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U.S. DISTRICT COURT
DISTRICT OF WYOMING
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STEPHAN HARRIS, CLERK
CHEYENNE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

LEMUEL CLAYTON BRAY KAZUKO HAYASHI BRAY, Plaintiffs, vs. THE UNITED STATES GOVERNMENT, Defendant,	Case No.: 17-CV-206-F MOTION FOR EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS

The Plaintiff, Mr. Bray claims a "legal disability" under the section the Defendant's cited, in the Defendant's denial letter of September 8, 2016, and as noted in the Plaintiff's request for reconsideration dated February 23, 2017; **Title 28, Section 2401 (a) of 3 years from January 1, 2016 instead of (b) and further claims a "Misrepresentation of Facts" under the citation of Title 41 in Title 28, Section 2401 (a); Section §7101 (9) definitions of Title 41.**

The SF-95 forms, required to start the proceeding was filed on 4/20/2016 by recognition of "legal disability," due to miss treatment and misdiagnosis by the Defendants to 1/16/2016 when treatment was recognized as successful.

Title 28, Section 1346 (b)(1), provides, "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

The State of California has a 4-year Statute of Limitations when a written contract is involved. The Enlistment Contract and controlling regulations there under provide a complicated line of administrative redress which needs be exhausted before proceeding in a Tort

Claim. The Plaintiff has also initiated a U S C 28 1346 claim under 38 CFR 3.154 which allows concurrent filing of an SF 95 Tort Claim against the Military and VA. The VA General Counsel has been selected to defend the SF 95 form Tort Claim which is be pursued here.

SPECIFIC TO EQUITABLE TOLLING:

1. The injury occurred on September 19, 1969. There are some errors in the Record Before the Agency (RBA) and I'm trying to identify the correct dates and times relative to this injury. Some of the errors were created by the Plaintiff, Mr. Bray because he thought he was transferred to NH Oakland on a Monday instead of a Tuesday. This accounts for the shortened period of unconsciousness in the ER admission notes while, after becoming more aware it was corrected to 3 days (approximately 80 hours) later during the hospitalization notes, RBA page 1426.
2. 10/20/1969 The Narrative Summary of the inpatient hospitalization at Nava Hospital Oakland, CA from 9/23/1969 RBA page 1408, prepared by the physician releasing Plaintiff Mr. Bray to duty from treatment deceptively minimized the residuals of the head injury not stating the period of unconsciousness or the nursing note entries, RBA pages 1424 and 1428 (1434), indicating possible complex partial seizures or the ER diagnosis on 9/23/1969 of post-concussion syndrome, RBA page 1413.
3. There are a lot of deceptions either purposeful or negligence or unintentional errors having the effects of deceptions that the Plaintiff is in the process of diligently listing and will present if necessary as soon as to finished going through the 4,529-page RBA which is deceptively disorganized with many duplications making the use of the RBA by the Plaintiffs extremely difficult as in next to impossible to identify missing items of import. <u>In alleging a deceptive act, the Plaintiffs are not alleging intent but are alleging deceptive effect no matter the reason.</u>
4. Plaintiff, Mr. Bray, was working in a medical environment as a Navy Hospital Corpsman where, had it not been for the deceptive

minimalization of the head injury the physician who filled out his first post injury Report of Enlisted Performance Evaluation dated 16 DEC 1969, for signature by the Executive Officer of NAVCOMSTA, SF would have referred the Plaintiff for a neurology follow up given his remarks, "a sincere conscious effort was made in order to not de-evaluate him because of a slight medical difficulty during a short convalescence." He had only known Plaintiff, Mr. Bray for a few days before the 9/19/1969 injury and was unaware of the length of unconsciousness or the things deceptively left out of the Narrative Summary of the care referenced.

5. A subtle condition of anosognosia (also disabling) set in following the 1969 injury causing the Plaintiff to enter a state of denial which at times was irrational. This condition is indicated on RBA page 3873 by the definition not the specific diagnosis of anosognosia.

6. "Atonic," and complex partial seizures were confirmed following an MVA in 1990 and treatment was wrongly administered with Tegretol which was contraindicated for this condition. RBA pages 3289 & 3290 (inverted order) The refusal to change medication necessitated the Plaintiff weaning off and quitting the medication after a 5-month trial that caused his condition to continuously worsen.

7. The Plaintiff, Mrs. Bray, has only know the Plaintiff since 2 years after the initial injury and was not equipped with the medical knowledge to determine the damage done to the Plaintiff by the mistreatment by the Defendants, The Navy and the VA. Mrs. Bray was in Japan during the 5 months of treatment by the Defendants' Seizure Clinic and could not have been aware of the deterioration during that 5 months.

8. Plaintiff, Mr. Bray, was unaware the drug Tegretol was contra-indicated for the seizures he was confirmed to have. Because it made him worse, he quit taking the medication, and the diagnosis was changed to pseudo

seizures which is contra indicated by a "Spiking Wave" EEG in his Medical File. RBA page 1445.

9. To the best of his ability the Plaintiff has pursued his claim against the Navy and the VA by the following acts.

    a. On July 30, 1974 Plaintiff, Mr. Bray, filed a claim with the DVA for residuals of his injuries. At the time Plaintiff, Mr. Bray was unaware of the disabling effects of his injuries due to anosognosia.

    b. After an experience of nearly going berserk in June of 1983 Plaintiff, Mr. Bray sought treatment for his mental condition from the DVA in Los Angeles on June 10, 1983. This is now known by some psychiatrists to be the result of a left anterior temporal lobe injury such as is indicated throughout Plaintiff, Mr. Bray's record.

    c. On 9/27/1984, as recommended by a mental health professional, Plaintiff, Mr. Bray, filed a claim for PTSD with the VA.

    d. After the medical examinations begun on May 13, 1985 indicated a traumatic brain injury with or without seizures Plaintiff, Mr. Bray, has continued diligently within his ability limited by his ADA condition to pursue his claim for compensation by the Defendants. The complete documentation of efforts by Plaintiff, Mr. Bray, and acts of deception by the Defendants is in the RBA and includes but is not limited to:

        i. Appeal of Rating Decision of 6/27/1985
        ii. Appeal to the BVA on May 12, 1986 Decided OCT 17, 1990
        iii. Claim for unemployability 6/24/1987 In Remand from BVA Decision of May 11, 2017 – granted from July 10, 2009 (VA delays)
        iv. 4/25/1988 request for EEG tracings
        v. 3/9/88 claim for increase in compensation

vi. 12/10/1990 RBA page1396 thru 1398 claim for injury adjustment.

vii. Inpatient treatment from 8/12/1991 to 1/15/1992

viii. 10/02/1991 letter to Congressman Waxman

ix. 2/26/1992 request for reconsideration of 1/22/1992 Rating Decision

x. 10/8/1992 withdrawal of representation by American Legion for CAVC appeal.

xi. 11/19/1992 Complaint of duty to assist re CAVC?

xii. During the period from the start of treatment with Tegretol on 9/17/1990 until years later Plaintiff, Mr. Bray, was in pretty much of a fog and unable to do things right. Although it got better over time it was not until treatment with Keppra that Plaintiff, Mr. Bray began to be able to function at a reasonable level in January of 2016 although he did the best he could. As is shown by the following:

1. 9/15/1995 to 10/15/1996 Demonstrated in DC at the Mall and in front of the VA Central Office for better care of veterans with organic brain syndromes. Then intermittently as funds were available until 9/8/2000 when the VA deceptively sent Plaintiff, Mr. Bray from DC where he was receiving his medical care to Kumamoto, Japan, his home of record to get a Compensation and Pension examination which couldn't be done in Japan. An inadequate exam was eventually completed

2. RBA 502, Medical Division facility in Sheridan, WY refused assistance to set up C&P when told that he was told by Pittsburgh VARO to contact any VA medical facility if he happened to travel to the U S from Japan and have them contact the DRO at Pittsburgh VARO.

xiii. 8/11/2016 RBA page 1399, FOIA request for records deceptively not given to Plaintiff's attorney for appeal to the BVA; Following up Request of 5/23/2016 on RBA pages 1400 thru 1403.

xiv. 5/24/1989 RBA page 1448 on another veteran deceptively in Plaintiff, Mr. Bray's file misleading the date of back injury to be prior to the MVA of 9/16/1990 and not secondary to his seizure condition.

xv. 6/12/1990 RBA page 1450, EEG report with “sharp waves left temporal region” “similar to a 6/11/1990 EEG #90065” not reported in neurology reports following the diagnosis of “pseudo seizures” which is precluded by interictal EEGs showing “spiking” and “sharp” waves such as this and Dr. Thompson’s spiking wave study above.

xvi. 9/17/1990 RBA pages 1458 & 1459, Neurology confirmation of complex partial seizures ignored in following adjudications in favor of a later erroneous diagnosis of “pseudo seizures.” (negated by the prior EEG with spiking waves)

xvii. Deceptively missing and/or unreported in Rating Decisions and Appeal Decisions:

1. Multiple Audiology examinations, some just the back page, which should be in the Medical Division OPTR file. (directly related to the issue on appeal; the rest is related to the remand not yet on appeal but likely to be if the AOJ doesn’t have it for consideration)
2. Record Management Center CD of 02/09/2017 page 2120, DOCTOR’S PROGRESS NOTES, dated 3 Oct 69.
3. Record Management Center CD of 02/09/2017 page 2531 which is page 2 of RBA page 4000. Page 4000 is page 2532 of the RMC CD.
4. MISSHION HILLS MEDICAL CENTER, Report dated April 22, 1988 referred to on page 2531 of the RBA.
5. DEFERRED OR CONFIRMED RATING DECISION, dated 12/30/88, page 2288 of the 02/09/2017 CD from the VA Records Management Center with provable by the record, deceptive remarks.
6. Page 2096 of the RMC CD of 02/09/2017 dated 24 May 1989 erroneously in the Appellant’s file that led to an erroneous decision on SDD.
7. Page 2254 of the RMC CD of 02/09/2017 dated 5/25/89 apparently referencing a missing 6-2-89 psychiatric exam. Box checked is Examination as scheduled.

8. Signed page of Section C of Examination Report form on page 2271 of the RMC CD of 02/09/2017 signature and date only of the 6-2-89 psychiatric examination.
9. The referenced 6-2-89 psychiatric examination that is probably a re do of the 3-10-89 examination that ignored objective data in the file in favor of subjective opinions from subjective history and also ignored generally accepted clinical practices of psychiatry with statements made.
10. RMC CD of 02/09/90 pages 1913 & 1914, EMMERGENCY ROOM NURSING RECORD date 9/16/90 at 4:10 PM.
11. 5 months of OPTRs for Seizure Clinic visits at the West Los Angeles Medical Center that started 2 weeks from 9/17/90, reference RBA pages 3290 (page1) & 3289 (page 2).
12. 6 or more months of OPTRs for Spine Clinic or Back Clinic reference RBA 2996 dated 9/12/91included in IPTR file.
13. The Appellant has a copy of the 10/28/91 Back Clinic visit which is now missing from the IPTR file but dates the visits from April 1, 1991 which was in the copies provided by Cheyenne VARO.
14. 1-5-90 X-ray report of X-ray ordered on RBA page 3256, pages 1985 &1986 of the RMC CD of 02/09/2017.
15. RMC CD dated 02/09/2017 pages 2192 & 2193 Form 21-4138 with employer's statement.
16. Documents requesting reconsideration to BVA for October 17. 1990 decision and relative to 1994 appeal in letter dated October 25, 1994, RBA page 2792.
17. Neuropsychological Assessment, undated, but dated by a Progress Note on RBA page 3343 as 8/16/91 in IPTR. Appellant has a copy of this Assessment from the hard copy of the file sent to Appellant by Cheyenne VARO.
18. Multiple additional hard copy radiographic reports that will be in the Medical Division OPTR and INPTR files. Probably omitted because of odd size.

19. Multiple EEG reports that should be in the Medical Division OPTR file.

20. Lemuel C Bray's letter to the BVA dated November 26, 1994, 1-page length not the longer letter, requesting assistance to obtain MRI Films and EEG tracings.

21. Denver VARO internal memos and VAOIG letters responding to the Appellee's alleged failure by a DRO to provide a hearing in Cheyenne in 1994 or 1995 on the appeal of the 1/22/1992 Rating Decision, (RBA page 3106) in addition to the Denver VARO letter dated JUL 20, 1998, RBA pages 2626 thru 2628, closing the claim appeal on June 19, 1995. The Appellant has an interoffice memo provided by the Communications Division in the VA Central Office last year. It is available from the same resource to the Appellee's attorney for inclusion in the RBA as are probably many of the other missing items. Use the Denver VARO JUL 20, 1998 letter to the VAOIG as a reference point to get the memos. The Appellant has copies of additional related inter office Denver Varo memos.

22. Missing IPTR from May 8, 1993 thru June 11, 1993. Referenced on RBA page 2464.

23. Denver VARO letter of June 19, 1995 Closing the appeal of the 1/22/1992 referenced on RBA pages 2626 & 2710.

24. The missing letters from Plaintiff, Mr. Bray, stating periods of unavailability for a hearing because of traveling for obligations to family and friends including the transfer to DC when the hearing hadn't been provided while I was in Wyoming before my move to DC. The letters are detailed on that interoffice memo provided to me by the Communications Division in the Central Office last year.

25. 7/3/1986 RBA pages 1438-1445 Neurologist, Dr. Thompson's report indicating an EEG with bifrontal spiking prior to administration of antidepressant drug therapy. Missing report stating, "epileptiform spiking."

e. 8/2/1988 Filed Bray V Brown 09cae Docket 88-6276

f. 5/4/1988 Refiled Bray V Derwinski 09cae 88-7166

g. 8/25/1992 Filed cacdce 2:1992-cv-05108

h. 4/21/1993 09cae 93-55524

i. 11/23/1993 09cae 93-56582

j. 6/23/2011 CAVA 11-2194

k. 9/9/2011 CAFC 2012-7005

l. 6/15/2016 RBA pages 1513-1516 hearing notification

FURTHER EVIDENCE OF a "Misrepresentation of Facts" under the citation of Title 41 in Title 28, Section 2401 (a); Section §7101 (9) definitions of Title 41:

1. With respect to deceptiveness by the U S Military of disabilities from organic brain syndromes by the U S Government's Military and Department of Veteran's Affairs (DVA), Mr. Bray cites an alleged orchestrated Yale Medical School study that found on behalf of the DVA's "cutting edge theory" that EEG sharp waves were more representative of "psychogenic seizures" than partial and complex partial seizures. The DVA is alleged to have effectively but without specific words demanded a pre-determined outcome of the study in return for the use of DVA telemetry units for the Yale Medical School studies on both civilian and veteran subjects, denying beds to veterans in the telemetry units for the purpose they were installed at DVA Medical and Research facilities in favor of the Yale Medical School non-veteran surgical research subjects of status epileptic seizures including Parkinson's Disease.

2. The Yale Study conclusions have now been debunked by a study of Oxford Medical School and NIH. The denial of partial and complex partial temporal lobe seizures as indicated by "sharp wave" tracings on EEGs served no purpose other than denial of compensation to veterans while denying all victims of deep based temporal lobe seizures needed medication and other therapy to mediate their condition. Non-veterans have been equally damaged by the deliberately false outcome of the Yale study and will continue to be so

damaged so long as there is a Neurology Text Book stating that "sharp waves" on temporal lobe EEG tracings are an indication of "psychogenic seizures."

3. See: http://epilepsy.yale.edu/about/history/1980.aspx And: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2995886/

4. **Additional evidence of "Misrepresentation of Fact" about organic brain syndromes by the U S Military and the Department of Veterans' Affairs, though not directly connected to the Plaintiff's TBI, is shown by what appears to be an obvious attempt by the authors of the research paper fail peer review:**

   a. *PSYCHOLOGICAL TESTING OF CEREBRAL MALARIA PATIENTS*, "The Journal of Nervous and Mental Disease," vol. 147, #6, 1968 by Kastl, A.J.; Daroff, R.B.; and Blocker, W.W.: to attempt to flag their report for failure of a peer review. It fails in 4 specifics the most basic of which is the "control group." And it appears to have been produced under some sort of duress for a predetermined outcome causing the authors to write in a form designed to get by local review and to fail peer review giving some basic items that are counter the conclusions in the lead up to the conclusions expecting the failures to appear after they had been released from the service. The research paper was used by **John Boos, MD, Department of Veterans Affairs National Director of Neurology at the VA Connecticut Healthcare System in West Haven, CT, in his testimony before the Subcommittee on Benefits, House Committee on Veterans Affairs, on July 16, 1998, a person of intellect and credentials that clearly should also have recognized the failings of the "peer reviewed" report.**

   b. *PSYCHOLOGICAL TESTING OF CEREBRAL MALARIA PATIENTS*, has clearly and irrefutably, through physiology, been debunked by the NIH study published online December 6, 2016.

   c. See also the debunking study: https://www.nih.gov/news-events/news-releases/raising-curtain-cerebral-malarias-deadly-agents.

5. The Army and probably the other military departments also deceptively inserted in the victims of cerebral malaria a summary of the rehabilitation treatment following the acute phase without any summary of the acute phase leading any physician reviewing the file to believe those victims had a very mild case of p. falciparum malaria.

6. We note there is a pattern of lobbyist interfering with veterans getting their medical and compensation benefits to benefit their clients:

7. http://www.disabledveterans.org/2016/05/17/phoenix-va-chief-gets-probation-no-penalty-dead-veterans/

TITLE 28, U.S.C. §2401. Time for commencing action against United States: (a) Except as provided by chapter 71 of title 41, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

TITLE 41, Section §7101 (9) MISREPRESENTATION OF FACT. The term "misrepresentation of fact" means a false statement of substantive fact, or conduct that leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

Dated this 15th December 2017 [day] of [Month], [year].

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