

Veterans Benefits Law
LWPER 997
Fall 2017 Syllabus

Class time: Wednesdays from 2:30 – 4:25 p.m., Katz Room 236

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Office Hours: 12 – 2 p.m. before class on Wednesdays & by appointment, Katz Room 205

Textbook: **Veterans Affairs Law, Paul M. Schoenhard (Carolina Academic Press, 2012)**
**Please note that we will use only the key parts of this text, and we will not follow the order of topics presented in this text. For many topics, I will post other reading. That outside reading will be placed in the corresponding Class Module in Canvas.

Final Exam: Monday, Dec. 11, 2017 at 8:30 a.m.

I. Introduction and Overview

This course is designed to teach students about the U.S. federal veterans benefit system, by analyzing the statutes and regulations that govern that system, studying the administrative agency tasked with applying the law and distributing the benefits, and analyzing both administrative and judicial decisions interpreting those laws. Students will study the policy goals of the system, the role of attorney representation of veterans as it has changed over time, how to be an effective advocate for the veteran in this system, and the challenges the system faces due to the unprecedented number of claims filed and appealed.

II. Statement of Learning Objectives and Assessments

At the end of this course, students will be able to:

1. Identify the basic legal principles and rules, in statutes, regulations, and case law, governing federal benefits awarded to U.S. veterans.
2. Analyze complex federal statutes and regulations, and understand the relationship and hierarchy between the two.
3. Describe and critique, in a scholarly manner, the role of a federal administrative agency in interpreting and applying federal statutes, and promulgating rules and regulations, and the challenges that the U.S. Department of Veterans Affairs faces when carrying out this role.
4. Describe and critique, in a scholarly manner, the administrative and judicial systems of review of agency decisions denying federal veterans benefits.

Commented [A1]: I do not recommend use of this textbook. The Ridgway textbook is better. More expensive for students but worth it.

5. Apply the basic principles and rules of federal benefits laws to resolve legal questions arising in hypothetical situations, and articulate plain language, legislative history, administrative history and policy arguments to support those applications, as well as counterarguments.

6. Describe how historical, political and cultural contexts have shaped federal veterans benefits laws.

Student achievement in items 1 through 6 will be measured in the final examination.
Student achievement in items 1 through 5 will also be measured through class participation.

III. Grading Criteria

Using the percentages set out below, this course is graded with one letter grade at the end of the semester, as a two-hour course, in accordance with the J.D. grading system and norms, *see* <https://pennstatelaw.psu.edu/current-students/student-academic-handbook/grading-systems>; <https://pennstatelaw.psu.edu/current-students/student-academic-handbook/grading-norms>.

- Participation & class attendance 20%
- Final Open Book Exam 80%

IV. Schedule of Assignments

At the end of this document, I have prepared a table to show you the dates of class and the order of the topics that we will discuss, and detailed course objectives and reading assignments for the first two classes.

Please note that I have scheduled a guest speaker for a second class in the first week of classes. This class will be a combined class for the veterans clinic students and the students enrolled in this course. It will take place on Friday, Aug. 18 from 9:30 – 11:30 a.m. in Katz room 012.

Please make every effort to attend this guest lecture on Aug. 18 and actively participate to enhance our reputation with these guests which will enable me to bring other military and VA guest speakers to Penn State Law in the future.

Class on Aug. 18 will replace class for Oct. 11 when I will be out of town at a conference. If you have an unavoidable conflict with the guest lecture on Aug. 18, please contact me with details so that I can provide an unexcused absence, and access to a video recording of the lecture.

Because I am teaching Veterans Benefits Law for the first time this semester, I have not fully populated the Schedule of Assignments with all of the planned reading at this time to provide me with maximum flexibility to spend less or more time on some topics, statutes and regulations, as needed, based upon my assessment after each class discussion.

I will post (1) updates to this Schedule of Assignments; and (2) all outside reading materials, in each Class Module, at least one week before class.

V. Accommodation Statement

Penn State welcomes students with disabilities into the University's educational programs. Every Penn State campus has an office for students with disabilities. The Student Disability Resources Web site provides [contact information for every Penn State campus](#). For further information, please visit the [Student Disability Resources Web site](#).

To receive consideration for reasonable accommodations, you must contact the appropriate disability services office at the campus where you are officially enrolled, [participate in an intake interview, and provide documentation](#). If the documentation supports your request for reasonable accommodations, your [campus's disability services office](#) will provide you with an accommodation letter. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. You must follow this process for every semester that you request accommodations.

VI. Counseling and Psychological Services Statement

Many students at Penn State face personal challenges or have psychological needs that may interfere with their academic progress, social development, or emotional wellbeing. The university offers a variety of confidential services to help you through difficult times, including individual and group counseling, crisis intervention, consultations, online chats, and mental health screenings. These services are provided by staff who welcome all students and embrace a philosophy respectful of clients' cultural and religious backgrounds, and sensitive to differences in race, ability, gender identity and sexual orientation.

Counseling and Psychological Services at University Park (CAPS): 814-863-0395

Penn State Crisis Line (24 hours/7 days/week): 877-229-6400

Crisis Text Line (24 hours/7 days/week): Text LIONS to 741741

VII. Educational Equity Statement

With the Pennsylvania State University, I am committed to and accountable for advancing diversity, equity, and inclusion in all of its forms. With the University, I embrace individual uniqueness, will foster a culture of inclusive excellence that supports both broad and specific diversity initiatives, will leverage the educational and institutional benefits of diversity, and will engage all individuals to help them thrive. With the University, I value inclusive excellence as a core strength and an essential element of our public service mission.

With Penn State:

- I will foster and maintain a safe environment of respect and inclusion for faculty, staff, students, and members of the communities we serve.
- I will ensure fair and inclusive access to our facilities, programs, resources, and services, and ensure that all of our policies and practices are inclusive and equitable.



Penn State takes great pride to foster a diverse and inclusive environment for students, faculty, and staff. Acts of intolerance, discrimination, or harassment due to age, ancestry, color, disability, gender, gender identity, national origin, race, religious belief, sexual orientation, or veteran status are not tolerated and can be reported through Educational Equity via the [Report Bias webpage](#) or contact one of the following offices:

University Police Services, University Park: 814-863-1111

Multicultural Resource Center, Diversity Advocate for Students: 814-865

1773 Office of the Vice Provost for Educational Equity: 814-865-5906

Office of the Vice President for Student Affairs: 814-865-0909

Affirmative Action Office: 814-863-0471

***Dial 911 in cases where physical injury has occurred or is imminent**

SCHEDULE OF ASSIGNMENTS

Class	Topics / Objectives	Reading
Week 1 Aug. 16	<u>Introduction to VA & Veterans Benefits</u> Class objectives: To introduce students to (1) the course; (2) the U.S. Department of Veterans Affairs (VA) and its basic structure; (3) the primary types of veterans benefits awarded by the VA; (4) the administrative and judicial review systems for reviewing denials of veterans benefits; and (5) the legal issue of who is eligible to receive veterans benefits.	Chapter 1, pp. 17-21 Diagram, in Canvas CRS Report, in Canvas Chapter 2, pp. 23-25 & 32-35
Guest Lecture (class make-for class to be cancelled in Week 9) Friday Aug. 18 Different time: 9:30-11:30 a.m. Different location: Room 012 Katz	<u>Introduction to Military Culture & the Veteran Client</u> Guest speaker lecture Combined class with Veterans Clinic (class is cancelled in Week 9; this lecture is Week 9's make-up class) (if you have an avoidable conflict, please contact Prof. Vollmer for an excused absence and access to the video) Kelly A. Wolgast DNP, RN, FACHE, FAAN COL (R), US Army Assistant Professor; Assistant Dean for Online Education and Outreach Penn State University College of Nursing http://www.nursing.psu.edu/2017/02/06/kelly-wolgast-85-comes-full-circle-in-new-assistant-dean-role/ http://www.nursing.psu.edu/project/kaw466/ Dr. Julie L. Decker, DNP, RN Assistant Teaching Professor of Nursing Penn State – Altoona http://www.nursing.psu.edu/2017/01/01/julie-decker-involved-in-efforts-to-improve-health-care-for-americas-veterans/	James D. Ridgway, <i>The Splendid Isolation Revisited: Lessons From The History Of Veterans' Benefits Before Judicial Review</i> , 3 Veterans L. Rev. 135 (2011)

	<p>Class objectives:</p> <p>(1) to introduce students to the common goal of both the legal and medical professions to render client-centered services;</p> <p>(2) to introduce, and discuss, U.S. military culture, as part of the knowledge students need to have to render client-centered services to veterans and better understand the perspectives and expectations of veterans;</p> <p>(3) to introduce students to, and discuss (i) certain historical U.S. military engagements/missions; (ii) the related health and other issues that veterans encounter as a result of those military experiences; and (iii) society's and students' views toward those engagements/missions and veterans to understand the role that cultural biases and experiences can have on one's perspective and delivery of professional services; and</p> <p>(4) to acquire background knowledge of the evolution of the laws that make up the VA system of benefits that we will study in the course.</p>	
<p>Week 2</p> <p>Aug. 23</p>	<p><u>Initial Filing Process for Veterans Benefit Claims</u></p> <p>VA Forms</p> <p>The Veteran Claimant's Burden</p> <p>The Regional Office's Initial Decision</p> <p>Objectives:</p> <p>(1) to introduce students to the unique characteristics of the pro-veteran benefits system that Congress created;</p> <p>(2) to introduce/review certain parts of the APA and the rule-making process for federal agencies governed by the APA;</p> <p>(3) to learn the mechanics of the initial filing process of veterans benefit claims and contrast it with the pleading requirements of the Federal Rules of Civil Procedure;</p> <p>(4) to learn a process for analyzing and synthesizing statutory and regulatory law with case law to solve legal issues arising during the initial filing process of veterans benefit claims; and</p> <p>(5) to learn/review plain language, legislative history, and policy arguments concerning statutory interpretation.</p>	<p>Selected statutes and regulations, in Canvas</p> <p>Selected VA Forms, in Canvas</p> <p>Excerpts from James D. Ridgway, <u>Veterans Law, Cases and Theory</u>, in Canvas (proposed rule and comments to the proposed rule)</p> <p>Final Rule, in Canvas</p> <p>Chapter 11, Sections 11.1-11.3, pp. 323-37</p>
<p>Week 3</p> <p>Aug. 30</p>	<p><u>Administrative Agency Deference</u></p> <p>Objectives:</p> <p>(1) To further discuss & analyze plain language, legislative history, and policy arguments concerning statutory interpretation; and</p>	<p>Excerpts from Justice Stephen Breyer, <u>Active Liberty: Interpreting Our Democratic Constitution</u> (2005), pp. 3-34 (Intro) (Active Liberty) & 85-</p>

	(2) to learn/review when, why and how courts defer to administrative agencies	108 (Statutory Interpretation) (Administrative Law) <i>Chevron & Auer</i> , in Canvas
Week 4 Sept. 6	<u>Veteran-friendly Statutory Interpretation & Administrative Agency Deference (con't)</u> Objective: To learn when, why and how courts defer to the VA specifically, and how to synthesize the reading for Week 3 with the reading for Week 4.	<i>Skidmore, Smith, Gardner & Palczewski</i> , in Canvas
Week 5 Sept. 13	<u>Administrative Appeal Process</u> The Veteran Claimant's Notice of Disagreement The Regional Office's Statement of the Case The Regional Office's Supplemental Statement of the Case VA Form 9 The Board of Veterans Appeals' Review of a Regional Office Decision <u>Agency's Duties to Claimants (con't)</u> Duty to Develop Veteran's Claim & Construe It Broadly Duty to Provide Reasons and Bases to Support Denial Objectives: (1) To learn the agency's duties to the veteran in the initial stage of the claim through the first level of administrative appeal; (2) to practice the process of analyzing and synthesizing statutory and regulatory law with case law to solve legal issues arising during the initial administrative appeal process for veterans benefit claims; and (3) to learn about some of the agency's duties to the veteran during the second level of administrative appeal.	Selected statutes, regulations & VA Forms, in Canvas Chapter 11, Section 11.4-11.5, pp. 337-44 (<i>Gallegos & Herndon</i>) & 348-51 (<i>Sims</i>) Ch. 12, pp. 353-55, 363-74 <i>Clemons v. Shinseki & Comer v. Peak</i> , in Canvas

<p>Week 6 Sept. 20</p>	<p><u>Administrative Appeal Process (con't)</u></p> <p>The Board of Veterans Appeals' review of a Regional Office Decision</p> <p><u>Agency's Duties to Claimants</u></p> <p>Duty to Provide Notice of How to Substantiate a Claim</p> <p>Duty to Assist & Duty to Notify</p> <p>Objectives: (1) To learn more about the agency's duties to the veteran in the initial stage of the claim through the first level of administrative appeal; and (2) to practice the process of analyzing and synthesizing statutory and regulatory law with case law to solve legal issues arising during the second and final level of administrative appeal process for veterans benefit claims, and to practice advocacy skills, precision & comprehensive analysis when solving hypotheticals.</p>	<p>Selected statutes and regulations, in Canvas</p> <p>Excerpts from the U.S. Gov't Accountability Office Report, GAO-02-395, <i>Clarity of Letters to Claimants Needs to Be Improved</i> (2002)</p> <p><i>Wilson v. Mansfield, Quartuccio v. Principi, & Hyatt v. Nicholson</i>, in Canvas</p> <p>Ch. 10, pp. 293-307</p>
<p>Week 7 Sept. 27</p>	<p><u>Administrative Appeal Process (con't)</u></p> <p><u>Agency's Duties to Claimants (con't)</u></p> <p>Duty to Assist (con't)</p> <p>Benefit of the Doubt Doctrine & Duty to Apply It</p> <p>Objectives: (1) to learn about more of the agency's duties to the veteran during the second level of administrative appeal; (2) to understand the role that physicians played in deciding veterans benefit claims before judicial review was imposed by statute; and (3) to practice the process of analyzing and synthesizing statutory and regulatory law with case law to solve legal issues arising during the second and final level of administrative appeal process for veterans benefit claims, and to practice advocacy skills, precision & comprehensive analysis when solving hypotheticals.</p>	<p>Selected statutes and regulations, in Canvas</p> <p><i>Gilbert v. Derwinski, Roberson v. Principi, Green v. Derwinski & Kahana v. Shinseki</i>, in Canvas</p> <p>Excerpts from James D. Ridgway, <u>Veterans Law, Cases and Theory</u>, in Canvas (two cases)</p> <p>Ch. 10, pp. 318-21</p>
<p>Week 8 Oct. 4</p>	<p><u>Direct Service Connection for Disability Compensation Claims</u></p> <p>Presumptive Service-Connection v. Proof of Service-</p>	<p>Selected statutes and regulations, in Canvas</p>

	<p>Connection Without a Presumption</p> <p>Secondary Service Connection</p> <p>Aggravation of a Pre-Existing Condition</p> <p>Objectives: (1) to learn the law of service-connection; (2) to apply the principles concerning deference from Weeks 3 & 4; and (3) to practice the process of analyzing and synthesizing statutory and regulatory law with case law to solve legal issues arising in a VA disability benefits claim, and to practice advocacy skills, precision & comprehensive analysis when solving hypotheticals.</p>	<p>Ch. 4, pp. 103-15 & 119-22</p> <p><i>Perry v. Brown, Allen v. Brown & Roper v. Nicholson</i>, in Canvas</p>
<p>Week 9 Oct. 11</p>	<p>Class is cancelled; class was re-scheduled and was held on Aug. 18 (with two guest speakers)</p>	
<p>Week 10 Oct. 18</p>	<p><u>Alternatives to Direct Service Connection for Disability Compensation Claims</u></p> <p>Relaxed Standard for Combat Veterans</p> <p>Presumption of Soundness</p> <p>Presumption of Aggravation</p> <p>Line of Duty Presumption</p> <p>Objectives: (1) to learn more about the law of service-connection; and (2) to practice the process of analyzing and synthesizing statutory and regulatory law with case law to solve legal issues arising in a VA disability benefits claim, and to practice advocacy skills, precision & comprehensive analysis when solving hypotheticals.</p>	<p>Selected statutes and regulations, in Canvas</p> <p>Ch. 3, pp. 51-82 & 87-90</p>
<p>Week 11 Oct. 25</p>	<p><u>Payment for Service-Connected Benefits</u></p> <p>Ratings - Calculating Percentages</p> <p>Objectives: (1) to learn the VA rating system for disabilities; and (2) to practice the process of analyzing and synthesizing statutory and regulatory law with case law to solve legal issues arising in a VA disability benefits claim, and to</p>	<p>Selected regulations, in Canvas</p> <p>Ch. 5, pp. 123-42</p> <p>Ch. 8, pp. 228-35 & 244-46</p> <p><i>Vazquez-Flores v.</i></p>

	practice advocacy skills, precision & comprehensive analysis when solving hypotheticals.	<i>Shinseki</i> , in Canvas Daniel M. Gade, <i>Why the VA Is Buried in Disability Claims</i> , Wall St. J., Jun. 23, 2013, in Canvas
Week 12 Nov. 1	<u>Judicial Review - Court of Appeals for Veterans Claims (CAVC), Federal Circuit & Supreme Court</u> Objectives: (1) to learn the process & procedure rules for federal court review of VA claims; and (2) to practice the process of analyzing and synthesizing statutory and regulatory law with case law to solve legal issues arising in a VA disability benefits claim, and to practice advocacy skills, precision & comprehensive analysis when solving hypotheticals.	Selected statutes and regulations, in Canvas Ch. 13 & 14
Week 13 Nov. 8	<u>Remand & Readjudication by BVA after CAVC Appeal or Settlement (Joint Motion for Remand)</u> <u>Attorneys' Fees with Judicial Review</u> Objectives: (1) to learn when and how attorneys are permitted to be compensated in the VA system; and (2) to practice the process of analyzing and synthesizing statutory and regulatory law with case law to solve legal issues arising in a VA disability benefits claim, and to practice advocacy skills, precision & comprehensive analysis when solving hypotheticals.	Selected statutes and regulations, in Canvas Ch.15 - 17
Week 14 Nov. 15	<u>Other VA Benefits</u> <u>Pension, Survivor, Healthcare & Education Benefits</u> Objectives: (1) to learn when pension & survivor claims are granted; and (2) to practice the process of analyzing and synthesizing statutory and regulatory law with case law to solve legal issues arising in a VA disability benefits claim, and to practice advocacy skills, precision & comprehensive analysis when solving hypotheticals.	Selected statutes, regulations and cases, in Canvas Ch. 6, pp. 176-86 Ch. 7