

STATEMENT OF
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FOR THE RECORD

TO THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

WITH RESPECT TO

REVIEW OF VETERANS' DISABILITY COMPENSATION

WASHINGTON, D.C.

JULY 29, 2009

MR. CHAIRMAN, RANKING MEMBER BURR AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony before this committee on VA disability compensation. The 1.8 million men and women of the Veterans of Foreign Wars of the U.S. appreciate the voice you give them at these important hearings.

As we all know, over the past two years the VA has funded the hiring of hundreds of new rating specialists in order to reduce the growing backlog of veterans' disability compensation claims. We also know that it takes at least two years for a rating specialist to be trained, and at least another year getting comfortable with the VA claims system to get to the point to where the rating specialist becomes somewhat proficient in assessing veterans claims. We note this because we believe it is important to understand that simply increasing the number of VA rating specialists will not significantly reduce the claims backlog in a fashion considered timely by this committee, Veterans Service Organizations, and most importantly the very veterans this system was developed to serve. This is merely a starting point in order to advance our discussion to a self-evident truth:

There is no quick fix to VBA...only the opportunity for steady and deliberate improvement.

There has been a silent paradigm shift over the past 30 years. If for no other reason than judicial review, the Veterans Claims Assistance Act (VCAA) and the budgetary environment that exists today, it may be time to acknowledge that the VA cannot be staffed at such levels as will allow it to produce quality decisions in the same period those earlier generations of VA workers achieved.

The converse of this may be to acknowledge that the better production and timeliness levels achieved in the 1950s and '60s may very well have been accomplished because there was *less* attention paid to procedural rights and that the VA may have exhibited a rather *cavalier* attitude when it came to interpreting the law and its own regulations.

Whether you agree with either view of history, you have to admit the world in which the VA operates has changed and it may no longer be realistic to expect accurate benefit decisions in a short period of

time. There are still things that can be done to improve production, reduce backlogs (although perhaps not at the rate we all would like to see) and ensure claims are completed with quality.

Provisional Claims Processing System

Within two years of the conclusion of World War II, more than 16 million service men and women were released from active duty. Millions filed claims with VA for compensation. Why wasn't the VA overwhelmed? There are numerous answers to the question, including:

- Veterans claimed fewer disabilities than at present.
- There were no due process requirements in the law and VA procedures required little more than acknowledgement of a claim and notice of the final decision.
- VA was not obligated to help veterans obtain private records
- VA could and did make decisions after receipt of service medical records but before all records were received. When additional records were received, VA reviewed those records in context with other evidence of record and made a new decision.
- VA frequently evaluated disabilities based on service discharge examinations.

All of these facts allowed the VA to make claim decisions quickly. Reexaminations were frequent and allowed VA to increase or reduce evaluations as disabilities worsened or improved.

Today, claims development takes longer. Quite simply, Congress recognized that past procedures and practices by VA were not always veteran friendly, did not adequately tell veterans what was needed and often led to decisions based on less than all the available evidence. Decisions are longer because Congress decided that veterans should be told what evidence was considered and why benefits were denied or granted. Appeals take longer to resolve because of increased evidentiary and notice requirements, the introduction of an additional review level with Decision Review Officers and the need to satisfy all judicial mandates.

The fact is there is nothing inherently wrong with any of these changes. Those decisions are needed to fix recognized problems and abuses.

However, the question still remains; how do you devise a system that allows VA to make decisions rapidly without increasing mistakes, is not costly either to the veteran or the American people, and continues to provide veterans with the protections that have been built into the law over the past 60 years?

Jerry Manar, VFW's Deputy Director for National Veterans Service, along with four other retired VA alumni, has developed a process that incorporates the best practices of a post WWII claims system to make expedited provisional decisions based on existing records. This proposal, which calls for the creation of a test program entitled the Provisional Claims Processing Program, would grant benefits on limited information quickly but with quality.

The Program would be limited to service members leaving the Armed Forces or recently discharged veterans. An initial evaluation would be conducted based on existing evidence, and the veteran would have the opportunity to accept the provisional rating. If the veteran declines the provisional rating, the claim would be processed through the normal claims process.

If the veteran accepts the provisional rating, full development, a VA examination and a new decision would be required four years after the initial provisional rating. Provisional decisions made under this program would have no precedent value and service connection for all disabilities, including any new condition the veteran chooses to place into contention, would be made during the review at the four-year point.

This program would restore the rapid delivery of benefits based on current rating standards, while still maintaining veterans' rights under a system of protections carefully crafted by Congress over the past 60 years. It should dramatically increase decisions on original claims while allowing the bulk of VA's field staff to concentrate on resolving the existing backlog.

More importantly, this program would provide a win for new veterans. In exchange for agreeing to wait for a final decision, they receive a provisional decision and benefits in a matter of weeks instead of more than six months. If properly structured the VA could fulfill the promise it made with the BDD program that a decision could be made prior to discharge.

Further, veterans have the right to choose which program they participate in AFTER they know what the provisional decision awards. If they disagree with the provisional decision, they need not accept it. And, since they know that the current program may take six months or more to produce a decision, their conscious choice to accept the wait should reduce the number of complaints and consequent pressure on Congress.

This proposal offers a viable short-term solution to the growing backlog of claims and we would hope the Congress would consider this proposal or some similar program as a means of assisting the VBA in improving the claims processing system.

Getting it right the first time

We also believe some of the greatest benefits can be found by fixing the front end of the claims operation. Most court decisions today focus on procedural problems stemming from notice to claimants and development, or failures to properly develop evidence. The VCAA was created because VA would sometimes take shortcuts in the claims development period, failing to give claimants adequate notice of what they needed to produce to prove their claims. However, as we have seen since its passage, it is quite possible to become bogged down in the notice requirements while attempting to dot every "i" and cross every "t".

We support the VCAA because we believe it helps level the playing field for veterans. The VA has the knowledge of what is required in order to grant or increase benefits to veterans. They are required to pass that knowledge on so that claimants know, too, and can focus their energies in obtaining the necessary evidence to perfect their claim.

This is not rocket science. If a veteran claims service connection for the residuals of a knee injury, the VA can tell her that she needs to show that she has a disability of the knee now, that she injured the knee in service or something that happened in service caused a knee problem and to provide VA with medical evidence that shows the current problem to be related to the event in service. These are the same three things that have always been required to prove service connection.

The requirements for obtaining an increase in benefits are equally finite: a claimant must show that their service-connected disability has worsened sufficiently to obtain a higher evaluation. In order to obtain an increase for that knee problem, the veteran must show the existence of arthritis in the joint which limits motion or causes pain, or demonstrates instability in the joint.

Again, this is not rocket science. Software could be developed that allows a VSR in a Pre-Determination team to simply answer a question on a computer screen concerning whether the claim is for service-connection or an increase and what the claimed condition is. Now, as you suspect, the computer can generate paragraph after paragraph explaining what is required and if the veteran is claiming 12 conditions then the letter can become quite long. Yet, if the object is to ensure that claimants have the information necessary to perfect their claims then it can be done with properly programmed computers. Further, software programs could be made available to claimants in a simple, easily accessed, public web site. Any curious veteran could enter the web site, answer a series of simple questions and receive detailed information on what is needed to obtain the benefit.

Utilizing technology as a tool to create efficiencies

We have testified before this committee in the past, and continue to believe, that if VA takes advantage of the rapid advances in technology they will be able to create efficiencies that currently do not exist. For instance, the VA currently has thousands of all electronic claims files. These cases are largely Benefits Delivery at Discharge (BDD) cases and the electronic claims files offer VA a unique opportunity to create a separate office to handle all electronic claims, allowing the VA to experiment and create an environment unencumbered by paper files. Imagine the possibility of having two or three Rating VSR's located in separate sections of a building reviewing one claims file and making decisions on different elements of the claim simultaneously. The efficiencies that such a system creates could be significant.

We understand that VA has established a claims processing laboratory in Providence, RI to explore and develop these efficiencies. We welcome this effort and look forward to viewing the results of this work in the years to come.

What about the millions of existing paper claim files? VA rightfully believes that copying these files would be cost prohibitive. We agree. However, VA receives thousands of requests each year for copies of claims files. Currently, each file is photocopied and sent to the claimant. What if each office was equipped with a scanner so that instead of photocopying the file, it is scanned. The claimant would still receive a paper copy of the file and at the same time, the VA would have yet another electronic record.

Mr. Chairman, these suggestions and ideas, in and of themselves, will not solve the backlog, timeliness and quality issues plaguing the VA today. However, if adoption of these and similar proposals each result in *steady and deliberate improvement*, we believe the cumulative effect will be sufficient to achieve reductions in workload and improvements in quality and service to veterans, their families and survivors.

Thank you for allowing the VFW to provide written testimony on this issue.

