

2. Jurisdictional Basis and Standing

The Court has jurisdiction to issue an order for extraordinary relief under 28 U.S.C. § 1651(a).

VetLAG is a 501(c)(3) non-profit organization that protects veterans' rights. VetLAG has standing because the VA's practice is directly harming its clients.¹ And VetLAG has several disabled veteran employees that are personally affected by the VA's exam scheduling.²

3. Relief Sought

VetLAG wants the Court to order the Secretary to stop scheduling C&P exams in New York City—and other coronavirus hotspots—during the coronavirus pandemic.

4. Relevant facts

The VA pays QTC for exams even when veterans fail to appear.³ The VA must deny claims for an increased rating when a veteran fails to show up for an

¹ DAV v. Gober, 234 F.3d 682, 689-691 (Fed. Cir. 2000).

² *Id.*

³ Exhibit 1, page 5.

examination.⁴ Any veteran that contracts the coronavirus while attending an examination—maybe even when traveling to or from an exam—would be entitled to benefits under 38 U.S.C. § 1151.

New York City is suffering through a pandemic where hospitals are overflowing, and medical staff is stretched to its limit.⁵ The NYC mayor has ordered hospitals to cancel elective surgeries to free hospital space and medical staff.⁶ The VA has closed its regional offices to the public.

Today, I received a phone call from a veteran who told me that he is scheduled for an in-person C&P exam in Queens NYC next week. The VA has likely scheduled many more veterans for C&P exams in NYC. Some veterans will travel to the exams on the subway. Some will travel by bus, car, or foot. All will risk contracting the coronavirus.

5. Argument

VetLAG has a clear and indisputable right to the writ. As a non-profit entity representing veterans' interests, it has clients that are directly affected by the VA's poorly-timed scheduling. The VA is currently forcing VetLAG's clients to choose

⁴ 38 C.F.R. §§ 3.327 and 3.655

⁵ <https://coronavirus.health.ny.gov/home>;
https://en.wikipedia.org/wiki/2020_coronavirus_pandemic_in_New_York_City;

⁶ <https://nynow.wmht.org/blogs/education/de-blasio-closes-new-york-city-schools-orders-elective-surgeries-canceled/>

between risking the coronavirus—and illness, hospitalization, spreading it to family members, even death—or losing their VA claims.

There is no avenue to correct this. There is no way to appeal the VA's exam scheduling through the VA's disability and pension section. QTC typically reschedules exams one time and—in most instances—chooses the time and place without an examinee's input. I have contacted the VA OIG office. The VA OIG should look into QTC's irresponsible behavior because the VA is remunerating QTC for the exams. But OIG is not the appropriate part of the VA to fix this problem because the VA needs to fix the problem immediately. The Secretary's office is unresponsive. Only this Court can act fast enough to alert the Secretary of this problem and order him to stop it.

The VA's decision to continue scheduling these exams will affect this Court's workload and could create an avalanche of litigation. To continue would make it worse. There likely have already been veterans—otherwise quarantined—that contracted coronavirus while attending a VA C&P exam. They are each now entitled to benefits under § 1151, including for death benefits for any that die. Already, the VA has undoubtedly denied claims citing 38 C.F.R. §§ 3.327 and 3.655. Thousands of claims that would have—but for a missed exam during the

coronavirus pandemic in a coronavirus hotspot—been granted will work their way through the Board to this Court.

CONCLUSION

VetLAG petitions this Court to order the Secretary to stop in-person C&P exams in coronavirus hot spots.

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Submitted,

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