Substantive Legal Rules (Establishing Issues to be Proved)

A veteran must prove that she has a disability that is “service-connected,” by proving three sub-issues of fact: (1) the veteran has a present disability (such as post-traumatic stress disorder (PTSD)), (2) while in active service, the veteran incurred an injury or disease, or the veteran suffered an aggravation of a pre-existing injury or disease, or there occurred an “in-service stressor” that is capable of causing PTSD; and (3) there is a causal relationship (or “nexus”) between the present disability and the in-service incurrence, aggravation, or stressor.

Evidence Types, Credibility Factors, and Soft Rules for Weighing Conflicting Evidence

Oversight of the Evidence Assessment Process in the U.S.

This paper reports on the results of an empirical study of how the Board of Veterans’ Appeals (BV A) to use such a pattern in its decisions. Examples in BV A decisions include:

1. Assigning more probative value to the contents of a medical record than to conflicting evidence about the same topic, especially if the issue is diagnosis or etiology;
2. Assigning more probative value to the contents of a contemporaneous document than to conflicting testimony made much later, especially if the testimony is discounted due to credibility factors;
3. Assigning the benefit of the doubt to the veteran when the conflicting evidence has equal probative value.

Conclusions (Toward Argument Typing)

1) Findings of fact tend to rest upon certain types of evidence, primarily lay testimony and documentary evidence.
2) Items of testimonial evidence are often evaluated individually for their credibility, using a number of credibility factors.
3) Items of documentary evidence are often evaluated individually for their trustworthiness, using a number of trustworthiness factors.
4) Comparatively weighing the conflicting evidence of the same type (for or against a possible finding of fact) can use the same factors as for individual items of evidence.

This study focused on sentences that play one of three reasoning roles in evidentiary assessment: a finding of fact (expressed by a “finding sentence”), which states whether a condition of a legal significance to a credibility factor present or not identified. The evidence (described in “evidence sentences”), and the reasoning from the evidence to the findings of fact (reported in “reasoning sentences”). The dataset contains 8,149 sentences, including in the PTSD portions of the decisions 310 finding sentences, 1,412 evidence sentences, and 442 reasoning sentences.

Sentence Types (Rhetorical Roles)

This study focused on finding sentences that play one of three reasoning roles in evidentiary assessment: a finding of fact (expressed by a “finding sentence”), which states whether a condition of a legal significance to a credibility factor present or not identified. The evidence (described in “evidence sentences”), and the reasoning from the evidence to the findings of fact (reported in “reasoning sentences”). The dataset contains 8,149 sentences, including in the PTSD portions of the decisions 310 finding sentences, 1,412 evidence sentences, and 442 reasoning sentences.