



LEGAL NEWS UPDATE: September 2012

1. President Obama signed the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 into law in August, providing benefits to veterans and restricting protests of service members' funerals.

The new law provides extended healthcare benefits to Camp Lejeune veterans and their families who have been diagnosed with a disease related to the base's water contamination between 1957 and 1987.

The new law also prohibits protests at military funerals in the two hours before and after the service, and states that any protest must be held at least 300 feet from the military funeral. This law is in response to *Snyder v. Phelps*, 131 S. Ct. 1207 (2011), the U.S. Supreme Court case that upheld the Westboro Baptist Church's right to protest at military funerals under the Free Speech Clause of the First Amendment.

In addition, the law has provisions regarding waiving copayments for telehealth care, expansion of travel benefits for veterans receiving care from Vet Centers, rehabilitation for veterans with TBI, expanded eligibility for specially adapted housing assistance, improved assistance to disabled veterans living in a family member's home, programs for homeless veterans, benefits claims processing, the duty to assist claimants in obtaining private medical records, and more.

2. VA will no longer cover the cost of service dogs for veterans with PTSD. VA issued a final rule that limits its payment of service-dog benefits to veterans with vision, hearing, or mobility impairments. 77 Fed. Reg. 54368 (Sept. 5, 2012). The rationale provided in the rule is that "VA has not yet been able to determine that these dogs provide medical benefit to veterans with mental illness." The rule expressly stated that it "does not deny access of any service dog to VA health care facilities." However, there is a provision in the Honoring America's Veterans Act of 2012 (above) that states that VA "may not prohibit the use of a covered service dog in any facility or on any property," and defines "covered service dog" as "a service dog that has been trained by an entity that is accredited by an appropriate accrediting body that evaluates and accredits organizations which train guide or service dogs."
3. In [Cline v. Shinseki](#), docket no. 10-3543 (Vet. App. Aug. 16, 2012), the U.S. Court of Appeals for Veterans Claims held that 38 C.F.R. § 3.156(c)(2) is a substantive rule that could not be applied retroactively. This rule provides an exception to the rule that requires VA to reopen a previously denied claim when it receives new official service records that were not in the file when VA first decided the claim. 38 C.F.R. § 3.156(c)(1). This rule allows for an effective date as of the date of the original claim if the newly discovered service records ultimately form the basis of an award of benefits. The

exception, which became effective in October 2006, states that the rule does not apply to records that VA could not have obtained at the time of its initial decision because (1) they did not exist or (2) the veteran did not provide enough information for VA to identify and obtain the service records.

In [Cline](#), the veteran wanted an earlier effective date based on the submission of new service records. He submitted his request to reopen, provided information to identify the service records, and was awarded benefits prior to October 2006. VA determined that he could not be awarded an earlier effective because he had not previously provided sufficient information to identify the service records. The Court found that the retroactive application of § 3.156 was impermissible and remanded to the Board of Veterans' Appeals to readjudicate the claim, applying the prior version of the regulation.

4. In [Hillyard v. Shinseki](#), docket no. 2011-7157 (Aug. 17, 2012 Fed. Cir.), the U.S. Court of Appeals for the Federal Circuit affirmed a Veterans Court decision that determined that appellants can bring only one motion for revision of any one disability claim based on clear and unmistakable error (CUE) to the Board of Veterans' Appeals. Appellants must raise every possible CUE theory in their CUE motion to the Board, or risk losing the ability to raise that argument. This case does not apply to CUE motions raised at the regional office level.

If you have any questions, or need additional information, please feel free to call
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