

# VETERANS COURT FINES VA

CAVC Finds VA in  
Contempt  
Harvey v. Shinseki

# Facts

- 6/08: Court issued decision re 2/06 Board decision denying effective date earlier than 4/00
  - During case, VA conceded effective date should be 9/17/98
  - Court reversed Board decision and assigned effective date of 9/17/98
  - Court remanded to calculate benefits

# Facts

- For 2 years VA did nothing
- vet filed petition for extraordinary relief on 3/9/10
- During 2 years, VA delayed calculating award and:
  - Failed to recognize vet had withdrawn POA
  - Delayed 4 months between CAVC mandate & Board's request for claims file
  - Transferred claims file multiple times
  - Directed claims file to wrong RO
  - Requested duplicate info
  - VA lawyers failed to ensure CAVC order carried out

# Facts

- Court requested responses from VA
- VA argued RO had completed calculation and sent vet letter on 7/14/10 so petition to Court was moot
- Vet and amici argued Court should impose sanctions on VA

# Contempt

- Court may hold party in contempt where:
  - 1) rule or order that is clear and unambiguous;
  - 2) clear and convincing proof of noncompliance with rule or order; and
  - 3) showing contemnor has not been reasonably diligent and energetic in attempting to accomplish duty under rule or order
- Bad faith or willfulness is not required

# Contempt

- VA's failure to expeditiously handle remand order meets 3 elements for contempt
  - Court's remand order was clear and unambiguous
  - VA's failure to comply with obligation to process remands expeditiously is same as noncompliance with remand order itself
    - Took VA 666 days to comply
    - VA calculating award after Court intervened does not excuse gross mishandling of remand order
  - VA grossly negligent & failed to be reasonably diligent & energetic in attempting to comply with remand order

# Sanctions

- Court has authority to punish by fine or imprisonment those found in contempt
- additional monetary fines were not necessary, but VA to pay reasonable attorney fees to both vet and amicus
  - Court ordered \$11,715.49 to be paid to vet for attorney fees and \$7,879.31 to amicus in costs and attorney fees