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## W&M law students get lesson in VA case law

By Mike Hixenbaugh  
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Eight years ago, a sailor who served at sea during the Vietnam War filed a claim with the Department of Veterans Affairs: Exposure to loud gun blasts aboard his ship decades earlier had led to debilitating hearing loss, he argued.

What happened next is familiar to thousands of veterans: The VA denied his claim for financial compensation, arguing the disability predated his service. The veteran appealed. The VA denied his appeal. The veteran appealed again. Finally, after years of back and forth - and stacks of paperwork - Clyde McKinney's case landed at the U.S. Court of Appeals for Veterans Claims.

Of the 1 million disability claims filed with the VA each year, about 4,500 are eventually heard by the niche appeals court based in Washington, D.C. It is often the final round of a veteran's long fight for compensation. It's not unusual for the court to decide claims more than 15 years after they were filed.

A three-judge panel traveled to the College of William & Mary Law School on Wednesday to hear oral arguments in McKinney's case, part of the court's effort to raise awareness about veterans law among aspiring lawyers.

McKinney, who lives in Texas, did not attend the two-hour hearing. Most veterans don't, and for good reason: Arguments delved into the minutiae of veterans case law and dealt little with McKinney's actual condition.

What's the difference between a defect and a disorder? What did Congress mean when it wrote those words into a law more than 70 years ago? How should the court interpret statute 3.322 or statute 3.385?

The VA's lawyers argued McKinney had a slight hearing problem when he enlisted in 1969 and, therefore, his now-severe hearing loss should be considered a pre-existing condition.

"What we have here is a clear notation that the appellant's hearing loss, his abnormal hearing, began prior to service," said Ronen Morris, who argued on behalf of the VA.

Judge Margaret Bartley pushed back, asking whether the hearing test administered when McKinney entered the Navy proved a pre-existing disability.

"The doctor never interpreted anything; there was no notation of defective hearing here," Bartley said. "If someone was to look back now, that is laying their interpretation over the top of a test result, and saying, 'Voila, he actually had defective hearing.'"

The judges will issue a ruling in McKinney's case in the coming days. They don't have a lot of time to deliberate. This court is among the busiest in the country and has been flooded with cases in recent months as the VA moves to clear its massive claims backlog.

After the hearing, the judges took questions from students. Several are considering careers in veterans law after spending a semester helping vets file claims at William & Mary's free veterans legal clinic.

The lesson Wednesday: Some of those claims won't be resolved until years from now.

Bill Libby, a 23-year-old student, said most veterans are angered by the complexity of the claims process.

"For a lot of clients, the financial aspect of compensation is secondary," Libby said. "What they really want is for someone to acknowledge, 'Hey, this awful thing that happened to me, it really happened.' For a lot of these guys, the VA denying benefits is akin to the VA denying that anything happened to them."

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