

Assignment 3 - Statutory Research

The following questions are open-ended; you need to use what we have discussed about locating and working with statutes to complete this assignment. I don't expect detailed and exhaustively written answers but please make an honest effort to answer the questions. As usual, retain a copy of your answers to facilitate classroom discussion this Friday.

1. Do not consult secondary sources for this question; locate the information using the tools related to the U.S.C. You represent a veteran who was honorably discharged from the military. She has come to you for assistance. She suffered a heart attack and was attended to by a non-governmental hospital during the emergency. At the time of the heart attack, she was registered with and was scheduled to see a doctor at a VA facility but had not yet received any care from the VA. She has a basic health insurance plan which will cover some, but not all, of the costs of her emergency treatment. She has been told, unofficially, that the VA will not reimburse for the amount not paid by her private insurance. Is this accurate?

A. Which code section applies to your client?

38 U.S.C. § 1725.

B. When was this code section last updated?

February 1, 2010

C. Please explain how you located the relevant section; be specific. If you tried more than one approach, please list all steps you took.

The index approach has an entry under the main heading "Veterans", and the subheading "Emergency Medical services".

You could also use the TOC approach, since Veterans affairs are covered in Title 38 of the United States Code. The TOC looks like this:

Title 38 - Veterans' Benefits

Part II. General Benefits

Chapter 17. Hospital, Nursing Home, Domiciliary, and Medical Care

Subchapter III. Miscellaneous Provisions Relating to Hospital and Nursing Home Care and Medical Treatment of Veterans.

§ 1725. Reimbursement for emergency treatment

**A search like the following retrieves the results on Westlaw:
pr,ca(veteran & emergency)**

A similar search on Lexis would be equally efficient. In the real world, you most likely want to run this search or something similar without the field/segment restriction and then focus/locate using the fields.

The 2010 amendment to the code is directly on point. However, the ultimate answer is that the veteran is probably not eligible because she does not meet the eligibility requirements of § 1725(b). See Fritz v. Nicholson, 20 Vet.App. 507, a citing case listed in KeyCite/Shepards, which held that just making an appointment did not qualify as an active health-care participant under the 24 month rule found in §1725(b)(2)(B).

2. You are practicing in Iowa and a client has asked for your representation in his case. Your client is forty-one years of age and was recently laid-off from his job. The official reason given for the termination was lack of production on the job. The job was with a small company that employs only five persons. The client believes he was fired because he didn't fit in with the rest of the employees because they thought he acted feminine.

Which statutes might apply in a possible discrimination action? You may use any source to assist in locating relevant material.

The first, and most obvious, issue in this example is called “gender identity” discrimination. For federal law, the issue is whether Title VII of the Civil Rights Act of 1964 applies to gender identity; it does cover sex discrimination. Current law in the 8th Circuit, which includes Iowa, holds that Title VII does not include gender identity as sex discrimination (see Sommers v. Budget Mktg, Inc., 667 F.2d 748). However, a recent 8th Cir. decision appears to disagree with Sommers (Lewis v. Heartland Inns of America, 591 F.3d 1033 (8th Cir. 2010). This case relies on the U.S. Supreme Court case of Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) but never references Sommers. Anyway, it is not clear whether the 8th Circuit would find Title VII applicable to this case.

Iowa has a statute that would apply. It is found at Iowa Code § 216.6 and explicitly covers discrimination based on “gender identity.”

Another possible issue is age discrimination; the Age Discrimination in Employment Act of 1967 (ADEA) applies to individuals over 40 years of age.

3. You are practicing law in California and are bringing this action in a federal district court in California. Your client is being charged under the Computer Fraud and Abuse Act. The claim is that he accessed a workplace computer at his employer's shop, which was the computer he used on a regular basis, and destroyed documents. He did this after becoming mad at the employer for disciplining him for being late to work. He was still an employee at the time the acts were committed. The question is whether he accessed the computer "without authorization."

Please identify where the relevant statutory language appears in the U.S.C. and make your best argument based upon the law.

The Computer Fraud and Abuse Act is found at 18 U.S.C. § 1030. The popular names table would be the best to use. The question here involves the definition of "without authorization." Does the phrase include a situation where an employee does something that is not authorized on a computer which he was authorized to use. A 7th Circuit decision (Int'l Airport Ctrs. V. Citrin, 440 F.3d 418 (7th Cir. 2006)) held that an employee, by doing something unauthorized on his work computer, fit the definition of "without authorization." The 9th Circuit disagreed in LVRC Holdings LLC v. Brekka. The 9th Cir. held that an employee does not lose authorization by using a computer to perform some act that is opposed to the company.

There is a circuit split but, in this case, the 9th Circuit decision will be binding as mandatory authority.