

clearly established laws regarding the right of familial association.

Discussion

The court’s determination clarified immunity for treating clinicians, as well as the scope of the parents’ right to direct a child’s treatment and to familial association. To begin with, absolute immunity applies to the judicial process, and unless a psychiatrist is acting in a judicial capacity, this concept does not apply. In addition, informing an agency of parental medical neglect does not violate the parental right to direct treatment. Finally, familial association is a constitutional right well founded in existing case law. In the present case, the “defendants cannot establish as a matter of law at this point in the proceedings that the relevant state interests outweighed the Thomases’ interest in their right to familial association” (*Thomas*, p. 1188). Unless there is a well-documented imminent risk of suicide, which a reasonable official would have discovered, familial association supersedes the state’s interests.

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Veterans Affairs Entitlement for Service-Connected Disability Caused by Posttraumatic Stress Disorder

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Medical Diagnosis of Posttraumatic Stress Disorder Is Necessary to Establish an Effective Date for an Award of Service Connection Due to the Disorder

In *Young v. McDonald*, 766 F.3d 1348 (Fed. Cir. 2014) the United States Court of Appeals, Federal Circuit, upheld a Veterans Court decision that the effective date for Mr. Young’s service-connected disability entitlement as a result of posttraumatic stress disorder (PTSD) was March 10, 1989, the earliest date when a medical diagnosis of PTSD could be established. He

had appealed, arguing that the effective date for his service-connected entitlement should be September 7, 1984, when he had first submitted an application for benefits. The court of appeals determined that the Veterans Court had not erred in its determination and that a medical diagnosis was necessary to establish a service-connected disability.

Facts of the Case

From October 1965 until August 1967, Robert G. Young had served as an Army combat engineer while on a tour of duty in Vietnam. In September 1984, he submitted an application for benefits with the Veterans Affairs (VA) Regional Office (RO) based on his reported symptoms of “anxiety,” “bad nerves,” and “[inability] to adjust to society.” However, after he failed to present for a medical examination to establish his diagnosis, the VA denied his request for benefits.

Subsequently, in 1989, a VA psychiatrist submitted a letter stating that Mr. Young “has been under my care since March 10, 1989,” and that he “is suffering from PTSD.” Nevertheless, the RO denied Mr. Young’s claims in serial rating decisions in December 1989, February 1990, and April 1991, because of the lack of a record of an established in-service exposure. He appealed the decisions to the Board of Veterans’ Appeals but his claim was again denied in July 1991. When he did not further appeal the Board’s decision to the Veterans Court, the decision became final.

Mr. Young requested to have his file reopened in August 1992, but his request was denied by the RO in decisions in October 1992, June 1993, February 1995, and March 1997. Then, in May, 1998, service department records that established Mr. Young’s exposure to an in-service stressor but were previously not a part of his file were received by the RO, and his claim was subsequently reopened. The RO granted him service connection with a 100 percent disability rating, assigning his award an effective date of August 1992, when he had originally submitted the request to have his file reopened.

In March 2007, Mr. Young argued that the RO had committed a “clear and unmistakable error” (CUE) in its May 1998 Rating Decision for assigning his award an effective date of August 1992. He argued that September 7, 1984, the date of his original claim, should be used as the effective date for his

entitlement. When the RO ruled against him, he further appealed its decision to the Board.

In its May 2011 decision, the Board determined that the RO had in fact committed a CUE when assigning the effective date of Mr. Young's award, reasoning that "the proper effective date" was either the date when the VA received his original claim or the date his entitlement arose, whichever occurred later. The board assigned his entitlement an effective date of March 10, 1989, when the RO had received the letter from his psychiatrist attesting to Mr. Young's diagnosis of PTSD. Mr. Young appealed this decision to the Veterans Court, which ultimately sided with the board in affirming that for his entitlement to be effective, he would have to have an established medical diagnosis of PTSD. He then appealed the Veterans Court decision to the United States Court of Appeals, Federal Circuit.

Ruling and Reasoning

The court of appeals first clarified its jurisdiction in the case and asserted that it had the authority to review the case to determine whether the applicable laws had been interpreted correctly, but not to ascertain the veracity of the facts themselves. It then held that "[t]he Veterans Court did not err in approving an effective date that corresponds to the earliest available medical diagnosis indicating that his PTSD existed as of March 10, 1989" (*Young*, p. 1354), thereby affirming the board's assignment of that effective date for Mr. Young's award and the Veterans Court's decision to affirm the board's ruling.

In coming to this conclusion, the Federal Circuit referenced the VA's own legal regulation (38 C.F.R. § 3.304[f] (2014)) that "expressly requires a medical diagnosis of the veteran's condition as PTSD. In light of this requirement, the Veterans Court agreed with the Board that Young's 'entitlement to service connection for PTSD could not arise . . . until a medical examination establishing a clear diagnosis of PTSD was performed'" (*Young*, p. 1352).

Discussion

At issue in this case was whether a layperson's diagnosis of PTSD is sufficient to establish a claim of service-connected disability versus a "medical diagnosis" by an appropriate health care professional. In affirming the Veterans Court ruling that a medical diagnosis of PTSD is necessary to establish a corresponding service-connected disability, the Federal Circuit not only deferred to qualified medical experts

in making the diagnosis of PTSD, clarifying the role of the medical expert, but also incorporated a safeguard against potential abuse of the system.

Implicit within its opinion was that medical testimony was imbued with a certain credibility that lay testimony was not. For example, it may be possible for a veteran to easily look up and then report the symptoms of PTSD, thereby claiming eligibility for a service-connected disability. The medical expert in theory establishes a more credible diagnosis of PTSD and can further use the medical records and other corroborating data to determine the earliest date when the diagnosis can be formally applied. This need not necessarily correspond with the date of the initial evaluation or initial contact of the veteran with the medical expert, but rather with the date that was reasonably consistent with applying a formal diagnosis of PTSD, given the available set of records.

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Is Attention Deficit Hyperactivity Disorder Covered Under the Americans With Disabilities Act?

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Ninth Circuit Court of Appeals Reversed the Jury Verdict of the District Court of Oregon in Favor of a City's Discharge of Employee, Ruling that Attention Deficit Hyperactivity Disorder-Related Social Deficits Are Not Covered Under the Americans With Disabilities Act

In *Weaving v. City of Hillsboro*, 763 F.3d 1106 (9th Cir. 2014), the Federal Court of Appeals for the Ninth Circuit was asked by the City of Hillsboro, Oregon, to uphold its discharge of an employee with attention deficit hyperactivity disorder (ADHD). The employee had prevailed against his employer for his discharge, claiming violation of the Americans