

**JAMES B. DOWD, et al. v. U.S. General Accounting Office**

**Docket No. 91-03**

**Date Issued: March 22, 1995**

**Cite as: Dowd, et al. v. GAO, Docket No. 91-03 (3/22/95)**

**Before: Nancy A. McBride, Administrative Judge**

**Headnotes:**

**Class Action**

**Disability Discrimination**

**Veterans Rights**

**ORDER REGARDING CLASS MEMBERS**



A. Respondent had no record of military service for Roberta L. Boyd, Dawn R. Godfrey, Dawna P. Hill, Richard E. Just, and Lisbeth L. Sodee.

Petitioner indicated that information from Godfrey, Just and Sodee confirms that they are ineligible as class members; Petitioner does not state whether this is because the individuals, in fact, did not have military service. In the absence of any disagreement by Petitioner with Respondent's assertion, I find that Godfrey, Just and Sodee are not veterans and their records should not be considered by Respondent in completing the discovery matrix with respect to the experience of disabled veterans employed by Respondent.

With respect to Boyd and Hill, Petitioner maintains, without explanation or documentation, that they belong on the list of disabled veterans. There is no evidence presented to counter the position of the Respondent that Boyd and Hill do not have military service. Therefore, I find that they are not veterans and their records should not be considered by Respondent in completing the discovery matrix for disabled veterans.

B. Respondent contended that the following persons did not fit within the definition of the class because they were separated from the Agency prior to 1989: Carl W. Boykin, James W. Rorie, Melodee D. Snokbullock, Gene

Berefered, Bob Frier, Edward Scott, Kathleen Scott, and Irwin T. Williams.

Petitioner indicates that information from Rorie, E. Scott, K. Scott and Williams confirms that they are ineligible as class members, without describing the nature of the information or the reason for which they are ineligible. I find that these individuals are not members of the class and should not be considered by Respondent in completing the discovery matrix for disabled veterans.

Berefered and Frier do not appear on Petitioner's Amended Proposed Certified List of Class Members and, therefore, they will not be considered members of the class and should not be considered by Respondent in completing the discovery matrix for disabled veterans.

Boykin and Snokbullock do appear on Petitioner's Amended Proposed List of Class Members, but without any evidence that Respondent's contention as to separation prior to 1989 is incorrect. I, therefore, find that Boykin and Snokbullock left employment prior to 1989 and are not properly part of the class that was certified in this matter. A different question is whether they should be included in the statistical base for analysis of disabled veterans during the time in which they were employed by Respondent. I find no good reason for considering the experience of non-class members along with that of class members for the purpose of comparing the experiences of specific subgroups,

e.g., women, minorities, to the experiences of class members. Therefore, Boykin and Snokbullock should not be considered by Respondent in completing the discovery matrix for disabled veterans.

C. Petitioner does not dispute Respondent's assertion that Thomas S. Taydus was hired after January 17, 1992, the employment cut-off date for membership in the class. Petitioner indicates that information from Taydus confirms that he is ineligible for the class. Therefore, Taydus is not a class member and his experience is not relevant to that of the class; he should not be considered by Respondent in completing the discovery matrix.

D. Respondent contends that John E. Clary, Donald L. Pless, and Clarence A. Whitt should not be included in the class because they did not establish disability until 6/25/92, 6/10/93, and 3/8/92, respectively.

Petitioner indicates that information from Pless confirms that he is not eligible for the class. Therefore, Pless is not a class member and he should not be considered by Respondent in completing the discovery matrix.

Affidavits and supporting documentation from the Veterans Administration demonstrate that Clary was found to have a service-connected

disability in 1972 and that Whitt was found to have a service-connected disability in 1980. As will appear more fully in the following paragraphs, I do not accept Respondent's position that certification of disability by the Veterans Administration at a particular time is a prerequisite for class membership in this case. However, with respect to Clary and Whitt, I find the assertion to be factually incorrect as well. Therefore, Clary and Whitt are class members and they shall be considered by Respondent in completing the discovery matrix.

E. With respect to 21 employees, Respondent contends that the official personnel folders contain no evidence that they have been determined by the Secretary of Veterans Affairs to be "disabled" due to a service-connected disability.

Petitioner indicates that information from two employees in this group, Thomas C. Howle and Arthur A. Klenker, confirms that they are not eligible for membership in the class and their names are not included in the Amended Proposed Certified List of Class Members. Therefore, Howle and Klenker are not class members and they should not be considered by Respondent in completing the discovery matrix.

Of the 19 remaining in this category, Respondent contends that they are

not "disabled veterans" because they have not been so certified by the Department of Veterans Affairs. With respect to several of the employees, the contention is not factually accurate. Specifically, I find that Raymond Allen, Phillip Andres, Roger Corrado, Nicholas DeMinico, Raymond Denmark, C. Jay Jennings, Valdis Karklis, Abraham Logan, Joseph J. Radosevich, and William Yarwood presented sufficient evidence to document that they have been certified by the Department of Veterans Affairs (or its predecessor the Veterans Administration) as having a service-connected disability.

The remaining individuals to whom the Agency has objected present evidence of receipt of the Purple Heart as demonstrating that they are properly classified as disabled veterans. Two of these, Bobby Hall and Leo Sullivan, present GAO personnel forms on which they are coded by the Agency as "10-point disabled veterans." While such individuals may not meet the statutory definition employed by the Department of Veterans Affairs for the purpose of determining entitlement to service-connected disability compensation, it appears that Respondent, nevertheless, classified them as "disabled veterans."

Respondent did not choose to define the term "disabled veteran" in Order 2306.1. It must be concluded that it intended the term to include, at a minimum, all persons whom Respondent itself designated "disabled veterans."

Had Respondent reviewed data for disabled veterans during the years in question, as required by Order 2306.1, it undoubtedly would have included in that base all individuals whom it classified as "disabled veteran." Therefore, Hall and Sullivan have presented sufficient evidence to warrant their inclusion in the class and they are to be considered by Respondent in completing the discovery matrix.

Lawrence Dixon, Daniel Kirwin, John Lesser, Bonifacio Roldan-Galarza, and Bobby Worrell presented evidence documenting award of the Purple Heart. There is a suggestion that GAO coded such persons as "10-point disabled veterans" on the strength of the Purple Heart alone. These individuals, are, therefore to be included in the class and considered by the Respondent in completing the discovery matrix. This ruling is subject to reconsideration upon motion of Respondent and presentation of evidence demonstrating that these individuals were never classified by the Agency as disabled veterans.

No evidence was submitted on behalf of Charles Smith. He, also, will be included in the class and considered by the Respondent in completing the discovery matrix, subject to Respondent's right to seek reconsideration if it can demonstrate that he was not classified by the Agency as a disabled veteran.

The affidavit of Joseph Unger that he has a 10% disability from service

during World War II is accepted as sufficient to demonstrate that he is a disabled veteran. I find that he is a proper member of the class and that Respondent shall consider him in completing the discovery matrix.

F. Finally, Respondent objects to the inclusion of certain individuals on the basis that it cannot locate the official personnel files of such individuals to verify their status as disabled veterans. Of these, James L. Blair, William C. Kennedy, Dennis K. Lutz, Paul C. Schwartzel, William G. Stepp, Robert J. Trier, and Harry L. Tyner have produced sufficient evidence to warrant their inclusion in the class and in the data base for Respondent's completion of the discovery matrix.

No evidence was submitted by Petitioner with respect to the remaining four individuals for whom Respondent asserts that it cannot locate personnel files. It appears that, for all or part of the relevant time, Douglas Davis, Tatia E. Ruffin, Gary L. Sepulvado and David J. Toner were classified by Respondent as disabled veterans. Therefore, they will be deemed to be members of the class and they shall be considered by Respondent in completing the discovery matrix. Respondent may seek reconsideration with respect to these individuals if it can demonstrate that they were not classified by the Agency as disabled veterans.

In addition, two names appear on Petitioner's Amended Proposed Certified List of Class Members which Respondent has not mentioned. Phillip Kagan was on Petitioner's original list, submitted to Respondent on December 28, 1995, from which Respondent developed its own stipulated list of class members and objections to other names proposed by Petitioner. Respondent did not stipulate to Kagan, but also filed no objection to him. Therefore, due to lack of an objection from Respondent, Kagan will be considered a class member and his records should be considered in completing the discovery matrix.

Vernon Nieporte, on the other hand, did not appear on Petitioner's December 28 list submitted to Respondent, and therefore, was not addressed by Respondent. However, Petitioner has now submitted Nieporte's name with evidence supporting his inclusion in the class. Therefore, Nieporte is found to be a class member and his records should be considered in completing the discovery matrix.

Based on the foregoing, the following individuals shall comprise the class certified in this matter and their records shall be considered by Respondent in completing the discovery matrix:

Gerald C. Allen  
Raymond Allen

Eric F. Anderson  
Phillip Andres  
Robert V. Arcenia  
Henry Arzadon  
Michael J. Avenick  
Alberto Ayala  
Calvin D. Baldwin  
James Blair  
Anton G. Blieberger  
Johnny R. Bowen  
Gerhard C. Brostrom  
Roy G. Buchanan  
Eugene P. Buchert  
John Clary  
Paul R. Clift  
Bobby L. Cooper  
William J. Cornelius  
Roger Corrado  
Mary E. Cox  
Anthony M. Csicseri  
Arthur L. Davis  
Douglas E. Davis  
Nicholas DeMinico  
Raymond Denmark  
Lawrence Dixon  
Mirjo J. Dolak  
James B. Dowd, Jr.  
Mark S. Eckenrode  
Mark H. Egger  
Walter R. Eichner  
Mary S. Emmerling  
Preston E. Enfield  
Leon S. Gill  
Wayne S. Godwin  
Macario Gonzalez  
Thomas L. Gordon  
Michael L. Gorin  
Stephen A. Greene

Bobby Hall  
Frank S. Heard  
Ronald J. Heisterkamp  
Johnnie D. Holmes  
Steven M. Hunter  
C. Jay Jennings  
Paul E. Jordan  
Phillip Kagan  
Valdis Karklis  
William Kennedy  
Laurie C. King  
Daniel Kirwin  
John Lesser  
Thomas E. Livingston  
Anthony P. Lofaro  
Abraham Logan  
George L. Lorenzen  
Thomas A. Luttrell  
Dennis Lutz  
Richard L. Madson  
Andrew Marshall, Jr.  
Tyrone D. Mason  
James O. McClyde  
Melvin L. McConico, Jr.  
Donaledee R. McCuistion  
Joseph T. McDermott  
Arthur T. Merriam, Jr.  
James R. Moore  
Roderick T. Moore  
Vernon Nieporte  
Arthur L. Nisle  
Arthur M. Peterson  
Martin Pinkard  
Harold D. Perkins  
Norman C. Poage  
Harry L. Purdy  
Joseph M. Radosevich  
Bernard D. Rashes

Walter E. Reed, Jr.  
Paul W. Rhodes  
David Rivera  
Bonifacio Roldan-Galarza  
Tatia E. Ruffin  
Paul C. Schwartzel  
William M. Seay  
Gary L. Sepulvado  
Donimic J. Sergi  
Robert P. Shorrocks, III  
Charles S. Smith  
Gordon A. Socher  
Richard M. Stana  
Keith E. Steck  
William Stepp  
Waverly E. Sykes, Jr.  
Leo B. Sullivan  
Robert L. Thames  
David Toner  
Robert Trier  
Harry Tyner  
Gary W. Ulrich  
Joseph Unger  
Alan J. Wernz  
Clarence Whitt  
Gerald W. Wood  
Bobby Worrell  
William Yarwood

SO ORDERED.

DATED: March 22, 1995

  
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Nancy A. McBride  
Administrative Judge