

Firm Associate Secures Federal Circuit Precedent for Veterans Seeking VA Benefits

On July 23, 2019, the U.S. Court of Appeals for the Federal Circuit issued its decision in *Francway v. Wilkie*, which marks a change in the law favorable to veterans seeking disability benefits from the Veteran's Administration (VA).

The *pro bono* case was argued by Associate William Milliken on behalf of Ernest L. Francway, a U.S. Navy veteran who was injured while serving on an aircraft carrier in 1969. The main issue on appeal was whether the Federal Circuit should overrule its prior precedent in *Rizzo v. Shinseki*, 580 F.3d 1288, 1290–91 (Fed. Cir. 2009), which held that the Board of Veterans Appeals and the Veterans Court may properly apply a presumption of competency in reviewing the opinions of Veterans Administration medical examiners. The Court did not overrule *Rizzo*, but it did hold that, contrary to current VA practice, “[o]nce the request is made for information as to the competency of the examiner, the veteran has the right, absent unusual circumstances, to the curriculum vitae and other information about qualifications of a medical examiner.” Slip Op. 8-9.

Unfortunately, since Mr. Francway had not raised the competence issue before the Board, he was unable to take advantage of the Court's new, far more favorable take on the presumption of competence. The Court affirmed the denial of Mr. Francway's benefits.

Despite this decision not benefitting Mr. Francway, the Court has created an easier path for countless veterans across the country that are seeking to establish their entitlement to VA disability benefits.

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