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Vets appeal dismissal of suit over lost VA data

Disappearance exacerbated illness, plaintiffs contend

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Plaintiffs in a 2007 lawsuit against the Department of Veterans Affairs over missing computer data on hundreds of veterans are appealing a federal judge's decision to dismiss the case.

The case involved the disappearance of an external computer hard drive from a VA office on Birmingham's Southside. It contained personal, financial and medical data on up to 1.8 million people, including more than 250,000 veterans.

The plaintiffs, Jim Henry Perkins and Jesse Frank Qualls, both Vietnam veterans, received medical services for post traumatic stress syndrome at VA hospitals in Alabama and maintained in the February 2007 lawsuit that their symptoms were aggravated by the breach.

Court records Monday show lawyers for the men appealed to the U.S. 11th Circuit Court of Appeals the ruling by U.S. District Judge Inge Johnson to dismiss the case.

Lawyer P. Stephen Gidiere III on Wednesday said Perkins and Qualls hope the appeals court will reinstate the case.

"It is our position that Judge Johnson's decision incorrectly relied on language in an outdated court of appeals' decision from 1982 that does not reflect the current state of the law under the federal Privacy Act," Gidiere said in a statement. "We intend to ask the court of appeals to clarify the matter and allow our case to proceed."

The hard drive has not been recovered and was cited as the second major data breach of VA information in 2007. The FBI is investigating.

The information on the hard drive included names, addresses, phone numbers, Social Security numbers, medical diagnoses and prescriptions. The VA sent out letters in February 2007 to veterans whose personal information may have been stored on the missing hard drive. In the letter, veterans were advised to contact a credit monitoring service to look for identity theft or financial fraud.

The men, who sought class-action status, are seeking monetary damages, citing violations of the Privacy Act. In dismissing the suit and granting summary judgment, Johnson ruled the plaintiffs did not show they had suffered any monetary losses as a result of the missing external hard drive.

"Here the plaintiffs have only alleged and proven that they have suffered mental injuries such as aggravation of their PTSD symptoms and anxiety over their financial security," Johnson wrote.

Johnson also wrote there was no evidence to support allegations that the VA made a conscious decision to violate the law or that the VA was aware that the violations were occurring and did nothing to correct them.

"In fact, after the external hard drive was reported missing, the VA investigated the disappearance and is now in the process of implementing new procedures to prevent a similar disclosure in the future," Johnson wrote.

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