

Claims court convenes on campus to teach William and Mary law school students

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In 1969, Clyde McKinney Jr. entered the Navy after passing a series of tests, including a routine exam showed his hearing fell below normal standards.

Forty-six years later, that blip on his record is at the center of a fight over disability benefits. It is too early to say whether he'll win or lose, but he achieved a measure of success Wednesday. His case helped educate a select group of students at the **College of William and Mary** who want to fight for other veterans seeking compensation.

A three-judge panel convened court on campus to hear oral arguments in McKinney's case. It is part of an outreach program by the U.S. Court of Appeals for Veterans Claims, and it played to a very appreciative audience.

The students who packed the McGlothlin Courtroom on campus work at the Lewis B. Puller Jr. Veterans Benefit Clinic, which helps former service members who have complex disability claims. The Puller Clinic has received statewide recognition for its efforts, and Wednesday's session offered students a real look at cases that reach a high level.

The arguments for and against McKinney, a Texas resident who did not attend, focused on finer points of **VA** regulations and prior case decisions. A layman might have found it difficult to follow.

Bill Burke, 36, ate up every word.

Burke, a former Navy pilot, is a third-year law school student and serving his second semester at the Puller Clinic. Unlike the first semester, where students sit eye-to-eye with veterans across the table and help solve problems, the second semester focuses more on the latter stages of cases.

Burke is working on a case that is headed to the veterans claims court.

"For me, it was less inside baseball — the exact stuff I'm thinking about and working on," he said. "It was really valuable to see how the court thinks about the issues and their approaches to the arguments of counsel — and just to sort of see them in person."

McKinney wants to receive compensation for a hearing disability, which he says was

the result of his Navy service. He served on the USS Iwo Jima and the USS Navarro, and he blames proximity to ship gunfire for his condition.

Attorneys for the VA note that his hearing already was below standards when he entered the service — in effect, a pre-existing condition. McKinney's counsel, Landon Overby, said his client's hearing was good enough for admittance to the Navy and should not be considered a factor.

McKinney has been seeking disability benefits for his hearing loss for seven years. The three-judge panel did not reach a decision Wednesday, but in interviews afterward, they said their turnaround time is relatively prompt — a matter of a few weeks or months.

Cases are delayed because of various appeal stages within the VA, but not in their court, they say.

"We're very quick," said Judge Mary J. Schoelen.

The veterans claims court is relatively young, established in 1988, and it includes nine active judges. Schoelen, along with judges Robert N. Davis and Margaret Bartley, made the trip to W&M.

The McKinney case is typical of the challenge the judges face — going back decades to examine health records or service record documents, then parsing its meaning in light of today's regulations.

"I've been on the court almost three years," Bartley said. "I've had three cases where the men served in the Battle of the Bulge," which was World War II. "We have a 97-year-old appellant now at the court."

"The length of time between when they initially were in the service and when they seek benefits is one of the great challenges," added Schoelen.

Burke faces challenges as he prepares his first case for the veterans claims court.

His client was injured in basic training in 1970. He put on an ankle brace and resumed training. Now years later, he has problems that are connected to that injury. But no one wrote down what happened.

Burke sympathizes with his client, because record-keeping isn't easy.

"My record, by the time I was done, papers were falling out and it was biodegrading before my eyes," he said. "The idea that someday a court of appeals could be examining this line by line and parsing words — it's a little terrifying."

Like Burke, Jack Wilson works at the Puller Clinic, although he's in his first semester. A 27-year-old former Army maintenance officer, he enjoyed seeing the give-and-take between attorneys and the judges.

"It was useful to see how the court thinks about the issues and their approaches to arguments of counsel — and how the advocates are passionate about their clients," he said.

During the question-and-answer session with students following the court session, Wilson said he was a little surprised to hear that Overby, the defense counsel, had only had three weeks to prepare for the case.

Overby works for the law firm of Chisholm, Chisholm and Kilpatrick. The firm is based in Providence, R.I., but as McKinney can attest, the firm handles cases from all over the country.

Overby is not an attorney, but he worked for Disabled American Veterans and represented hundreds of former service members before the claims court. His official title is "nonattorney practitioner." He's also a Navy veteran with a disability connected to his service, and Wednesday's court session was the 15th time he's made oral arguments before the court.

The judges gave good marks to Overby and his counterpart representing the VA, Ronen Morris.

Davis, who presided over the three-judge panel, said what the students saw "was an academic discussion in a lot of ways, but it has a practical impact."

Schoelen said she's had her mind changed after hearing oral arguments, and left the students with this message:

"Don't underestimate the impact you can have."

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