Is Alcoholism a Disease?

The Supreme Court is reviewing a case challenging the VA's concept of alcoholism as willful misconduct

THE concept of alcoholism as a disease has come before the Supreme Court in a case concerning a regulation by the Veterans Administration (VA), which labels primary alcoholism—as separate from the physical problems it causes—"willful misconduct."

The case combines suits brought by two veterans, both now recovering alcoholics, who sought extensions of their eligibility for educational benefits on the grounds they had been unable to use these benefits because they were disabled by alcoholism. The plaintiffs won their cases in federal district courts in 1985; both decisions were subsequently reversed on appeal.

The vets claim that the VA's actions violate Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicaps, including a history of alcoholism. The VA contends that the Veterans' Benefits Law precludes federal review of the agency's decision.

The plaintiffs, Eugene Traynor and James P. McKelvey, both have a family history of alcoholism and both started drinking in childhood. After multiple hospitalizations, they sobered up, but not in time to take advantage of education benefits within the 10-year time period allowed by the VA. They appealed to the Board of Veterans Appeals but the board denied them extensions, saying in one case, "we don't have discretion to say that primary alcoholism is a disease."

The VA, which understandably wants to avoid awarding disability benefits to people on the basis that they drink too much, has a somewhat bizarre definition of alcoholism. "Secondary alcoholism," which is defined as "secondary to and a manifestation of an acquired psychiatric disorder," qualifies as a disability. But "primary alcoholism," that is, alcoholism unaccompanied by physical or mental disorders, is "willful misconduct." Diseases and disability that result from excessive drinking are, however, treated as legitimate disabilities. In other words, the behavioral concomitants of alcoholism—compulsive drinking and alcohol-induced behavior—are not regarded as components of the disease, but the physical sequelae are. Although Traynor was hospitalized 5 times and McKelvey 33 times for alcoholism, this did not rate them extensions of their benefits because none of the hospitalizations exceeded 30 days.

The two appeals court rulings reversed the lower court decisions for different reasons. The Washington, D.C., appeals court contended Traynor's case fell in the category of VA actions that are immune from judicial review. In McKelvey's case the court said the VA decision was reasonable in view of society's ambivalence about alcoholism. It said it is "within the bounds of reasonable interpretation for the agency to reflect" prevailing social attitudes. It observed that the decision was based on the "conduct" of the individual, and not on a "handicap" labeled "primary alcoholism." It added, "Since alcoholism is self-inflicted, it is feasible to make a generalized determination that willfulness exists."

The extent to which alcoholism results from "willful" behavior is basically unresolvable.

Arguments on the Supreme Court case were presented on 7 December. The plaintiffs, represented by Keith A. Teel of the Washington law firm of Covington and Burling, base their case on the fact that federal legislation covering research and treatment, as well as the Rehabilitation Act, generally recognizes alcoholism as a disease. Teel said VA rules should not be immune from judicial review if they violate other federal laws. Teel also argued that the regulations date from the Prohibition era (the "willful misconduct" concept has been in VA regulations since 1933) and have never been reconsidered "in the light of current medical knowledge."

The government stance, presented by Justice Department lawyer Jerrold J. Ganzfried, is that the law did not intend that any decision by the VA administrator should be subjected to judicial review. He further explained that, according to the VA, "consuming too much alcohol is conduct, not a physical effect." He pointed out that the VA spends $100 million a year on alcoholism treatment and rehabilitation but that it cannot pay disability benefits to people just because they are compulsive drinkers. In fact, he said, a case is pending in Philadelphia in which a veteran is trying to collect disability on the grounds that his alcoholism prevents him from working.

Ganzfried waded into a rather murky explication of alcoholism in response to repeated questions from Justice Thurgood Marshall, who wanted to know if it is a disease. Ganzfried replied that it "can be," but "not always," and that it could also "be an inclination short of a compulsion" or "a compulsion short of an illness." He also said: "Illness is not necessarily a disability." But, he added, the question of whether primary alcoholism is an illness is "basically an irrelevant question in this context."

The extent to which alcoholism results from "willful" behavior is basically unresolvable. The government contends there are "significant elements of volition," while the National Council on Alcoholism, in its amicus curiae brief, asserts: "Whether any particular individual who drinks will become an alcoholic is largely the result of forces beyond his or her control." Neither contention can be proved since it is impossible to know how many individuals with a weakness for drink choose to quit before their drinking gets out of control.

The Supreme Court may avoid substantive questions about alcoholism by ruling on the narrower issue of whether the courts have authority to rule on VA decisions in this instance. But according to Richard Bonnie of the University of Virginia Law School, an expert on alcoholism and the law, the court is likely, whatever its decision, to "reject the VA's rhetoric" on alcoholism because it is incompatible not only with the Rehabilitation Act but with many other recent federal statutes.

Alcoholism has also played a prominent role in an unrelated case, involving former White House aide Michael Deaver. Deaver, whose trial began in mid-October, has been accused of five counts of lying to a grand jury and a congressional committee about the lobbying activities of a firm he set up after he left the White House in 1984.

His lawyers were planning to call some of the nation's top alcoholism experts to testify that he was not lying when he said he could not remember making contacts with several Administration officials because his heavy drinking obscured his memory. However, Deaver's lawyers decided to rest their case without offering a defense, which means that the legal argument remains untested. ■ CONSTANCE HOLDEN