April 5, 2010

Strict Deadlines, Disabled Veterans and Dismissed Cases

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WASHINGTON

Three years ago, the Supreme Court said there are some filing deadlines so rigid that no excuse for missing them counts, even if the tardiness was caused by erroneous instructions from a federal judge.

The vote was 5 to 4, and Justice David H. Souter wrote a furious dissent. "It is intolerable for the judicial system to treat people this way," he said, adding that he feared the decision would have pernicious consequences.

He had no idea.

The court's decision concerned a convicted murderer who had beaten a man to death. But now it is being applied to bar claims from disabled veterans who fumble filing procedures and miss deadlines in seeking help from the government. The upshot, according to a dissent in December from three judges on a federal appeals court in Washington, is "a Kafkaesque adjudicatory process in which those veterans who are most deserving of service-connected benefits will frequently be those least likely to obtain them."

The Supreme Court will soon consider whether to hear an appeal from David L. Henderson, who was discharged from the military in 1952 after receiving a diagnosis of paranoid schizophrenia. He sought additional government help for his condition in 2001, and he was turned down in 2004.

Mr. Henderson, who served on the front lines in the Korean War, had 120 days to file an appeal, but it took him 135 days. He had a pretty good excuse.

His psychiatrist has said under oath that he is "incapable of rational thought or deliberate

decision-making." As a consequence, the psychiatrist added, "Mr. Henderson has been incapable of understanding and meeting deadlines."

The courts acknowledge this. On the other hand, they say, deadlines are deadlines.

The United States Court of Appeals for the Federal Circuit, in Washington, ruled against Mr. Henderson in December, saying the Supreme Court's decision from three years ago, Bowles v. Russell, left it no choice.

In a dissent, Judge Haldane R. Mayer, writing for himself and two colleagues, called the majority's approach "both ironic and inhumane."

"It is the veteran who incurs the most devastating service-connected injury who will often be the least able to comply with rigidly enforced filing deadlines," Judge Mayer wrote.

The Federal Circuit's decision was immediately felt in the United States Court of Appeals for Veterans Claims, where thousands of veterans file cases every year seeking to overturn administrative decisions denying them benefits. More than half of them do so without lawyers. Yet they win with startling regularity, prevailing at least in part in 80 percent of the cases the veterans' court decides on the merits.

The practical effect of the Federal Circuit's decision, Mr. Henderson's lawyers told the Supreme Court, is "that the courthouse doors will be shut on untold numbers of veterans with otherwise meritorious benefits claims if they miss the time limit by even one day through no fault of their own."

Since the summer of 2008, when the veterans' court first dismissed Mr. Henderson's case based on the Bowles decision, there have been more than 225 similar dismissals. These days, that court is dismissing about two cases a week under the new, rigid deadline.

The law treats different sorts of deadlines differently. Statutes of limitations have some flexibility to them and are sometimes subject to "equitable tolling," allowing courts to temper formalism with fairness. But "jurisdictional" deadlines are said to be absolute. It would not be difficult to argue either theory in Mr. Henderson's case.

It is clear, though, that the government itself takes a leisurely approach to processing veterans' disability claims, making it hard to take seriously its demand that the veterans themselves meet inflexible deadlines.

"It often takes many years — in some cases several decades — to obtain service-connected benefits," Judge Mayer wrote. "The government is hardly in a position to complain that

equitable tolling will result in inordinate delays."

Here is how Joe Havlik put it in February in asking the veterans' court for a little leniency in meeting the 120-day deadline: "Anyone dealing with the V.A. on a regular basis knows four months is like four days to the Department of Veterans Affairs."

On March 15, the court told Mr. Havlik tough luck, unmoved by undisputed evidence that he had been given the runaround by the V.A. and had just been told he had three months to live.

The court also rejected a request from Anthony Bove, who filed his appeal 54 days early but mistakenly sent it to Veterans Affairs instead of the court. Officials there did nothing to help him, and the veterans' court said it could not understand the V.A.'s indifference.

But the government took a hard line, saying it was "unaware of any duty on the part of the V.A. to forward misfiled papers to the court." Instead, it sat on Mr. Bove's papers, let the deadline run and then won a dismissal of his case.

That seems an odd way to treat men and women who were, in the words of a World War II-era Supreme Court decision, "obliged to drop their own affairs to take up the burdens of the nation."

The Supreme Court case that started all this involved an appeal in a habeas corpus proceeding. It followed a jury trial in state court, a state court appeal and then a proceeding before a federal trial judge. Mr. Henderson's court case was shut down before it could begin.

Before the Supreme Court leaves for its summer break, the justices are likely to decide whether they will hear Mr. Henderson's appeal. If they do, they will consider whether they really meant to shut the courthouse door on veterans as well as murderers.