Supreme Court and Federal Circuit Rule for Veterans in Two Cases

You may recall the sad story of Mr. Henderson that I talked about in this post. The basic facts were relayed in the lower court opinion:

Mr. Henderson served on active military duty from 1950 to 1952. He was discharged in 1952 after being diagnosed with paranoid schizophrenia, for which he has established service connection and currently has a 100% disability rating. In August of 2001, Mr. Henderson filed a claim for monthly compensation with the Department of Veterans Affairs (“VA”) Regional Office (“RO”), based on his need for in-home care. The RO denied the claim, and Mr. Henderson appealed to the Board. The appeal was denied on August 30, 2004. Thereafter, on January 12, 2005, Mr. Henderson filed a notice of appeal with the Veterans Court, fifteen days after the expiration of the 120-day appeal period set forth in 38 U.S.C. § 7266(a). Section 7266(a) provides as follows: In order to obtain review by the Court of Appeals for Veterans Claims of a final decision of the Board of Veterans’ Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.

Anyway, the Supreme Court, in a unanimous opinion today says that the 120 day requirement is not concrete, that an individual may take longer if circumstances warrant such. They held: a veteran seeking benefits need not file an initial claim within any fixed period after the alleged onset of disability or separation from service. When a claim is filed, proceedings before the VA are informal and non-adversarial. The VA is charged with the responsibility of assisting veterans in developing evidence that supports their claims, and in evaluating that evidence, the VA must give the veteran the benefit of any doubt. If a veteran is unsuccessful before a regional office, the veteran may obtain de novo review before the Board, and if the veteran loses before the Board, the veteran can obtain further review in the Veterans Court. A Board decision in the veteran’s favor, on the other hand, is final. And even if a veteran is denied benefits after exhausting all avenues of administrative and judicial review, a veteran may reopen a claim simply by presenting "new and material evidence."Rigid jurisdictional treatment of the 120-day period for filing a notice of appeal in the Veterans Court would clash sharply with this scheme. We hold that the deadline for filing a notice of appeal with the Veterans Court does not have jurisdiction attributes. The 120-day limit is nevertheless an important procedural rule. Whether this case falls within any exception to the rule is a question to be considered on remand. Now, I haven't as yet waded through the Erickson opinion, but the Tully Rinckey law firm that was arguing this one for the veteran sent out a rather lengthy release that lays out the pertinent information:

In a decision that will likely impact thousands of veterans for generations to come, one of the nation’s highest courts has ruled in favor a highly decorated war hero by finding the U.S. Postal Service violated his rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

The case, Erickson v. United States Postal Service, involves Army Special Forces Sergeant Major Richard Erickson. Erickson, who has been awarded multiple medals for Combat Distinguished Valor and is a Purple Heart recipient, was fired from the Postal Service for “excessive absence due to military service,” a blatant violation of federal law. The Court of Appeals for the Federal Circuit on Monday sent the case back to the Merit System Protection Board, which will likely order the Postal Service to reemploy Mr. Erickson with eleven years of back pay and benefits that could cost the Postal Service over $1,000,000 in damages when attorney fees are included.

The board previously incorrectly ruled that Mr. Erickson waived his rights by abandoning his civilian career to serve his country. Yesterday, in a precedent-setting decision, the Federal Circuit reversed the incorrect decision of the board by stating that the independent, quasi-judicial agency failed to properly consider all of the evidence in this case. The court stated that Mr. Erickson’s military service was justified and that he had always planned to return to his civilian job, thus he did not abandon his job with the postal service. The decision further clarifies the abandonment principle under USERRA and will likely lead to both public and private employers having a more difficult time in discriminating against the half-million people currently serving in the National Guard and Reserves.

The Federal Circuit had previously overruled the board’s determination that Mr. Erickson’s termination was not the result of discrimination based on his military service. The board had wrongfully claimed that Mr. Erickson’s military absence exceeded five years and that he was not entitled to USERRA.

“This is a man who spent years away from his family so that he could protect and serve his country,” said Mr. Erickson’s attorney, Mathew B. Tully, who also serves as a Lieutenant Colonel in the National Guard. “It is an absolute disgrace that my client has had to endure such hardships. I am confident that justice is right around the corner and Mr. Erickson will soon be able to put this heinous act of discrimination behind him.”

Those are big wins for the good guys. I had really hoped that Snyder v. Phelps (Gold Star Dad v. the Westboro Baptist Church) would come down today, but looks like I will have to wait a bit longer on that.