

Harvey Weiner and Leigh Ellen Gray Prevail in Appeal of Veteran's Discharge Status Before the Court of Appeals of Veterans Claims in Washington, D.C.

Senior Counsel

Harvey Weiner

By Peabody & Arnold on November 13, 2018

In their pro bono representation of a Vietnam-era veteran who had been pursuing a change to his discharge status for over forty years, Harvey Weiner and Leigh Ellen Gray successfully appealed an unfavorable decision of the Board of Veterans Appeals which had found that the veteran's discharge status was a bar to his receipt of VA compensation benefits. See *Frazier v. O'Rourke*, No. 17-1549, 2018 WL 3202747, at *1 (Vet. App. Jun. 29, 2018). Weiner and Gray advanced several arguments in support of their client's case, including a novel argument that the VA should apply the more lenient standard used by other military agencies and review boards in considering discharge upgrade requests for veterans with mental health conditions who were victims of sexual assault. The Court of Appeals of Veterans Claims in Washington, D.C. reversed the Board of Veterans Appeal's decision and remanded the veteran's case back to the Board for further review and permitted the veteran to introduce additional evidence on an alternative ground advanced by Weiner and Gray, namely, that the Board erred in relying on a psychiatrist's opinion that was based on an inaccurate understanding of the meaning of the VA regulatory definition of insanity. Weiner and Gray are currently seeking an award of fees pursuant to the Equal Justice Act and, if awarded, expect the firm to make a substantial donation to two local veterans' service organizations.