



LOS ANGELES

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Fighting for veteran benefits

Perspectives

By David Ackerly

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The Marines crouched behind a long mound of dirt in the abandoned rice paddies, exchanging fire with the North Vietnamese soldiers who were holding positions in the trees less than 100 yards away. Despite heavy shelling and bombing, the North Vietnamese soldiers did not run away. They couldn't. They were chained to their machine guns in their foxholes. They were left behind to die defending this no man's land.

The Marines attacked, and some were cut down. Jack saw a fellow Marine raise his hand and wave for help. Jack immediately went over the mound and ran to his buddy. Marines never leave a man behind. When he got to his buddy, there was a gaping wound in the Marine's abdomen. Jack tried to shove the guts back in and tied his jacket around the man's stomach. He grabbed his buddy's wrists and tried to drag him back to safety.

Halfway back, two other Marines ran out to him. "You're dragging a dead man." Jack looked down. His buddy was gone. The other two pulled him back to safety behind the mound. Someone handed Jack a morphine pack. He took it, and felt a rush. There was no more fear, there was no more grief, he just "went bananas" and wanted to kill the enemy.

The battle for that ground raged off and on for several months. Jack was never the same, and began self-

medicating to block the symptoms he felt: survivor's guilt, terror, anger, and insomnia.

Jack was eventually diagnosed by the Veterans Health Administration as suffering from Post Traumatic Stress Disorder and received therapy. But when he applied for service-connected disability compensation from the Veterans Benefits Administration, he was denied.

Post Traumatic Stress Disorder was only identified in 1980, years after the Vietnam War. Despite the current legal presumption in favor of veterans' combat experiences, far too often the Veterans Benefits Administration delays or denies compensation by insisting on more information and more details. When veterans from World War II, Iraq and Afghanistan receive medical treatment for Post Traumatic Stress Disorder, too often they are denied the compensation desperately needed to help them escape homelessness or to prevent them from becoming homeless in the first place.

The Dept. of Veterans Affairs requires one or more detailed "stressor events" to establish the in-service requirement for a compensable disability. The current definition of a Post Traumatic Stress Disorder stressor event used by the Dept. of Veterans Affairs is from the *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition*: The person has been exposed to a traumatic event in which both of the following have been present:

(1) The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat

to the physical integrity of self or others;

(2) The person's response involved intense fear, helplessness, or horror.

The RAND Corp. projects that the current wars will eventually result in 300,000 cases of Post Traumatic Stress Disorder and more than 320,000 cases of traumatic brain injury, which is closely related and may produce similar symptoms. These projections are so high because of the extensive use of improvised explosive devices by the enemy and because of tremendous improvements in vehicle and individual armor, combined with advances in battlefield medicine that allow soldiers to survive situations and injuries that would have killed them in earlier wars. Vietnam produced fewer than two disabled soldiers for every soldier killed; Iraq and Afghanistan are producing more than 16 disabled soldiers for each soldier killed.

The Veterans Health Administration is completely unprepared for this influx. As recently as 2006 it anticipated seeing 2,900 cases of Post Traumatic Stress Disorder from Iraq and Afghanistan. Their actual case load that year exceeded 34,000. Since the claims for medical treatment and benefits are vastly more than were anticipated by the government, veterans and their advocates may spend months trying to get medical treatment and years before receiving benefits. The publicity around Post Traumatic Stress Disorder claims is also encouraging veterans of earlier wars-fought before this disorder was identified-to come forward for help.

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matic Stress Disorder claims, ranging from multiple battlefield traumas to training incidents to sexual assault. The symptoms of the disorder, not the causes, unite these veterans. Most symptoms stem from tremendous control issues. Veterans from Iraq may have trouble going down city streets, fearing that discarded trash or a sleeping animal may contain an improvised explosive device. Other veterans isolate away from crowds, noise and sensory overload. Many are hyper vigilant, jumping at loud noises, carrying weapons at all times when at home, checking the locks on doors and windows repeatedly. Flashbacks, depression, and short-term memory loss are all characteristics of Post Traumatic Stress Disorder.

On Aug. 24, the Dept. of Veterans Affairs proposed a new rule that would significantly reduce the evidentiary standard of establishing an in-service stressor for Post Traumatic Stress Disorder. If a Dept. of Veterans Affairs' psychiatrist or psychologist confirms a diagnosis of Post Traumatic Stress Disorder, then "in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor."

In Feb., H.R. 952 (the "Compensation Owed for Mental Health Based on Activities in Theater Posttraumatic Stress Disorder Act" or "COMBAT PTSD Act") was introduced in the House of Representatives. The bill would expand the definition of "combat with the enemy" to include "service on active duty in a theater of combat operations during a period of

war or in combat against a hostile force during a period of hostilities."

The proposed rule and the COMBAT PTSD Act would be of tremendous benefit to America's veterans who are currently being treated for Post Traumatic Stress Disorder. Few detailed records exist of individual actions during battle. For example, even after we filed an extensive declaration about Jack's stressor events during combat, the Dept. of Veteran Affairs sent a request for more information stating that military research units "only have unit records at their disposal and unit records will typically only verify combat-related events or certain other major events experienced by the whole unit." Yet veterans who rely on incidents that impacted the unit as a whole are often denied for not showing how they were personally impacted by the events. Jack is not sure of the exact date he tried to rescue his fellow Marine. The battles continued day after day; no one kept a personal planner.

The amount of compensation available for a veteran with Post Traumatic Stress Disorder is determined by the Veteran Health Administration psychologist's or psychiatrist's evaluation, combined with an independent professional assigned by the Veteran Benefits Administration. The maximum benefit, in most cases, is around \$32,000 a year. Veterans are not getting rich off Post Traumatic Stress Disorder claims. They are stabilizing their financial and living situations so that they can deal with the symptoms of their condition. They were asked to fight and possibly die for their country. Treatment and compensation for what they have suffered is a national obligation.

Many veterans are seeking some form of validation for what they have

suffered. They need the Dept. of Veteran Affairs to stop denying that something happened to them over there. The healing process itself requires acknowledgment.

Jack continued to fight in Vietnam beside his fellow Marines. The morphine he took that day became a habit, which led him to other drugs to try to dull his pain. He spent years in and out of prison. He is currently in an intensive rehabilitation program, trying to finally kick a drug habit that his psychiatrist is certain stems from his experiences in combat in Vietnam. The proposed rule and the COMBAT PTSD Act seek to bring an end to the Dept. of Veteran Affairs' endless rounds of denials seeking evidence that may never be found. The battles should be left behind on the battlefield. Veterans should not have to fight for years for the benefits they earned in service.

David Ackerly is the Directing Attorney of Inner City Law Center's Homeless Veterans Project. He represents military veterans with disabilities and places their cases with pro bono attorneys