

The Burden of Proof in Veterans Claims:

#1. Today, I would like to talk about the law, the spirit of the law and the burden of proof when it comes to dealing with the VA for service connected injuries. This should be pretty interesting to say the least!

#2. I remember one day back in 1988 when I was a teenager, as I was driving down Lake Emma Road in Lake Mary Florida I was pulled over by a police officer just moments after I turned onto Range-line Road. I stopped at the stop sign then turned right and just as I turned, a police officer turned onto the road from the other direction and he saw me coming out of my stopped position. Well he immediately turned around and flashed his lights and pulled me over. The officer walks up to my car and immediately asks for my license and registration, and asks me if I know why he pulled me over? I responded that I had no idea at all. He responded back to me, and I quote: "I think there is a possibility that you might have run that stop sign back there!" Well, being a typically teenage male, instead of responding back "No sir", instead I looked at the officer and informed him that it would be a waste of both of our time to ticket me. I pointed out that he said the 3 deadly words "THINK, POSSIBILITY, AND MIGHT HAVE." All of which when I mention this statement to the judge on my day in court means that he didn't definitively see me run the stop sign, because of each of these words. The officer looked at me and replied with somewhat of a snicker that actually I was correct and that someday that I would make a great lawyer! There is a reason that I mention this because the burden of proof in this situation is very similar to that of with the VA, which is what these next few postings will be pointing out!

#3. In the last posting, I pointed out what the burden of proof often looks like. Here are 2 important terms when it comes to veterans claims and its where the line in the sand is actually at: "AS LIKELY AS NOT, IT WAS CAUSED BY YOUR MILITARY SERVICE" or many-times its stated as "WAS AS LEAST AS LIKELY AS NOT APPROXIMATELY DUE TO OR THE RESULT OF THE VERIFIED PERSONAL TRAUMA". Now, please allow me to dissect these statements in layman's terms for everyone. See many-times when dealing with VA doctors or C&P examiners they will often state to the veteran that "There is no way that I can be absolutely sure that this injury/illness was caused by your military service". ABSOLUTELY SURE are the keywords here, ABSOLUTELY SURE, I never asked you to be 100% sure, after all you weren't there with me so how could you possibly be 100% sure! I am not asking for absolutely sure, I am merely asking for you to agree that hey, AS LIKELY

AS NOT, that's a 50.01% to 49.99% statement not a 100% statement. Hey I will even settle for "AS LEAST AS LIKELY AS NOT, then with the word APPROXIMATELY which in the dictionary means (nearly exact; not perfectly accurate. Near, close together. Very similar to, come near To bring near. To estimate) these are all definitions of the word APPROXIMATELY. So to AS LEAST AS LIKELY AS NOT, WE ESTIMATE or at least come near or that it's similar to what the veteran is claiming. That's a far cry from 100% guaranteed as they would have you believe!

#4. Yesterday, we began discussing exactly where the burden of proof is when it comes to veterans claims in dealing with the VA, which is where I am always quick to point out to veterans and VA employees exactly where that line in the sand is at. Today I would like to use a different approach and discuss a case that most people are familiar with. Back in 1995 OJ Simpson was acquitted of 2 counts of murder yet in 1997 he was found guilty in a civil court and ordered to pay \$33.5 Million to the Brown and Goldman families. Which brings up a reasonable question: WHY? The basic reasoning is that there are different burdens of proof in criminal versus civil courts. See in criminal court the burden of proof is "Beyond a reasonable doubt" key word being REASONABLE, which means that basically if a jury of reasonable people comes to a consensus that you in fact did this, then yes you will be found guilty of the crime. Now in civil court cases the burden is different in that "More likely than not" well that statement would imply that 50.01% out of a 100% would be "more likely than not" because that pendulum has tilted ever so lightly to the yes side. Starting to make sense?

#5. After the last posting someone contacted me asking: What is the importance of knowing exactly where the burden of proof is at, and how that would help them specifically? Knowing exactly where the line in the sand is at is always helpful because then it's much easier to see if your being veered off course! I cannot stress to everyone here how many times that over the years I have had to redirect VA doctors back to exactly where that line in the sand is at!

#6. Oftentimes when I speak with disabled veterans that are embattled with the VA, they often feel like it's a David vs. Goliath scenario. After all they are fighting this \$140.3 BILLION dollar a year company and they are, just the average citizen going up against what feels like a giant machine!

#7. In the last posting I mentioned that fighting the VA often feels like David vs. Goliath, seeing as the VA is a \$140.3 Billion dollar a year organization, and you

are just a veteran that's trying to fight this giant entity. Here is why I mention this: See every-time I have ever read the story of David vs. Goliath in the Book of Samuel, David wins! So, I find it ironic that so many veterans can always relate to the fact that the little guy has to go up against the giant, but remember that although the VA may seem impenetrable at times, they are beatable just as David found out! Which is why, it's extremely important to know exactly how to fight, what the rules are to win and to not get distracted or deterred when they attempt to make you feel that you can't win because the burden of proof is too high with your claims. Remember it only takes 50.01% to be "AS LEAST AS LIKELY AS NOT!"