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THE V.A. AND THE LAW - YEAR 2000 EDITION

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(Footnotes have been added by David Todeschini to clarify certain terminology)

We do know that upon entering, and being sworn into the Armed Forces of the United States, that you are no longer in possession of all your Constitutional, nor your Civil rights. You are under the classification of the "Feres Doctrine", an extremely unfair manifesto, carried over from England, back in our colonial days. The "Feres Doctrine" is the prime example of sovereign immunity. This continues, even up to the present day, and is the main reason why piercing the federal veil is next to impossible. Be it right or wrong, we think that sovereign immunity for anybody is dead wrong, the government, as well as those individuals who work for the government to administer their laws, military, or non-military. They must be legally accountable to "WE THE PEOPLE".

In military life, the discipline must be maintained. Upon becoming a civilian, the abuses and the sovereign immunity aspects of this system must stop there. Unfortunately however, once an individual is separated from the service of his country, the abuses continue under the dishonest and predatory policies of the Veterans Administration. Veterans very quickly find out that the protection of the Constitution of the U.S. has been stolen from them, and replaced by certain incredibly restrictive statutes of USC¹ Title 38 and 38 CFR² ever since the "Veterans Benefits Improvement Act of 1940".

Lets examine very carefully what USC Title 38 is all about, and how these predators at the V.A. use it to deprive the veterans of their rightful benefits claims. The following are some of the more important sections of USC Title 38, and 38 CFR, which are pertinent to the chicanery of the V.A., their National Veterans Service Organization cohorts, and their congressional cohorts.

¹ USC – United States Code – the body of laws upon which all laws in the US are based.

² CFR – Code of Federal Regulations.

SECTION 511(a): The worst of all the laws under USC Title 38 is Section 511(a). It reads as follows.... "The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary to veterans or dependents or survivors of veterans. The decision as to any such question shall be final and conclusive, and may not be reviewed by any court, whether by and action in the nature of mandamus or otherwise". SECTION 511(a) GUARANTEES DECISIONS OF THE SECRETARY, FINALITY.

This single act of Congress removed the V.A. out from under any congressional control, and the Congress has no supervisory authority over it.

SECTION 5904. This aberration of the law states that when a veteran files a claim with his V.A. Regional office, he is only permitted to use a representative of a veteran's organization to present and argue the merits of his claim, unless he can locate an attorney, who is willing to work for free (PRO-BONO³). THIS IS THE V.A.'s "UNNECESSARILY PATERNALISTIC" CONCEPT OF A FAIR HEARING, WHERE AS NO ATTORNEY WILL LOOK OVER THEIR SHOULDER, AND COMPEL THEM TO COMPLY WITH THE RULE OF LAW. MEANWHILE, THE V.A. HAS OVER 1200 OF THEIR OWN ATTORNEYS, CREATIVELY FINDING NEW, AND BETTER WAYS TO CIRCUMNAVIGATE THE LAW, AND DENY CLAIMS. The only other way that a veteran can have his own attorney is, if the Board of Veterans Appeals (BVA) has given a final denial. This as a process which takes anywhere from 7 to 30 years.⁴

So far, after three congressional hearings by the HVAC on this same subject, nothing has been accomplished due to the lobbying efforts of the National Veterans Service Organizations to protect their "FORBIDDEN LEGAL TURF" and their "VESTED PRIVATE INTERESTS" and the utmost cooperation of both House the and the Senate Veterans Affairs Committees which are certainly not "veteran friendly", but are "National Veterans Service Organization friendly". In other words, with our "tainted" congressional veteran's committees, we stand two chances.... Slim and None.

38 CFR Ch.I, (7-1-99 Edition) under Section 20.1302 Rule 1302, referring to USC Title 38, Section 7104(a) as the Authority: DEATH OF THE APPELLANT DURING PENDENCY OF APPEAL.... An appeal pending before the Board of Veterans Appeals, when the appellant dies, will be dismissed. HERES ANOTHER V.A. REGULATION, WHICH ALLOWS THE V.A.'s INFAMOUS BOARD OF VETERANS APPEALS TO CLOSE UP A CASE, WHEN A VETERAN EXPIRES, WHILE AWAITING A DECISION. It doesn't matter that the case may be anywhere from 20 to 50 years old. It doesn't matter that the veteran has been waiting 2 to 3 years for the BVA to schedule a hearing for him, nor does it matter that maybe the BVA has not rendered a decision, although a year to a year and a half have elapsed. If that veteran dies, the BVA will be as happy as pigs in "you know what" to close up the case, so as the veteran's next of kin will have only the option of reopening the case at the local V.A.'s Regional Office from the very beginning, or drop the claim. This V.A. "bummer" of a regulation only serves to show you what a lack of standards of decency that the V.A. has.

In addition to the above, under Section 15.2.2. The only benefits that can be paid to a veteran's survivors as a result of a claim started by the veteran, who expires before a final decision is reached, are those provided in the "accrued benefits" statute, (which authorizes payment to certain survivors of no more than two years of benefits that were due, or should have been paid to the deceased at the time of death). Therefore, when a veteran dies while the case is on appeal to the Court, the appeal is dismissed as moot, and the underlying Board and Regional decisions are vacated. In other words, the veteran's survivors will only be entitled to two years retroactive benefits maximum, even if the case is decided in favor of the veteran against this "stacked deck".

DOES THIS REGULATION SOUND FAIR OR EVEN LEGAL TO YOU???

³ Pro Bono (Latin, legal abbreviation) from: "*Pro Bono Publico*" or "For the Public's Benefit" - DT

⁴ A few short years ago, two V.A. Attorneys from the B.V.A. were sent to federal prison for altering and destroying veteran's claim files to avoid paying disability compensation claims.

And, while we are talking about this same subject matter, lets look at another V.A. regulation, USC Title 38, Section 7104(c): The Board shall be bound in it's decisions by the regulations Department instructions of the Secretary and the precedent opinions of the Chief Legal Officer of the Department. ONE THING REALLY DISTURBS ME, AND I WOULD LIKE TO ASK YOU AS FELLOW AMERICANS.... WHY DOES THE V.A. REGULATIONS, THE INSTRUCTIONS OF THE V.A. SECRETARY, AND THE PRECEDENT OPINION OF THE V.A. CHIEF LEGAL OFFICER TAKE PRECEDENCE OVER WHAT IS RIGHT AND THE LAW ???

SECTION 5902(a): This law is quite unique. It is believed by everybody, that it serves as a payback, or shall we say "LOOT" to the National Veterans Service Organizations for "SERVICES NOT RENDERED", ITS TIME NOW THAT WE TELL IT LIKE IT IS. THE BIGGEST BETRAYAL IN OUR HISTORY, AS VETERAN BETRAYS VETERAN. For keeping the V.A.'s illegal quota of service-connected claims at the minimum amount of 4% allowed, the law states "At the discretion of the Secretary, the V.A. will provide RENT-FREE OFFICE SPACE for the NVSOs in V.A. buildings. A very liberal interpretation of the law also gives them FREE HEATING AND ELECTRICITY, FREE POSTAGE, FREE STATIONERY, FREE TELEPHONE, FREE FURNITURE, FREE COMPUTER EQUIPMENT, AND A TAX EXEMPT STATUS. No wonder that this law is called the "GRAVY TRAIN STATUTE". There are 44 of these service organizations chartered by Congress, and officially recognized by the V.A., and for the most part, they are enjoying some, if not all of these V.A. "FREEBIE" privileges. Among them are the Disabled American Veterans, the American Legion, the Veterans of Foreign Wars, AMVETS, and the Military Order of the Purple Heart. There are also 68 non-chartered Veterans service organizations (without grant, contract, or privilege) giving us a total of 112 veterans service organizations.

Not all the laws of USC Title 38 go against the veteran. There is one statute, SECTION 1110: BASIC ENTITLEMENT that reads, "For disability resulting from personal injury or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter". (USC Title 38, SECTION 1131: BASIC ENTITLEMENTS states the exact same thing covering conditions other than wartime).

BOTH OF THESE LAWS STATE THAT DISABILITIES RESULTING FROM PERSONAL INJURY SUFFERED OR DISEASE CONTRACTED, OR FOR AGGRAVATION OF A PREEXISTING INJURY OR DISEASE CONTRACTED IN LINE OF DUTY, AND WHICH ARE NOT DUE TO OUR OWN WILLFUL MISCONDUCT ARE COMPENSATORY FROM THE PERIOD OF SERVICE IN WHICH SAID INJURY OR DISEASE WAS INCURRED OR A VETERAN'S DATE OF DISCHARGE. THESE ARE BOTH VALID LAWS, WHICH HAVE BEEN ON THE BOOKS FOR THE PAST 60 YEARS OR SO, AND YET THE V.A. CHOOSES TO IGNORE THEM BOTH IN THEIR ENTIRETY. But then, what about the federal courts ??? Surely, the V.A. must abide by the federal court rulings???

The Supreme Court of the U.S. has told the V.A. that where the laws are plain and clear, that it must abide by them as they are written without V.A. interpretation and regardless of the V.A.'s regulations, age or time in existence, and yet, the V.A. continues to let V.A. regulations supersede the law. The Supreme Court has in the past blasted the V.A.'s interpretation of the law in the landmark Gardner case decision, as in other numerous related cases, yet why has the V.A. not been compelled to obey the law??? Assuming that the connection is limited to proximate causation, so as to narrow the class of compensable⁵ cases, that narrowing occurs by eliminating remote consequences, not by requiring a demonstration of fault.[n.3] See generally W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts, Section 42(5th ed. 1984).

⁵ So in original – Compensat(e)able – cases which are eligible for compensation - DT

IT SHOULD ALSO BE NOTED THAT THE SUPREME COURT DOES NOT EVEN RECOGNIZE THE U.S. COURT OF APPEALS FOR VETERANS CLAIMS AS A TRUE FEDERAL COURT. (THIS SHOWS US THAT SOME SANITY STILL EXISTS TO A CERTAIN EXTENT). In several decisions, the High Court completely jumped over the Court of Veterans Appeals from the BVA to the Federal Court of Appeals, thus leaving out the Court of Veteran Appeals as if it does not exist. Again, it should be noted that the Veterans "Court" is supposed to be an Appellate Court, and yet, an Appellate Court is a court which hears cases from a lower court. These veteran's cases have NEVER been to a lower court, only to the V.A. IN ESSENCE, THIS FRAUD OF A COURT IS CONSIDERED NOTHING MORE OR LESS THAN AN EXTENSION OF THE V.A.

These laws comprise an integral part of the "STACKED DECK" that our disabled veterans must face, as they file claims for benefits; and disability compensation that most of them will never see due to V.A. thievery...

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