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Groups Sue for Veterans' Mental Health Care Injunction Sought Would Force VA to Spend \$60 Million on Pending Claims

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SAN FRANCISCO - It didn't take long after his honorable discharge from the Marine Corps for William Rogers to realize his life was unraveling.

He couldn't shake the memories of the blasted and bloodied bodies he saw during the Persian Gulf War. The dogs that attacked him while he was patrolling Kuwait City one night in 1990 returned in his nightmares. The stutter he overcame as a child was suddenly back, joining a host of new troubles: migraines, fatigue, memory loss and depression.

Rogers went to a U.S. Department of Veterans Affairs hospital for the first time in 1992 and started what he describes as a 15-year battle to get his claims of post-traumatic stress disorder recognized by the government. He was finally diagnosed with post-traumatic stress disorder late last year and is now entitled to the treatment he says could have kept his life from falling apart a decade ago.

"They just gave me the runaround for so long," said Rogers, 40, who lives with his wife and three children in Live Oak and says he's kicked the drugs and alcohol he turned to when the VA turned him away. "It seemed like they were always making more excuses to deny my claims."

Rogers' case is far from unique, say lawyers for Veterans for Common Sense and Veterans United for Truth. The two advocacy groups are suing the VA on behalf of 320,000 to 800,000 veterans who they expect will seek treatment for post-traumatic stress disorder by the end of the current wars in Iraq and Afghanistan as well as those who served in the Gulf War and Vietnam. *Veterans for Common Sense and Veterans United for Truth v. Peake*. 07-3758.

The veterans groups want U.S. District Court Judge Samuel Conti to grant a preliminary injunction that would force the VA to spend about \$60 million to provide immediate care to the roughly 600,000 veterans they say have pending claims. A hearing on the injunction is scheduled to begin today, with testimony from medical experts and VA administrators expected to focus on the care veterans receive.

"There's a crushing caseload that the VA can't keep up with," said Gordon Erspamer, a Morrison & Foerster lawyer who is representing the plaintiffs pro bono. "You could easily wait 15 years before you get any treatment."

The lawsuit, filed last July in U.S. District Court in San Francisco, says the VA routinely delays and rejects health care claims and makes it difficult for veterans to appeal the rejections. There are no veterans named as plaintiffs, a decision lawyers made to spare individuals from possible retribution.

The VA won't discuss individual health care claims because of privacy issues and officials at the U.S. Justice Department, which is defending the VA, won't comment on the lawsuit.

Government lawyers lost their bid to have the case dismissed and argue in court papers that the VA's secretary has sole discretion in deciding the scope of care veterans receive. They insist veterans have due process when they appeal their claim denials.

"Moreover, VA is making great progress in addressing the mental health care needs of combat veterans through its own programs," the lawyers wrote in their opposition to the plaintiffs' motion for the preliminary injunction.

Dr. Ira Katz, one of the VA's top mental health service administrators, told the House Committee on Veterans' Affairs late last year that his agency boosted its spending on mental health care from \$2 billion in 2001 to \$3 billion last year.

He said about 100,500 of the 750,000 veterans who have fought in the current wars have gone to the VA with a mental health condition.

"While a significant number of veterans of the conflicts in Iraq and Afghanistan have required treatment for mental health conditions on their return home, the number is well within our capabilities for providing treatment," he told the congressional committee in December.

Katz, who plaintiffs' lawyers want to call as a witness during the preliminary injunction hearing, said the VA has suicide prevention coordinators in each of its 153 hospitals and employs "more than 200 mental health providers whose jobs are specifically devoted to preventing suicide among veterans."

He said there were 144 known suicides among veterans returning from Iraq and Afghanistan between the beginning of the war and the end of 2005 - a statistic that falls far below plaintiffs' estimate of more than 6,000 veteran suicides in 2005 alone.

While Katz told the House committee that a 10 percent increase in VA patients with mental health conditions since 2002 "should be balanced against the 50 percent increases in expenditures and mental health staffing" since 2001, the advocates say too many veterans like William Rogers aren't getting the help they need.

After his first attempt to get mental health care from the VA in 1992, Rogers didn't return to a veterans hospital for another five years.

More information was coming out about Gulf War syndrome around 1997, and he figured that might be the cause of his fatigue and cognitive problems. At the VA in Sacramento, he says doctors told him he wasn't exposed to anything during his combat tour that would cause the symptoms.

He was told he had post-traumatic stress disorder - a diagnosis he says was soon overturned and reclassified as an anxiety disorder that had nothing to do with his service as a Marine corporal, meaning it was ineligible for treatment at the VA.

Hoping to distract himself with a busy work schedule, he left for the Gulf of Mexico and took a job as a commercial diver. His depression and concentration problems went with him, and he started asking for care at the VA in New Orleans.

Again, he was told he didn't have post-traumatic stress disorder and was denied the treatment he felt entitled to, he says.

"I just gave up," he says. "I started self-medicating. It was the only way I could relieve the pain."

His increased use of drugs and alcohol led to his arrest in 1999 for burglary and cocaine possession. Rogers says a new-found faith in Christianity helped return him to a sober life just before he began serving a four-year prison sentence.

After prison, he returned to the VA and again had his post-traumatic stress disorder claims denied. Feeling like he had nowhere else to turn, Rogers says he explained his decade-long struggle with the VA in a letter to Sen. Barbara Boxer while continuing to appeal his rejected claims.

In May of 2007, the VA agreed to re-evaluate him. Seven months later, they diagnosed him with post-traumatic stress disorder caused by his wartime service, he said.

"The doctors did a complete 180," Rogers says. "They told me they didn't know why my claims weren't granted earlier."

Rogers isn't sure why doctors finally diagnosed him with post-traumatic stress disorder after 15 years. He said his symptoms and his story never changed each time he went to see a doctor.

He guesses the letter he sent to Sen. Barbara Boxer may have helped. Or maybe it was the lawsuit filed against the VA, he says.

"I just don't know why it was such a huge uphill battle," Rogers says. "If they don't do something to make it easier for other people, there's going to be more veterans who are going to do drugs and alcohol. There are going to be more veterans on the street. And there will be more in prison. I guarantee you that."

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