***The 1151 Claim***

An important part of VA Disability law provides relief if a veteran suffers an injury or dies as the result of “negligent” VA health care, VA vocational rehabilitation, or the VA compensated work therapy (CWP) program.   The Statute allowing these benefits is **38 USC § 1151**, better known simply as an 1151 claim. A claim under Section 1151 is similar to a medical malpractice claim against the VA, but there are some very important differences.

In order to file an 1151 claim, a veteran or family member has to write the VA indicating that he/she believes that a permanent injury/disability, or death has occurred as the result of an action, or failure to act, of the VA. You MUST be able to show “intent”, in order to apply for 1151 benefits or VA disability benefits. Once this is done, the claims process should be triggered.

In order to win an 1151 claim involving medical care, the veteran or his family must prove: (1) that the disability or death **was not** the result of willful misconduct, and (2) the “proximate cause” was due to a VA medical provider’s carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault; or (3) that the outcome was not reasonably foreseeable. If the 1151 claim is due to voc-rehab, or the CWT program, then the rules are different and the veteran or his family member only has to prove “proximate cause”, but not negligence or fault. The VA defines “proximate cause” to mean that the action or event must directly cause the disability or death. In simple terms, it must be the actual cause of the injuries or death.

If a claimant is successful in the 1151 action, then the VA regulations require that the disability or death be treated in the same manner “as if” it were a service-connected injury. This means claims approved under Section 1151 allow veterans or survivors to receive VA Disability Benefits or Dependency and Indemnity Compensation (DIC), as applicable.

Most 1151 claims are very difficult to win because the “standard of proof” is pretty high, and always will require the opinion of a medical expert. Not surprisingly, the VA often fights these claims by saying that the medical providers use proper judgment and provided adequate care. They say the consequences of a medical procedure were foreseeable, or that the patient gave informed consent. This is where the medical expert employed by the veteran or his family comes into play by providing an opinion as to whether or not there was carelessness, negligence, lack of proper skill, etc..

Finally, it is important to know that there are other remedies beyond a Section 1151 claim that may be available in VA malpractice situations; for example, filing suit under the Federal Tort Claims Act (FTCA). The intricacies of filing an FTCA claim are beyond the scope of this blog; however, it is important to have an awareness that alternative remedies exist, and to discuss all options with an attorney that has experience with FTCA claims. At Hale Law Office, attorney Roger B. Hale has the experience to properly evaluate an 1151 or FTCA claim.