

Winston Wins Landmark Victory for Service Members Living with HIV

APRIL 15, 2022

Following a federal district court ruling, the Department of Defense (DOD) must now allow asymptomatic HIV-positive service members with undetectable viral loads to deploy and commission as officers in the U.S. military—ending decades of discriminatory treatment not backed by science. This groundbreaking ruling represents a significant win in the fight to protect the rights of people living with HIV and reflects that HIV is a chronic, treatable condition, not a reason to discriminate.

“We are grateful for the opportunity to help overturn the military’s outdated and unconstitutional policies concerning people living with HIV,” said John Harding, Washington, D.C. associate. “Our pro bono efforts, in both the district court and the Fourth Circuit, have brought about a meaningful, and long overdue, change for service members living with HIV.”

The federal district court’s permanent injunction stems from two lawsuits filed in 2018 by Winston, Lambda Legal, and the Modern Military Association of America. The first lawsuit was filed on behalf of Sgt. Nick Harrison, a lawyer and veteran of two overseas combat tours, who was denied a position in the Judge Advocate General (JAG) Corps because Pentagon policy considers service members living with HIV non-deployable. The second lawsuit was filed on behalf of two active-duty airmen who were notified by the Air Force that they would be discharged because they could not deploy under current DOD policies due to their HIV-positive status.

The decision follows a January 2020 ruling by the U.S. Court of Appeals for the Fourth Circuit, which upheld a preliminary injunction preventing the discharge of the two airmen and stated that “any understanding of HIV that could justify this [deployment] ban is outmoded and at odds with current science.”

The federal district court opinion, which is currently sealed, follows the reasoning of an amicus brief filed in the Fourth Circuit by high-ranking former military leaders—including the secretaries of the Army, Navy, and Air Force—that stated, “The United States’ all-volunteer military depends on allowing every citizen who is fit to serve to do so. In our professional military judgment, any policy that discharges willing, and able service members based on chronic, but well-managed, medical conditions should be based on the most up-to-date science and be justified by credible—not theoretical—risks. ... It is our professional military judgment that there is no legitimate reason to deny HIV positive service members the opportunity to deploy.”

Numerous Winston attorneys and alumni contributed hundreds of hours toward achieving this significant win. Current Winston attorneys who worked on this matter include Chicago Partner Bryce Cooper, Associate John Drosick, and Paralegal Gregory Skogg; and Washington, D.C. Associates John Harding and Lauren Gailey.

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