VETERANS LAW JOURNAL

A QUARTERLY PUBLICATION OF THE COURT OF APPEALS FOR VETERANS CLAIMS BAR ASSOCIATION

Winter 2011

Supreme Court Hears Oral Argument in *Henderson v. Shinseki*

by Aaron Moshiashwili

On December 6, 2010, the Supreme Court heard arguments in *Henderson v. Shinseki*. David Henderson (recently deceased, and replaced as a party by his widow, Doretha Henderson) was a veteran who suffered from paranoid schizophrenic episodes. One such episode caused him to miss by 15 days the 120 day deadline to file an appeal with the Court of Appeals for Veterans Claims. The CAVC eventually dismissed the case for lack of jurisdiction, citing the recent Supreme Court decision *Bowles v. Russell*. 551 U.S. 205 (2007) (interpreting 28 U.S.C. § 2107 and holding that the time for appeal to court of appeals, is jurisdictional, and therefore not subject to equitable tolling). The Federal Circuit affirmed, and the Supreme Court granted certiorari.

The lines were staked out very clearly. The government's position was that this case fell precisely within the language of *Bowles*, and it was in the hands of Congress, not the court, to create exceptions to the statutory deadline. The appellant argued that neither the language nor the context of the statute in this case is the same as the statute at issue in *Bowles*. In the situation at hand, a veteran was not appealing from a district court, but rather an agency decision. Finally, in any case, the appellant argued that it made no sense for Congress to have created a pro-veteran system that contains an immovable obstacle if the veteran make an error.

Some of the justices seemed to be wearing their opinions on their sleeves. Justice Scalia, who had several contentious exchanges with counsel for the appellant, stated in no uncertain terms that he did not "have a whole lot of sympathy" for litigants who,

after receiving a clear notice of their rights and responsibilities regarding appeals, filed in the wrong location. Justice Breyer, on the other hand, pointedly asked who in Congress would have intentionally created a system where big businesses engaged in lawsuits are forgiven essentially the same type of error, but wounded veterans are "out, no matter how excusable [their error] is."

Lisa Blatt, of Arnold and Porter, argued for Mr. Henderson. She quickly entered into an animated discussion with Justice Scalia and Chief Justice Roberts about the amount of assistance received by veterans

Henderson, *continued on page 8.*

INSIDE THIS ISSUE

COURT OF APPEALS FOR VETERANS CLAIMS BAR ASSOCIATION

Message from the President

Happy New Year! I hope everyone had a pleasant holiday. Now that the holidays are over, it is time to buckle down to our daily routine as we move through the seemingly slow months of January and February. In the meantime, the Bar's Board of Governors has been busily planning its upcoming events and programs for the coming year.

As you know, the Bar Association has been busy over the last several months. In November, we were invited to address the Court's Judges at their retreat in Cambridge, Maryland. After soliciting your input, three of our members, myself (representing the private bar), Gayle Strommen (representing VAG7), and Brian Robertson (representing VSOs), discussed with the Judges various topics, including the Bar Association's vision for itself; plans for Bar Association programs, including a Bench and Bar Conference; administrative issues that are of concern to practitioners; and matters that practitioners believe could make the Court more efficient. Although we were given a limited time, we engaged the Judges in a lively discussion addressing those matters important to our members. I appreciate the many comments and suggestions I received from our membership in advance of the retreat, and am grateful for the opportunity to dialogue with the Court in an informal setting.

As I expressed to the judges, the Bar Association is committed to educating our members, recommending rule changes where necessary, and encouraging dialogue and outreach so as to promote awareness among law students and outside practitioners. The judges were very interested in discussing several proposed rule changes most of which involved attempts to streamline the appeal/development process further so that cases may be decided more expeditiously.

Members of the Court's Bar can soon expect the Court to publish for public comment proposed revisions to its Rules of Practice and Procedure. The Court's Rules Advisory Committee (chaired by Joan Moriarty) worked diligently over the last several months on revisions and suggestions to the newly proposed rules. Once the Court publishes them, all members will be given an opportunity to submit comments and suggestions during the notice and comment period, and I strongly encourage you to give the proposals

thoughtful consideration and provide your input to the Court. The Court is very interested in increasing efficiency in the appeal process, and has expressed a willingness and, indeed, an eagerness to consider all comments and suggestions to further that effort.

On November 22, 2010, I was pleased to participate in a retirement dinner for Judge William P. Greene, Jr. The event was well attended by colleagues, family, and various dignitaries who honored Judge Greene for his many years of public service including five years as Chief Judge of the CAVC. The Bar Association honored Judge Greene with a gift certificate to dinner and car service to a Kennedy Center event, and briefly reflected on a few of his accomplishments while Chief Judge of the Court.

We will officially honor Judge Greene in the early spring with the unveiling of his recently

Message from the President, continued on page 7.

Second Annual Veterans Law Appellate Advocacy Competition is Another Success

On October 16 and 17, the Court and the CAVC Bar Association co-sponsored the second annual Veterans Law Appellate Advocacy Competition (VLAAC), which was hosted by the George Washington University School of Law. Twelve teams from eight different schools participated.

The two-person teams addressed two issues in the fictional case of *Pierce v. Shinseki* before the Supreme Court. In the fact pattern, Army veteran Benjamin F. Pierce was injured when he was caught and crushed between two trucks, resulting in two herniated disks and a minor fracture in his lumbar spine. Several years after service, he applied for service connection for obesity secondary to his in-service back injury. VA denied benefits because the evidence did not show that Mr. Pierce's obesity was the inevitable physiological result of his service-connected back condition. After the Board's decision, Mr. Pierce mailed his Notice of Appeal to his regional office, which held it for nearly three months before returning it to the appellant shortly before the expiration of the 120-day period for filing it with the CAVC. Mr. Pierce then remailed it to the CAVC one day late. The issues presented to the students in the problem were:

1. Is the 120-day period for filing a Notice of Appeal (NOA) to the U.S. Court of Appeals for Veterans Claims, set forth in 38 U.S.C. § 7266(a), subject to equitable tolling when the Department of Veterans Affairs delays returning an NOA it receives within the time period?

2. Does the Department of Veterans Affairs have the discretion to limit compensation for obesity secondary to a service-connected injury to cases in which the condition is an inevitable, physiological result of the underlying condition?

Each team was assigned to represent either the Secretary as petitioner or the veteran as respondent in briefing, and worked from July through September drafting briefs. However, each team had to argue both sides during the two preliminary rounds. The sides for the semi-final and final rounds were assigned at random.

The second annual VLAAC was another resounding success in bringing together practitioners from all aspects of veterans law and introducing students to veterans law. The briefs, the preliminary argument rounds, and the semi-final rounds were judged by Court staff, VA attorneys, and experienced veterans law practitioners. The final round was judged by a panel of judges from the CAVC, comprising of Judge Greene, Judge Hagel, and Judge Schoelen.

Best Petitioner's Brief was awarded to Jonathan Gaffney and Caroline Pham of the George Washington University School of Law. Best Respondent's Brief was awarded to Jenny Liabenow and Michael Mackhanlall from Florida A&M University College of Law. The semi-final teams represented George Washington, Florida A&M, the

VLAAC, continued on page 9.

A student from the Thomas M. Cooley Law School argues during one of the semi-final rounds

Judges Greene, Hagel, and Schoelen hear oral argument in the final round

Shade v. Shinseki: Interpreting the Definition of New and Material Evidence in 38 C.F.R. § 3.156(a)

by Mary Sorisio

Reporting on *Shade v. Shinseki*, __ Vet.App. __, No. 08-3548 (Nov. 11, 2010).

The veteran, William Shade, originally filed a claim of service connection for a skin disorder in July 2000. A VA Regional Office (RO) denied his claim in November 2002 because he did not have a current diagnosis. Although Mr. Shade initiated an appeal of the RO's decision, he did not perfect the appeal; thus, the November 2002 rating decision became final. In February 2006, Mr. Shade requested to reopen his claim on the basis of new and material evidence. The RO denied his claim to reopen, and he perfected an appeal of that decision to the Board.

In support of his application to reopen, Mr. Shade submitted a private physician's medical report that stated he had chronic dermatitis that "had been present for years." In September 2008, the Board denied his claim to reopen. The Board found that the private physician's report was new. However, it concluded the evidence was not material because although it showed Mr. Shade had a current diagnosis of a skin condition, it did not address whether there was a nexus between the current condition and service. Mr. Shade appealed the Board's decision to the Court.

The Court's decision concluded that the Board had misinterpreted and incorrectly applied 38 C.F.R. § 3.156(a). In so holding, the Court reviewed the history of § 3.156(a) and the Court and Federal Circuit's prior interpretations of the regulation. The Court noted that, when VA promulgated the current version of § 3.156(a) in 2001, it indicated that the revisions were meant to be consistent with the purpose of the VCAA. One such purpose "was to lower the bar for claimants attempting to avail themselves of the Secretary's duty to assist." Thus, the Court found that the regulation must be read as "creating a low threshold" for the requirements to reopen a claim. The Court noted that there are three pertinent sentences of § 3.156(a) - the first discusses new evidence; the second discusses material evidence; and the third discusses new and material evidence. The Court focused on the third sentence, which states that new and material evidence "must raise a reasonable possibility of substantiating the claim." The Court found that these three sentences must be read in conjunction with 38 U.S.C. § 5108, which simply states that a claim will be reopened when new and material evidence is presented. Therefore, when deciding whether evidence is new and material, the Board needs to consider whether, if the claim were reopened, the evidence could result in substantiation of the claim if further assistance were provided. The Court concluded that the requirement that the evidence "must raise a reasonable possibility of substantiating the claim" is part and parcel of the question of what constitutes new and material evidence. It is not a separate determination made after the Board concludes that evidence is new and material. By reading § 3.156(a) in this manner, the Court determined that it did not conflict with § 5108.

The Court discussed that, at the same time VA promulgated the current version of § 3.156(a), it also revised § 3.159 in part to state that VA's duty to assist did not require it to provide a medical examination until after a claim is reopened. The Court found that VA could not have intended a reading of § 3.156(a) and § 3.159 together to mean that once evidence had been determined to be new and material, a claim would not be reopened because the claimant had not submitted an adequate nexus opinion. It found that such a reading would make the "promise of assistance in obtaining a medical opinion illusory" because such assistance would never be given unless the claimant submitted a nexus opinion.

In applying its interpretation of § 3.156(a) to Mr. Shade's case, the Court found that the private physician's report stating that Mr. Shade had a current skin disorder was new and material. The evidence was new because it was not previously of record, and it was material because it pertained to the unestablished fact that Mr. Shade had a current diagnosis of a skin condition. The Court noted that, because the evidence previously of record had reflected that Mr. Shade had a skin disorder in service and the new evidence showed that he had a current skin condition, he had established, on a prima facie basis, two of the three elements of service connection. The Court concluded, thus, that the new evidence raised a reasonable possibility of substantiating the claim, because a nexus between service and the current skin disability could potentially be established

Shade, *continued on page 9.*

Savage v. Shinseki: The Secretary's Duty to Clarify Private Medical Opinions

by David E. Boelzner

Reporting on *Savage v. Shinseki*, __ Vet.App. __, No. 09-4406 (Nov. 3, 2010).

In this case, the Court tackled an issue that has lurked in the underbrush around the duty to assist for some time: whether VA has any duty to return for clarification unclear or insufficient private medical examination reports. Section 4.2 of Title 38, Code of Federal Regulations, requires an examination report containing a diagnosis not supported by the findings or containing insufficient detail to be returned as inadequate for evaluation purposes. It has long been understood that this provision applies to VA examinations, and it was the government's position in this case that it applied solely to such reports. The Court held otherwise, but limited the situations in which it will apply.

The Court rejected VA's contentions that VA procedures in the M21-1 Manual, regulations such as 38 C.F.R. § 3.326(a), the duty-to-assist statute itself, 38 U.S.C. § 5103A, and case law require an interpretation limiting VA's duty to seeking clarification of VA reports. The Court acknowledged the practical difficulty of obtaining clarification from doctors over whom VA has no control, but it reasoned that this should not relieve VA of the effort to seek clarification; if none were provided, VA can proceed to adjudication as usual.

The rule established by the Court's decision is that, when a private medical report is unclear or not suitable for rating purposes, and it reasonably appears that a request for clarification could provide relevant information that is not in the record and not available elsewhere, VA has a duty to ask the private examiner to clarify the report, or the Board must clearly and adequately explain why such clarification is not needed or would be unreasonable. Beyond the qualification that the duty arises only where the information is not otherwise available or is already or record, it is further limited to those situations in which "the missing information is relevant, factual, and objective - that is, not a matter of opinion - and where the information bears greatly on the probative value of the private examination report." Slip Op. at 16.

Savage involved private audiology tests, and it was not clear from the reports whether the Maryland CNC Test acceptable under VA regulations was used. The Court held this to be the sort of information VA has a duty to seek. In applying the new rule, the Court reviewed (1) the relevancy of the information, finding it in this case essential to evaluate eligibility for staged ratings; (2) the nature of the missing information, finding it to be factual and essential to understanding whether the private audiology tests were probative; and (3) the burden on VA to seek the information, which in this case was minimal. ■

David E. Boelzner is with the Veterans Benefits Practice Group of Goodman, Allen & Filetti in Richmond, VA.

A Note from the CAVC Rules Advisory Committee

by Joan Moriarty

The Board of Judges solicited the input of the Rules Advisory Committee as to a substantial revision of the Court's Rules. The proposed revisions included a comprehensive examination of all of the Court's Rules, particularly in light of the move to electronic filing and the change in the record process. The Committee met frequently over the summer with the prior Clerk of the Court, Norman G. Herring, to provide comments on the Court's extensive proposed changes, focusing on changes that would improve the efficiency of the Court's processes. On October 7, 2010, the Committee submitted its comments and recommendations as to potential changes to the Rules to the Clerk of the Court for the Board of Judge's consideration. Subsequently, in November, the Court held a retreat and invited the Chair of the Committee, Joan Moriarty, to discuss the Committee's comments on the proposed changes. The Committee's recommendations are now before the Board of Judges for their consideration. It is anticipated that the Board of Judges will publish an extensive revision of the Rules for public comment in the near future. ■

Bryant v. Shinseki: Court Clarifies VA Hearing Officer's Duty to Explain Issues Fully and Suggest the Submission of Overlooked Evidence

by Lou George

Reporting on *Bryant v. Shinseki*, 23 Vet.App.488 (2010)

In *Bryant*, the CAVC clarified the duties of a VA hearing officer (to include a BVA Veterans Law Judge) under 38 C.F.R. § 3.103(c)(2), to fully explain the issues and suggest that the claimant submit supportive evidence. The Court also provided a prejudicial error analysis in such cases.

The facts of *Bryant* involved an Army veteran (who served from May 1943 to April 1946, and from September 1950 to October 1951), who applied for entitlement to service connection for bilateral hearing loss, for tinnitus, for squamous cell carcinoma, and for frostbite residuals in both feet. The RO denied the claim, concluding that the record failed to show medical diagnoses for these conditions. Regarding the squamous cell carcinoma claim, the RO explained the medical evidence showed "several areas of treatment" for this condition, but did not show this condition occurred in or was caused by service. 23 Vet.App. at 490-491.

The veteran appealed the decision, and after a BVA hearing, the Board denied the frost bite claim based upon a lack of evidence of a current disability (based on VA medical opinions), and the hearing loss and tinnitus claims because the conditions were not related to service. The Board denied the squamus cell carcinoma claim because there was no evidence of a current disability, although there no VA examination had been performed. *Id.* at 491.

The Court noted that "[t]he central question to be resolved in this case is the extent of the Board hearing officer's duty under 38 C.F.R. § 3.103(c)(2)(2009), *see also* 38 C.F.R. § 20.1304 (2009) (procedures to obtain a hearing at the Board), to explain fully the issues and suggest the submission of evidence that the claimant may have overlooked." 23 Vet.App. at 491.

After reciting the parties' arguments, the Court rejected the veteran's argument that the § 3.103(c)(2) duty required the preadjudication of his claim, as it was "not supported by the language of the regulation, or its prior interpretation and application." 23 Vet.App. at 492-493. Furthermore, the Court rejected the Secretary's interpretation that the duties were "limited to suggesting the submission of only that evidence that is already in existence, and only when the possible existence of such evidence is triggered at the hearing," as having "no basis in the plain language of the regulation, or its prior interpretation and application." 23 Vet.App. at 493.

Rather, the Court stated that when the RO denied a disability claim because there is no current disability, no nexus to service, or no incident in service, etc., then the Board hearing officer should explain that the claim can be substantiated only when the claimed disability is shown to exist and shown to be caused by an injury or disease in service, and the hearing officer's explanation and discussion should be centered on these issues. 23 Vet.App. at 496. As for the duty to suggest the submission of overlooked evidence, the Court stated that the hearing officer "must suggest the submission of evidence when testimony during the hearing indicates that it exists (or could be reduced to writing) but is not of record." *Id.* at 496-497. The Court added, "[t]o the extent the above scope of the duties to fully explain the issues and suggest the submission of evidence may not have been stated or held explicitly in prior cases, we so state and hold today."

Turning to the application of the law to the facts involved, the Court concluded that the Board member in the case on appeal failed to "'explain fully' the outstanding issues material to substantiating the claim, which in this instance were current disability and medical nexus." *Id.* at 497. As for the duty to suggest the submission of evidence that might have been overlooked, the Court found that there was nothing that "gave rise to the possibility that evidence had been overlooked with regard to the appellant's claim for benefits for frostbite, hearing loss, and tinnitus." Id. Turning to squamous cell carcinoma, although the Court noted that the veteran did not reveal at the hearing any unsubmitted evidence that may have been available, there was no other VA or other examination report of record addressing the question of medical nexus. The Court stated that "[u]nder these circumstances, the lack of medical evidence in the record addressing a nexus between the appellant's diagnosed squamous cell carcinoma

Bryant, *continued on page 7*

Bryant, *continued from page 6.*

and an in-service event or injury gave rise to the possibility that evidence had been overlooked, and the Board hearing officer should have suggested that the appellant secure and submit this evidence if he could; the hearing officer's failure to do so was error." *Id.* at 498 (citing *Sizemore v. Principi*, 18 Vet.App. 264 (2004); *Costantino v. West*, 12 Vet.App. 517 (1999); *Cuevas v. Principi*, 3 Vet.App. 542 (1992).

Turning to the question of prejudice, the Court stated that an error by the hearing officer could not be cured merely by a preadjudicatory notification letter sent pursuant to 38 U.S.C. § 5103(a). Rather, prejudice is case-specific. *Id.* at 498. The Court concluded that the hearing officer's failure to suggest evidence to secure and submit, with respect to the squamus cell carcinoma claim, was prejudicial, warranting remand. *Id.* at 499.

Judge Lance, concurring in part and dissenting in part, pointed out two serious problems with the Court's analysis. First, he noted the majority's failure "to sufficiently explain the distinction between its holding that the regulation does not require a preadjudication of the claim or weighing of the evidence and its requirement that the hearing officer must review the entire record to fully explain the issues on appeal." *Id.* at 500. Rather, an analysis similar to that used in *Kent v. Nicholson*, 20 Vet.App. 1 (2006), was warranted. Second, Judge Lance expressed concern with the majority's prejudicial error analysis, noting that the presence of negative evidence (such as existed with the frostbite, tinnitus, and hearing loss claims), reinforced the duty to suggest the submission of evidence, and "[w]here there is substantial negative evidence in the record on an issue, it is even more important that the Board member explain the need for favorable evidence in order for the claimant to have a realistic opportunity to prevail on the claim." *Id.* at 501 (citing *Moore v. Shinseki*, 555 F.3d 1369, 1374-1375 (Fed. Cir. 2009)). ■

Lou George is a Senior Staff Attorney for the National Veterans Legal Services Program.

Message from the President, continued from page 2.

commissioned portrait. I am proud to report that the membership eagerly answered the call for donations to our portrait fund. Within a very short time we have come within striking distance of reaching our goal. If you have not yet had a chance to give to this fund, I encourage you to do so. Details may be found on our website at www.cavcbar.net.

Most recently, on December 8, the Bar Association hosted a program featuring three members of the Board of Veterans' Appeals. Those of who participated in person and by phone were treated to a rare inside look of what the decision makers do each day, and participants had an opportunity to ask questions about Board processes and procedures. The event concluded with light refreshments in the Judges' conference room. Special thanks to Cherry Crawford, Mark Hindin, and Jonathan Kramer for making time in their busy schedules to speak to us.

Later this month, we will be hosting part one of a two-part series featuring VA's Regulation Rewrite group. As many of you know, VA has been working diligently to revise and rewrite Part 3 of Title 38 C.F.R., which will be renumbered as Part 5. I can think of little that is more important to our members than information and insight relative to the novelties the new regulations will offer. Program participants will have an opportunity to hear the highlights of many of the changes first hand from the folks who are directly involved in the revision process. Additional information, including registration details, will be forwarded shortly. I encourage everyone to attend this series.

Once again, I wish you a prosperous new year. On behalf of the Board of Governors, thank you for your continued support of our Bar Association. We look forward to a fresh new offering of events and programs designed to further engage and educate our membership in the coming months. As always, your input is welcomed and encouraged.

Glenn R. Bergmann
President, CAVC Bar Association

Henderson, *continued from page 1.*

throughout the VA appeals process, including through the Court of Appeals for Veterans Claims. The Justices seemed surprised at the appellant's assertion that veterans rarely had the benefit of help from the various service organizations by the time they appealed to CAVC. The appellant pointed out that although the veterans were not, in Justice Scalia's words, "dropped like a hot potato," it was often several years before a final resolution was reached, and that the veterans and VSOs often do not stay in touch. The Justices repeatedly expressed surprise that the system worked that way; Ms. Blatt relied on amici briefs by various VSOs themselves stating that was precisely the case. By the end of the exchange, Ms. Blatt seemed openly frustrated, taking an almost combative tone with Justice Scalia.

The biggest question left unanswered by the appellant was asked by Justice Alito, at the very end of the argument time, "[A]t what point after the 120-day period would the right to file a notice of appeal be cut off? Would this go on potentially indefinitely?" Ms. Blatt began by referring directly to the facts of this case, and noting that Mr. Henderson had been having a documented episode of mental illness during the time frame in question, presumably working toward the point that the episode in question had a documented beginning and defined end. However, she ran out of time before she was able to fully articulate her point, or state any broader premise.

Assistant to the Solicitor General Eric Miller spoke for the government. Chief Justice Roberts immediately challenged him on the idea that this case followed from *Bowles*, asking him whether an appeal from one Article III court to another could be considered the same as the appeal of an agency decision to an Article I court, as happened in this case. Mr. Miller stated that it was, and that *Stone v. INS* supported that idea by finding similarly in an appeal from a final decision from the Board of Immigration Appeals. Justice Ginsburg followed up, questioning whether the difference between that context - an adversarial one - and the non-adversarial context of a VA board decision should not make a difference.

Chief Justice Roberts later brought up that, in light of the high rate of success veterans have in actions brought before the CAVC, it would make sense for the rule to be lenient; a strict rule would make more sense if the veteran did not have much chance of winning anyway. Justice Scalia made the point that it made little sense to look for Congress's intent here, as it was unlikely that anyone in Congress had given this particular matter any thought at all. Justice Breyer rebutted that the Court has often used a "reasonable member of Congress" standard when looking at congressional intention, rather than worrying about whether any member actually intended a specific reading.

The case ended on a somewhat contentious note. Ms. Miller took strong opposition to the assertion by the government that 80% of veterans had registered representatives who received notice after the final Board decision. When questioned on the difference between the government's statements and her prior statements that veterans were only rarely represented, her response was that the two parties seemed to "have a different understanding of reality," and referring to the amici briefs by various veterans' service organizations that supported her point. It seems more likely that the disagreement was actually about the definition of the word "represented" in this context, rather than such a huge discrepancy of fact, but the format of oral argument made it impossible to resolve the issue.

Of the nine justices currently sitting on the bench, only three - Breyer, Alito, and Kennedy - have served in the military, all during peacetime. *See* Susan Smelcer, *Supreme Court Justices: Demographic Characteristics, Professional Experience, and Legal Education, 1789-2010*, 27, *available at* http://www.fas.org/sgp/crs/misc/R40802.pdf. Justice Kagan recused herself from the case because it was partially prepared during her tenure as Solicitor General. ■

The full audio of the oral argument is available at http://www.veteranslawlibrary.com/files/Henderson_09-1036.mp3 or http://www.veteranslawlibrary.com/files/Henderson_09-1036.wma

CONTRIBUTORS WANTED

The publications committee is looking for new members to contribute to upcoming installments of the *Veterans Law Journal*. Participants do not need to be located in the Washington, D.C. area. Contact James Ridgway at *jridgway@uscourts.cavc.gov* or Glenn Bergman at *BergmannLaw@msn.com*.

VLAAC, continued from page 3.

Stetson University College of Law, and the Thomas M. Cooley Law School. The other schools participating in the competition were Florida Coastal School of Law, the John Marshall Law School, North Carolina Central University, and the University of Virginia School of Law. Ultimately, the Stetson team of Erin Isdell and William Hurter successfully defended the school's title as the overall champion and William Hurter was awarded the title of Best Advocate, after defeating the George Washington team in the final round, where both schools were arguing on brief.

Reactions from the students and the judges were resoundingly positive. Many students were excited to work on an issue (equitable tolling) that would be argued before the Supreme Court in December. The judges commented on the outstanding quality of advocacy displayed by the students, especially those who qualified for the elimination rounds on the second day. In addition to the competition itself, the participants enjoyed red carpet treatment from the George Washington University School of Law, which not only provided facilities and support staff for the preliminary rounds on Saturday, but also treated everyone to excellent spreads of refreshments throughout the competition.

Bar President Glenn Bergman and Judge William P. Greene, Jr. congratulate Erin Isdell and William Hurter of the Stetson University College of Law on their championship performance.

Once again, the competition was made possible by the extraordinary efforts of dozens of members of theCAVC and the Bar Association. It would not have happened without the tireless efforts of Alice Kerns, who coordinated all of the logistics that went into making the event happen, and James Ridgway, who once again drafted the problem, helped grade the briefs, and tabulated the results throughout the weekend. Of course, the ultimate credit for this success must go to all of the volunteers who stepped up to act as judges, hosts, and staff before and during the competition.

As we look forward to a third competition in 2011, the Bar Association is already seeking volunteers to help with preparations. If you are interested, please contact the Law School Outreach committee through Jridgway@uscourts.cavc.gov. In particular, the committee is seeking those whowould be interested in helping to (1) make the necessary arrangements with the host school, (2) coordinate volunteers to judge briefs and oral argument, (3) assist with drafting and reviewing the competition problem, and (4) review and update the rules of the competition. Even if you cannot volunteer, we encourage you to contact your alma mater or local law school and encourage them to sign up in the spring once registration is open for next year's VLAAC. ■

Shade*, continued from page 4.*

if a VA examination were secured. The Court found that the Board had misinterpreted and misapplied § 3.156(a) in Mr. Shade's case by failing to consider the new evidence in conjunction with the evidence previously of record, and by requiring a higher burden.

The Court reversed the Board's decision and directed that Mr. Shade's case be reopened. It directed the Board on remand to consider the merits of Mr. Shade's reopened claim for service connection for a skin disorder, including considering whether he is entitled to a VA examination. ■

Mary Sorisio is Special Counsel to the Chief Counsel for Operations of the Board of Veterans' Appeals.

COURT OF APPEALS FOR VETERANS CLAIMS BAR ASSOCIATION

Court of Appeals for Veterans Claims Bar Association
Ben Franklin Station
PO Box 7992
Washington, DC 20044-7992

MEMBERSHIP APPLICATION / RENEWAL INVOICE

_____

Last name First name Middle initial

_____

Employer / Firm Name

_____

Mailing Address City State Zip

_____ _____

Telephone number (including area code) Fax number (including area code)

_____

E-mail address

Membership Category

(Please Check One):

_____	I am an attorney in private practice (Voting Membership)	FEE: $95.00*
_____	I am a non-attorney practitioner (Voting Membership)	FEE: $95.00
_____	I am an attorney in government practice and have been designated for Bar Association Membership by my supervisor through an organizational membership program (Voting Membership)	FEE: $95.00**
_____	I am an attorney in government practice and I am a self-paying member of the Bar Association (Voting Membership)	FEE: $95.00
_____	I am an employee of the US Court of Appeals for Veterans Claims and have been designated for Bar Association membership through the Court's organizational membership (Non-voting Membership)	FEE: $95.00**
_____	I am a law student seeking Student Membership (Non-voting Membership)	FEE: $25.00

*An organization/group rate of $75.00 per membership applies for the renewal of five (5) or more members.

**Government Practice Organizational Members and Court Organizational Members do not need to send fees in with their Application / Renewal because each organization will make one dues payment.

Membership Certification

I hereby certify that I am admitted to practice before the United States Court of Appeals for Veterans Claims having been admitted on the _____ day of _____, _____.

(Note: CAVC personnel and law students are not required to be admitted to practice before the Court in order to obtain membership).

A check for my dues fee payable to the "Court of Appeals for Veterans Claims Bar Assn." is enclosed.

_____ _____

(Date) (Signature)