit will lead to many positive changes, political solutions will also be necessary to improve the care provided to veterans with PTSD. Critical legislative or policy changes include:

- Extending automatic eligibility for health care for veterans who have served in combat from two to five years;
- Improving outreach programs for veterans regarding VA benefits and services;
- Creating PTSD specialist teams in every VA Medical Center;
- Streamlining and upgrading the VA claims system; and
- Increasing funding for claims review and treatment.