

Veterans Affairs' Problematic Evaluation of a Veteran's Claim for Service-Connected Psychiatric Disability

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In Determining Service Connection for Mental Illness, the Etiology of the Psychiatric Disability Is Irrelevant

In *Mann v. Gibson*, 2014 U.S. App. Vet. Claims LEXIS 1048 (Vet. App. 2014), the United States Court of Appeals for Veterans Claims reviewed a 2011 decision by the Board of Veterans' Appeals (the Board), which relied on inconclusive medical opinion to deny Mr. Mann's claim for service connection of a psychiatric disorder. The court of appeals set aside the decision and remanded the case for clarification of the medical examiner's opinion or to obtain a new opinion regarding the relationship between his claimed psychiatric disorder and military service.

Facts of the Case

Leon C. Mann II served in the U.S. Air Force from June 1970 to February 1974. In May 1973, he was diagnosed with adult situational reaction (a Diagnostic and Statistical Manual of Mental Disorders, first edition (DSM I) diagnosis), which would be equivalent to an adjustment disorder in more recent versions of the DSM. In a subsequent document in October 1973, he was found "sufficiently free from mental illness, defects or derangement" (*Mann*, p 2) and was then deemed medically qualified for duty. Soon after his discharge from service, Mr. Mann reported a history of depression and sleep difficulties "due to service tension" (*Mann*, p 2). However, the evaluator documented normal findings in a psychiatric examination.

Mr. Mann's first course of legal action occurred in August 1999, 25 years after he left the service, at

which time he filed a claim for service connection for a "nervous condition." He stated that in 1971 he was hospitalized for "some type of psychosis" (*Mann*, p 2) after taking a hallucinogenic drug and has had psychiatric problems ever since. The Veterans Affairs (VA) regional office (RO) denied the claim as not well grounded.

In February 2001, a veterans' service organization requested that the claim be readjudicated under the recently passed Veterans Claims Assistance Act of 2000, which would require the VA to provide any information or evidence needed to support the claim, and help the claimant in obtaining any such evidence (114 Stat. 2096 (2000)). The RO took no action on the request.

In October 2005, Mr. Mann filed a claim for service connection posttraumatic stress disorder (PTSD), but the RO denied the claim because there was no confirmed diagnosis of PTSD on record. Mr. Mann filed a Notice of Disagreement, stating that he was hospitalized in June 1971 for a "mental breakdown . . . and has had PTSD ever since" (*Mann*, p 3). In April 2009, the Board "recharacterized Mr. Mann's claim as one for service connection for a psychiatric disability to include PTSD and remanded that claim for a . . . VA medical examination" (*Mann*, p 3).

After a review of the veteran's file and a psychiatric evaluation in August 2009, Mr. Mann was diagnosed with depression not otherwise specified, opioid dependence in sustained full remission, and cocaine dependence in sustained full remission. The examiner was not able to provide an opinion on the etiology of those conditions.

Once again, the Board recharacterized Mr. Mann's claim for service connection to include PTSD and depression in April 2010; another VA medical examination was conducted in October 2010. The examiner concluded that since it was "impossible to delineate whether Mr. Mann's depression . . . started prior to or subsequent to his substance abuse" (*Mann*, pp 5–6) while in service, opining on the etiology of his symptoms would be speculation. However, the examiner offered two possible hypotheses for consideration: that the substance abuse led to problems in the military and in finding a job thereafter, which contributed to his depression, or that the stress of the military caused some of his symptoms of depression, which, in turn, may have led to substance abuse. The examiner diagnosed Mr.

Mann with depressive disorder, not otherwise specified, and opioid dependence in remission.

In December 2011, the Board denied Mr. Mann's claim, because the October 2010 medical examiner could not provide a conclusive opinion on the etiology of Mr. Mann's psychiatric disorder and because of the lack of "competent and credible evidence linking any psychiatric condition to service" (*Mann*, p 7). Mr. Mann subsequently appealed the decision.

Ruling and Reasoning

The appeals court held that the October 2010 VA medical opinion was inadequate because the examiner did not explain why he was unable to assess the likelihood that Mr. Mann's depression was related to service without resorting to speculation. The Board therefore erred in relying on it. The court noted that in order for a medical opinion to be considered adequate, it must be based on

consideration of a veteran's prior medical history and examinations, and also [describe] the disability in sufficient detail so that the Board's evaluation of the claimed disability will be a fully informed one. . . . A medical examination report must contain not only clear conclusions with supporting data, but also a reasoned medical explanation connecting the two [*Mann*, p 9].

The court noted that the October 2010 medical examiner's stated purpose of the examination was "to attempt to determine whether Mr. Mann's claimed psychiatric illnesses were at least as likely as not related to his active service in the Air Force" (*Mann*, p 9). The court then wondered why the examiner could not provide a nonspeculative opinion despite having "affirmatively identified two possible causes for the veteran's depression, both service related" (*Mann*, p 11) without alluding to any non-service-related cause.

Accordingly, the court concluded that the Board erred in relying on the October 2010 VA medical opinion, and subsequently directed the Board on remand, to "seek clarification of the October 2010 VA opinion or obtain a new opinion addressing the relationship between Mr. Mann's claimed psychiatric disabilities and service" (*Mann*, pp 13-4).

Discussion

This case highlights two considerations critical to all forensic psychiatric evaluations: what is the purpose of the evaluation, and what are the points to be addressed? In addition, the case raises concerns regarding the adequacy of collateral materials or infor-

mation sought and reviewed. The Board asked the medical examiners to opine whether Mr. Mann's symptoms and subsequent disability were service connected. This question requires two inquiries: did Mr. Mann have a psychiatric disability during service, and what constitutes service connection?

In answering these questions, the medical examiners conducted a psychiatric evaluation of Mr. Mann and reviewed his veteran's file. It is not clear what Mr. Mann's file contained, but neither of the two medical examiners discussed Mr. Mann's adult situational reaction. What exactly were the symptoms he reported for which he received the diagnosis? Also, following another evaluation five months after his diagnosis of adult situational reaction, Mr. Mann was found to be sufficiently free of mental illness or defect to be deemed medically qualified for duty. The statement suggests he had been deemed medically unfit for duty following his diagnosis of adult situational reaction and that being cleared for duty did not require that he be completely free of mental illness. Therefore, careful reading of his record around this time would be crucial in answering the question of the presence of psychiatric disorder during service. It would be important to note his level of functioning during that period and at other times during his service.

Further, Mr. Mann reportedly gave a history of depression upon separation from the military. If so, did the history of depression occur during service? There was no description of records related to that psychiatric evaluation. Finally, there was no mention of collateral information from Mr. Mann's relatives or military colleagues to corroborate or refute his complaints of mental illness during service.

With regard to service connection, under 38 U.S.C. § 1110 (2009), service connection is established when there is a disability resulting from injuries sustained or diseases contracted in line of duty or for aggravation of a preexisting injury. Although the stress of military service or combat could lead to psychiatric disability, service-connected disability refers only to development of psychiatric disability while in military service; it is not necessary to establish a causal relationship between stress of service and psychiatric disability. Surprisingly, the VA medical examiners focused their opinions regarding service connection on being able to identify the etiology of the psychiatric disability rather than on the mere presence of mental illness during service.

Unfortunately, 40 years after Mr. Mann's discharge from service and 15 years after he first filed a claim for service connection, his case remains unresolved.

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Determining When to Hold a Competency Hearing

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Granting a Competency Hearing Under Reasonable Cause Is at the Discretion of the Court

In *United States v. Frazier*, No. 13–4462, 2014 U.S. App. Lexis 11646 (4th Cir. 2014), the United States Court of Appeals for the Fourth Circuit, held that an appellant was not entitled to a competency hearing and that he had waived the right to appeal his sentence after accepting a plea in the U.S. District Court of Maryland.

Facts of the Case

On August 14, 2010, Dwayne Frazier and two other individuals carjacked two vehicles and robbed their owners at gunpoint in Baltimore, Maryland; they were caught and arrested that night. In January 2012, a grand jury indicted Mr. Frazier and a co-defendant on charges of conspiracy to commit carjacking, two substantive carjacking counts, two counts of possession and brandishing of a firearm in furtherance of a crime of violence, and possession of a firearm by a convicted felon.

Before the start of Mr. Frazier's trial, defense counsel filed a letter under seal with the district court regarding his concern that Mr. Frazier may not be competent to proceed to trial. In particular, defense counsel questioned Mr. Frazier's ability to weigh the options of going to trial versus accepting a plea, to assist in his defense, and to decide whether to testify.

In an *ex parte* hearing before the judge, Mr. Frazier's attorney described his concerns regarding his in-

teractions with and observations of his client: his stained fingernails, glassy eyes, difficulty with attention and concentration, and inappropriate affect, that, taken together, led him to believe that Mr. Frazier was under the influence of narcotics while in the Chesapeake Detention Facility and may not be able to assist in his defense. Mr. Frazier attributed his strange behavior to high levels of stress and anxiety, for which he was taking Neurontin and Prozac. He also admitted smoking, but explained that he had never had a positive urinalysis for any substance.

At the request of the court, authorities at the detention facility were queried and confirmed that there was no indication that Mr. Frazier had been using illegal drugs while detained. Based on Mr. Frazier's statements and information from the facility, the district court determined that he was competent to proceed to trial. The court also noted that he had written letters to the court in which he was able to express himself without difficulty. The court acknowledged that Mr. Frazier sometimes appeared to giggle inappropriately, but found this behavior consistent with his manner.

Rather than proceed to trial, Mr. Frazier accepted a plea offer and pleaded guilty to one count of carjacking, receiving a sentence of 144 months in prison. He subsequently appealed his sentence, contending that the court had erred: first, by not holding a competency hearing to determine whether he could proceed to trial and by applying the wrong standard in determining his competency by not considering whether he could assist in his own defense and, second, by sentencing him to the agreed upon 144 months' imprisonment.

Ruling and Reasoning

The U. S. Court of Appeals for the Fourth Circuit affirmed the judgment of the district court. On the first contention, the court considered whether the district court had exercised appropriate discretion in deciding against a competency evaluation for Mr. Frazier. The court held that, based on available evidence (i.e., the lack of positive drug screens demonstrating narcotic use, his own statements that his odd behavior was related to stress and anxiety for which he was medicated, and his letter to the court demonstrating his ability to express himself in a coherent and organized way), the trial court did not have reasonable cause to suspect that he was incompetent to proceed to trial.