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COURT MINIMIZES VA ACCOUNTABILITY FOR ERRORS IN PROCESSING CLAIMS

(Shinseki v. Sanders, No. 07-1209)

The U.S. Supreme Court this week reversed a federal appeals court ruling that had held the U.S. Department of Veterans Affairs (VA) accountable when it commits significant procedural errors in processing disability claims submitted by veterans.

The Court's decision in *Shinseki v. Sanders* was a partial setback for the Washington Legal Foundation (WLF), which filed a brief urging that the appeals court decision be affirmed. But the High Court's decision included a silver lining; it held that the U.S. Court of Appeals for Veterans Claims (also known as the "Veterans Court") is entitled to determine that certain types of VA procedural errors have the "natural effect" of prejudicing a disability claimant and to overturn VA decisions on that basis.

WLF had argued that when the VA commits procedural errors and a veteran sues to overturn a decision denying him benefits, a reviewing court should *presume* that the veteran was prejudiced by the procedural errors unless the VA affirmatively demonstrates that there was no prejudice. The Supreme Court disagreed, ruling that claimants for disability benefits should bear the burden of demonstrating that they were, indeed, prejudiced by any procedural errors committed by the VA during the administrative process. If no prejudice is demonstrated, the VA's procedural error should not be a basis for overturning a denial of benefits, the Court ruled.

WLF filed its brief on behalf of itself, the Allied Educational Foundation, Rear Admiral (Ret.) James J. Carey, and four veterans organizations that advocate on behalf of veterans: the American Military Retirees Association, the National Defense Committee, the National Veterans Organization of America, and Veterans United for Truth.

"We are concerned that the Court's ruling will reduce the effectiveness of provisions of federal law designed to guarantee that the VA will assist veterans in developing viable claims," said WLF Chief Counsel Richard Samp. "Most veterans who apply for disability benefits cannot afford to hire an attorney. Without the VA's assistance -- which Congress has required the VA to provide -- many veterans will be unable to marshal the evidence necessary to support their claims. But as a result of this week's ruling, the VA will have a reduced incentive to provide the assistance that many veterans so desperately need," Samp said.

The case involved disability claims submitted by two veterans. The VA rejected both veterans' disability claims, and they sought judicial review of the denials. The U.S. Court of

Appeals for the Federal Circuit determined that in both cases the VA failed to comply with notification requirements imposed on the VA by the Veterans Claims Assistance Act of 2000 (VCAA). The VCAA requires the VA to notify a claimant before making any determination on the claim, regarding: (1) all information not yet provided to the VA that is necessary to substantiate the claim; and (2) which portion of that information must be supplied by the claimant and which portion the VA itself will attempt to supply. The VA failed to fulfill the first notification requirement with respect to one of the veterans, and to fulfill the second notification requirement with respect to the other.

The Federal Circuit held that the VA's failure to comply with VCAA notification requirements is presumptively prejudicial to a veteran who has submitted a disability claim. It held that unless the VA demonstrates that its errors did not prejudice the claimant (for example, by demonstrating that the claimant knew precisely what medical information the VA required him to provide), the denial of benefits should be vacated and the case remanded to the VA for a new determination. The Supreme Court reversed, holding that it is up to the veteran to demonstrate that (s)he suffered prejudice.

In its brief, WLF argued that a fair reading of the entire statutory scheme governing VA claims leads to the conclusion that Congress intended to place on the VA the burden of demonstrating that its own errors in notifying a claimant did not prejudice the claimant. WLF argued that there is nothing anomalous about imposing the burden of proof regarding prejudice on the administrative body that committed the procedural error; it argued that courts have assigned the burden of proof in that manner whenever, as here, an error is of such a character that its natural tendency is to prejudice a litigant's substantial rights. The Supreme Court only partially disagreed; it held that although the burden of proof is on the veteran, the Veterans Court is entitled to determine, based on its experience in handling numerous disability cases, that claimants are particularly likely to be prejudiced by certain types of VA notification errors. The Court said that the Veterans Court could determine, for example, that there is an increased likelihood of prejudice when the VA fails to provide the first type of notice required under the VCAA: a listing of all additional information needed to prove entitlement to benefits.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a significant portion of its resources to protecting the constitutional and civil rights of individuals.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.