

STATEMENT OF

ROBERT JACKSON, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

ADDRESSING THE VA CLAIMS BACKLOG

WASHINGTON, D.C.

JUNE 18, 2009

MR. CHAIRMAN, RANKING MEMBER LAMBORN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to provide testimony before this committee on the VA claims processing system. The 1.6 million men and women of the Veterans of Foreign Wars of the U.S. appreciate the voice you give them at these important hearings.

Mr. Chairman, I have worked for the VFW approximately 18 months. When I began working in my current position, a VFW colleague welcomed me, handed me a copy of the VA's rating schedule, and explained that I would need to become acquainted with the material in order to understand how the VBA goes about conducting its business. I am sure you are all familiar with this thick manual and no doubt understand the instant panic that set in as I began thumbing through the pages.

"How on earth can anyone make sense out of this?"

I imagine that a newly hired VA rating specialist probably feels pretty much the same way on their first day, understanding that he or she will have to spend a good two years of training and referring to this manual (and other VA regulations), 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. I note this because I believe it is important to understand that simply increasing the number of VA rating specialists (as the VA has done over the past couple years) will not significantly reduce the claims backlog in a fashion considered timely by this committee, the VSO representatives at this table, and most importantly the very veterans this system was developed to serve. I use this example as a starting point in order to advance our discussion to what I believe is a self-evident truth:

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

There is No Magic Bullet

Perhaps it is time we recognize that the world has changed. 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, the initial point remains; 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.

Getting it right the first time

We believe 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, these software programs can 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.

Technology, technology, technology

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 is establishing 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.

A quick fix for veterans

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 that there is nothing inherently wrong with any of these changes. Those decisions were all needed to fix recognized problems and abuses.

Having said that, 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, who is the VFW's Deputy Director of National Veterans Service, along with VFW staff and 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.

Limited to servicemembers leaving the Armed Forces or recently discharged veterans, evaluations would be based on existing evidence, understanding that benefits for some conditions may be denied when further development would enable VA to grant service connection under existing law. Conversely, it is understood that benefits, based on existing evidence, may not be service connected when all evidence is eventually developed and considered. Consequently, a grant of benefits for any disability is not a grant of service connection entitling the veteran to protections afforded by existing law and regulation.

Under this program, 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 VFW'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.

We will be more than happy to provide you with copies of this proposal.

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.

This concludes my statement. I would be happy to respond to any questions you may have.