

MILITARY UPDATE: PTSD vets discharged since 2002 score big win

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More than 4,300 Iraq and Afghanistan war veterans who were diagnosed in service as suffering from Post-Traumatic Stress Disorder, but got low military disability ratings, have won an agreement with the Defense Department to upgrade those ratings retroactively to 50 percent.

The higher rating will represent an important win for this group of veterans mentally scarred by war. It will mean, from date of discharge, eligibility for disability retirement and access to TRICARE, the military's triple health insurance option, for the veterans, spouses and dependent children.

Any out-of-pocket medical costs since discharge also could be paid retroactively, and these soon-to-be-designated disabled "retirees" will gain access to discounted shopping and recreational services on base.

Sparking the agreement is a class action lawsuit brought by the National Veterans Legal Services Program, or NVLSP, in which a former Fort Carson soldier was one of the original plaintiffs.

The suit contends that the services illegally denied retiree status and medical benefits to these veterans who were diagnosed with PTSD then separated as unfit for service.

Service Physical Evaluation Boards ignored the disability rating schedule used by the Department of Veterans Affairs, which requires a minimum 50-percent rating for PTSD victims, and routinely discharge members with ratings as low as 10 percent.

A board rating below 30 percent lowers personnel costs, because instead of immediate annuity and lifetime TRICARE coverage, veterans get only a lump sum severance pay.

Judge George W. Miller of the U.S. Court of Federal Claims agreed to stay a final ruling in the case of Sabo, et al v. United States after DoD agreed to cut a deal. Defense officials gave Veterans Legal Services the names of 4,300 veterans who should be invited to apply to have their ratings reviewed, but there could be more.

Misty Sabo, wife of former Army Sgt. Michael Sabo, one of the original seven plaintiffs, said she was "totally excited" to learn of the agreement this week. Five of their six children are disabled with bilateral cleft lip and palate, which creates hearing, dental and speech problems and requires multiple surgeries. Family medical bills, said Misty, are enormous.

Michael Sabo, 31, had served in the Army more than a decade when he was diagnosed with PTSD after two tours in Iraq where he routinely went on patrols that exposed him to multiple explosions and live enemy fire.

After Sabo's first 13-month tour in 2003-2004 he suffered recurring nightmares, severe headaches and mood swings. In the middle of his second tour, he returned home on emergency leave to care for his children while Misty underwent surgery.

While he was home in Fountain, Sabo's nightmares, severe headaches and violent mood swings intensified and, the lawsuit contends, "severely impacted him and his family."

He sought medical help and was diagnosed with PTSD and Post-Concussive Syndrome. In February 2008, the Army discharged him as unfit with a 10-percent disability rating and a modest lump-sum severance.

Misty said she was stunned that the Army rating was only 10 percent for a condition that ended his career and changed his life so dramatically.

“He was just thrown to the wind,” she said.

“I didn't care at the time,” said Michael, in a brief phone interview.

“I kept telling him, ‘This doesn't sound right that somebody would get hurt like you and not get a retirement,’” Misty said. “He said, ‘Well, what do you want me to do, fight against the Army?’ And I said, ‘Yep.’”

A Class Action Opt-In Notice Form is being mailed to these veterans and must be returned either by fax or postmarked before July 24, 2010. Veterans who don't get a notice by mail but believe they might be eligible can get more information online at: www.ptsdlawsuit.com.

The deal will not benefit tens of thousands of veterans diagnosed with PTSD over the last 30 years, only those discharged with a rating for PTSD of less than 50 percent after Dec. 17, 2002, and before Oct. 14, 2008.

As the dates indicate, the deal doesn't include even all PTSD veterans discharged since Sept. 11, 2001. That's because the lawsuit was brought under the Tucker Act, which has a six-year statute of limitation from the date a complaint is filed against the government, which was in December 2008.

Misty said a doctor at Fort Carson finally prescribed proper medication for Michael after some terrible times. Though he is able to work, every day remains a struggle due to memory loss, headaches and nightmares.

“It's very hard for him, and us, because he has no memory,” said Misty. “Yesterday was our daughter's birthday. He totally forgot. He doesn't like to be around people, which makes it really hard with a big family. ... And he does not sleep because of the nightmares.”

“I have heart disease,” she said, “and just before he was discharged I found out I have MS. So I've been without my thyroid pills or any medical care.” When the family qualifies again for TRICARE, she said, “I can start taking better care of myself to take care of my children.”

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