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Spotlight

Counsel achieves recognition for lawyer who died on September 11 as volunteer firefighter

Winuk v. U.S., Fed. Cl., No. 06-770C, Jan. 10, 2008.

On the morning of September 11, 2001, Glenn Winuk did what volunteer firefighters are trained to do—he rushed into a dangerous situation to save lives. Despite that heroism, which cost him his own life, the federal government did not want to recognize his rescue efforts or give his family the death benefits they were entitled to, forcing them to pursue legal action. After years of struggle, the family's efforts, and those of their very determined attorney, finally earned Glenn the recognition he deserved.

Glenn Winuk, 40, was an attorney working in a building near the World Trade Center. After the planes struck the towers, Glenn—a volunteer firefighter and emergency medical technician (EMT) for 19 years—helped evacuate people from his building. He then ran to the south tower of the World Trade Center to see whether he could help treat the people who were injured. When he arrived, emergency personnel were only letting rescue workers into the building, so Glenn must have identified himself as a rescue worker using his fire department identification. The building collapsed while Glenn was still helping people inside.

It was not until the spring that Glenn's body was found. He had a stethoscope around his neck, surgical gloves on his hands, and a medical bag nearby. As was the custom when rescue workers' bodies were located, Glenn's body was draped in the American flag, and all work ceased until he had been carried out.

A few years before, Glenn had changed his status with the Jericho Fire Department, his hometown fire department on Long Island, from "active" firefighter to "associate" firefighter. This reduced the hours of training he had to attend but also prohibited him from fighting structural fires. Glenn retained his "first responder" medical status, however, so that he could still perform basic first aid, CPR, and medical evacuations. The change in Glenn's status, though seemingly minor at the time, would prove to be a big obstacle for his family after his death.

Glenn's grief-stricken parents and two brothers filed a claim with the Bureau of Justice Assistance (BJA), a branch of the U.S. Department of Justice, requesting that he be recognized as a rescue worker killed in the line of duty, qualifying him for \$250,000 in death benefits under the Public Safety Officers' Death Benefits Act of 1976 (PSOBA), 42 U.S.C. §§ 3796-3796c. That law allows for payment of benefits to the survivors of public safety officers killed in the line of duty. "Public safety officer" includes people who served a public agency in an official capacity as a firefighter or member of a rescue squad.

To support the application, the chief of the Jericho Fire Department submitted letters stating that Glenn should be recognized as a public safety officer killed in the line of duty and that he was a member of the fire department and acting on its behalf. Later, the department chairman sent a letter directly to the BJA, saying Glenn should be considered a public safety officer. The BJA, however, determined in 2004 that Glenn was not a public safety officer covered under the act and rejected the family's claim.

That same year, Glenn's brother Jay met AAJ member Andrew J. Maloney, of New York. When Maloney mentioned that in addition to being an attorney, he was also a volunteer firefighter, Jay talked about his family's quest for recognition of Glenn's service. "I heard this story, and I said, 'That's outrageous. I have to take this case,'" says Maloney, who offered to represent the Winuks pro bono.

Maloney appealed the BJA determination, and the BJA appointed an independent administrative officer to conduct a hearing. Members of the public and political officials began to hear about Glenn's case and engaged in a bipartisan effort to support rescue worker recognition on his behalf. Before the hearing, New York Governor George Pataki signed a law stating that Glenn "shall be deemed" to have been an active member of the fire department on the date of his death.

At the hearing, Maloney argued that Glenn did not enter the building to fight a fire, but rather to offer medical assistance, which he was trained and certified to do. The commissioner of the Fire Department of New York City (FDNY) at the time of the attacks, Thomas Von Essen, testified at the hearing that emergency workers were letting people in only if they had proof that they were rescue workers. Glenn must have offered his identification, which was found in his wallet with his remains. Firefighting status did not matter because they were there to treat people and help evacuate them, not to fight the fires on the top floors. "The Department of Justice argued it didn't have proof that Glenn had been authorized by the FDNY to provide first aid, but that's because all of those FDNY officers who accepted his help died when the building collapsed," says Maloney.

Maloney also offered proof that Glenn had previously helped at other disaster sites, such as the 1993 World Trade Center attack. "Whenever there was some kind of calamity out of his district, he did not hesitate to offer his assistance to an appropriate fire officer in compliance with New York's mutual aid law." Glenn thus knew that he would have to present his fire department credentials and that his EMT training would be essential.

The administrative hearing officer concluded that Glenn was acting as a public safety officer when he went into the building because his associate status did not prevent him from providing emergency medical services on behalf of the Jericho Fire Department.

BJA refused to accept the hearing officer's finding, calling it a recommendation, and conducted its own review. "For one additional year, they continued to review the claim," says Maloney. "I kept calling and writing letters because we thought the case was over." In September 2006, almost five years after Glenn died, the BJA determined that he was not a public safety officer. It dismissed the letters submitted on his behalf because the letters said he "should be considered" an officer instead of certifying that he was an officer.

Maloney and the Winuks had exhausted every administrative remedy and were forced to file suit against the United States in the U.S. Court of Federal Claims. One of the allegations Maloney had to prove to win was that the BJA acted arbitrarily and capriciously. He did this by introducing evidence that the BJA granted benefits to three men who were retired from the FDNY at the time of their deaths on September 11. The agency also granted benefits to 14 Port Authority building supervisors. "We had all the legal arguments, but they were splitting hairs. They gave benefits to people who don't fall under the statute but did not do so for Glenn," says Maloney.

The court agreed with Maloney that Glenn's family was entitled to benefits. Finding that the PSOPA places the responsibility for certification in local hands, the court said the BJA's inquiry should have concluded with the letters from the Jericho Fire Department, which considered Glenn "as one of its own" and certified that he was operating on its behalf, and with the New York law designating him an active firefighter.

Despite the court's holding, the BJA did not relent. "We were feeling sky high, thinking we were done," says Maloney. "The government waited until the last day to file a notice of appeal. It was insane." Before a government appeal can actually be filed, the U.S. Solicitor General's office has to approve it. Maloney found people in the Solicitor General's office who would listen to him. "I told them it was a black eye for the Justice Department, and it looks unpatriotic," he says. "Eventually, cooler heads prevailed." The government dismissed its appeal in January.

The Winuks have not yet received the benefits, and Maloney says that will come soon but it is not what is important to them. "They don't really care about the money. It's about the recognition. He ran from a position of safety to help evacuate people who were injured and trapped and paid for it with his life."

The next step, Maloney says, is for President Bush to recognize Glenn's efforts by honoring him

with the same Medal of Valor given to September 11 rescue workers. But his sacrifice has already been honored in a significant way. Across the street from the World Trade Center site, on the wall of a fire station, is a 56-foot-long bronze wall sculpture created with funds raised by Glenn's law office. The sculpture, which was revealed in a ceremony attended by hundreds of family members, firefighters, and dignitaries, depicts scenes of firefighters' actions after the attack and lists all of the firefighters who lost their lives that day. A separate plaque on the memorial says that the wall is dedicated to "our fallen friend and partner, volunteer firefighter Glenn J. Winuk."

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