

STATEMENT OF  
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BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES SENATE

WITH RESPECT TO

REVIEW OF VETERANS' DISABILITY COMPENSATION: REPORT OF THE VETERANS'  
DISABILITY BENEFITS COMMISSION

WASHINGTON, D.C.

JANUARY 24, 2008

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for this opportunity to provide the views of the members of the Independent Budget—AM VETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars of the United States—on the findings and recommendations of the Veterans' Disability Benefits Commission (VDBC) concerning the current disability compensation system.

The Veterans' Disability Benefits Commission (VDBC) was created by Public Law 108-136, the *National Defense Authorization Act of 2004*. It began meeting in May 2005 and concluded its work in October 2007. In the first two years it met nearly every month for two days and in its final 6 months usually met twice a month for 3 days. It took testimony from hundreds of people and scores of organizations. It conducted site visits at VA and military facilities around the nation and met with hundreds of veterans in public forums. Except for administrative matters, all of its work was done out in the open where the harsh light of public scrutiny could, and did, illuminate its deliberations and conclusions.

Many of us who serve our nation's veterans were initially skeptical of the Commission's mission. During the first several hearings it became evident that many veterans viewed the Commission as a tool of those who were intent on dialing back and dismantling elements of the disability compensation program. Sometimes harsh and critical words were spoken in those early hearings. Chairman Scott reacted as a former General would, often giving as good as he got.

In time, however, critics grew silent as the Commissioners began to demonstrate by their actions that they did not have secret marching orders; they took their mission seriously, they were interested in all views and, most importantly, were not afraid to modify their positions when the evidence was compelling.

As we stated in our testimony before this Committee on October 17, 2007, we do not agree with all the recommendations of the VDBC. However, as we said, “the Veterans Disability Benefits Commission has exhaustively examined the current compensation program, affirmed its strengths and pushed forward many thoughtful and constructive recommendations for evolving it into a mechanism to better serve America’s new generations of veterans. Their approach is to retain the best parts of the disability compensation program and create a process for measured and deliberate reform and improvement.”

While the Commission’s final report offers over 130 recommendations covering areas as diverse as the transition from service to civilian life, medical care, concurrent receipt, disability compensation, and survivor’s benefits, we will focus our testimony on its recommendations dealing with the disability compensation program. Specifically, today we will discuss the Schedule for Rating Disabilities, quality of life, and individual unemployability.

### **Schedule for Rating Disabilities**

Service-connected disabilities are evaluated using criteria contained in Part 4 of title 38 Code of Federal Regulations. The current rating schedule is the fourth iteration of a rating scheme first devised in 1925. The Commission discusses the various rating schedules in great detail in its report and it will not be repeated here.

Many critics of the current rating schedule allege that it has not been substantively revised since its last major overhaul in 1945. While the Commission found that the rating schedule has been revised, often substantively, since 1945, sections of it have been rarely touched and many parts contain medical terminology and evaluative criteria which are significantly out of date.

VA is charged with administering a compensation program that pays veterans in excess of \$30 billion per year for disabilities arising as a result of or coincident with military service. Yet the VBA Compensation and Pension Service has fewer than 140 people including support staff assigned to run this program. When the 26 employees assigned to conduct quality reviews of various types are subtracted, along with the 28 people figuring out how to make computer software work more efficiently, the remaining 86 are spread too thin to do most jobs adequately. For many years in the late 1990’s only one person was assigned to review, revise and update the rating schedule. It is little wonder that many sections of the rating schedule are not up to date.

To address this problem, the Commission adopted a number of recommendations advanced by an Institute of Medicine Committee (IOM) that the Commission had contracted

with to study the disability evaluation of veterans. In its report, "A 21<sup>st</sup> Century System for Evaluating Veterans for Disability Benefits", the IOM suggested that VA should create a permanent disability advisory committee, "staffed with experts in medical care, disability evaluation, functional and vocational assessment and rehabilitation, and include representatives of the health policy, disability law, and veteran communities." The Advisory Committee would meet regularly and offer direction and oversight to the regular review and updating of the rating schedule. In addition to this Committee, the IOM recommended that VA substantially increase the number of staff members permanently assigned to accomplishing the changes directed by the Advisory Committee.

We support these recommendations and believe that its first task should be to recommend a change in the criteria for evaluating Post Traumatic Stress Disorder (PTSD). Concurrently, it could begin the process of reviewing and suggesting changes to those sections of the rating schedule that have not been updated in the last 10 years.

Some critics of the current disability compensation program have suggested that the rating schedule can be thoroughly and completely reviewed and updated in as little as 6 months. As I testified on October 17, anyone can revise the rating schedule in a few weeks or months. However, the result will simply be a different rating schedule. It is our considered belief, based on our long and detailed experience with evaluating veterans disabilities, that it will take years of hard work by a competent staff of medical, vocational and legal experts to devise new rating criteria for all the body systems which allows for the accurate assessment of service-connected disabilities.

Revision of the rating schedule cannot be a one-time project. A permanent process must be devised and put in place to ensure that you and your successors, and I and mine, never again have to discuss why the primary tool for assessing veterans disabilities is inadequate and antiquated.

### **Quality of Life**

In reviewing the disability compensation program, the VDBC did more than just look at the rating schedule. It commissioned original research into whether current levels of compensation adequately replace, on average, lost earnings of veterans with service connected disabilities when compared to non-disabled veterans. Much to the surprise of nearly everyone, the Center for Naval Analysis (CNA) determined that current levels of compensation are fairly accurate for most groups of veterans. There were, however, three groups for which compensation fell significantly short of replacing average lost earnings: veterans with psychiatric disabilities were under compensated regardless of the evaluation assigned, those veterans evaluated 100 percent disabled at a young age and among those granted individual unemployability.

So the CNA determined that current levels of compensation replaced average lost earnings for most veterans. However, losing a hand or foot, acquiring an arthritic knee, or suffering a traumatic brain injury is not the same as suffering an economic loss that some court can remedy by awarding the plaintiff a judgment. When someone suffers a permanent

disability while serving their country the injury suffered is more than loss of earnings capacity. No matter how well a prosthetic leg allows someone to walk or how durable an artificial knee is or how much progress therapy and drugs allows a TBI veteran to function, the fact is that these men and women suffer much more than an economic loss. They are deprived of the opportunity to live their lives at the same high level and do the same things they could have done had they not been injured.

That is why we support the Commission's recommendation to revise the rating schedule to take into account the impact that service-connected disabilities have on a veterans quality of life. We recognize that Special Monthly Compensation (SMC) already compensates some veterans, at least to some extent, for the effects disabilities have on their quality of life. However, most SMC is focused on those with obvious disabilities such as missing limbs, vision or hearing. Special Monthly Compensation is also available for the most seriously disabled of service-connected veterans. However, SMC is only a component of a few disabilities listed in the rating schedule, even though every compensable evaluation acknowledges that there is loss of earnings capacity and, by implication, at least some impact on quality of life.

We support the VDBC recommendations that call for extensive studies of the impact that service-connected disabilities have on the quality of life of veterans and urge Congress to authorize increased compensation, either as a component of each evaluation or as a separate payment in addition to compensation already payable. Until such detailed studies can be conducted and evaluations adjusted to reflect the loss of quality of life as a result of service-connected disabilities, we support the Commission's recommendation to increase compensation levels by up to 25 percent to take into account the effect of loss of quality of life resulting from service-connected disabilities.

### **Individual Unemployability**

The compensation program was intentionally designed to assess a veteran's symptoms resulting from service-connected disabilities and provide compensation based on the average loss of earnings capacity. It was not designed to determine what the actual lost earnings would be for you or me, the special circumstances of any one veteran; the 1925 Rating Schedule attempted to do that and failed miserably. Such a computation must fail because the government does not have the time, staffing or expertise to compute lost earnings for any particular individual when they leave service or throughout their life as education, occupation, geographic location marital status, and other life events occur.

In a sense, then, the evaluation of disabilities and the payment of compensation are decisions that can be made in almost a cookie cutter fashion. The problem, however, is that no two people are alike. A former colleague of yours, Max Cleland lost three extremities in service. By determination, hard work, perseverance and exceptional ability, he eventually became the Administrator of Veterans Affairs and a United States Senator. These same horrific injuries would cause many other people to be totally disabled.

Individual unemployability is the one provision in the rating schedule that allows VA to take individual circumstances such as education, employment experiences and other facts into consideration when deciding whether service-connected disabilities keep someone from working. This single provision concedes that some people can be made more disabled by certain disabilities than others. This provision requires VA to exercise judgment to determine if a veteran is made totally disabled by their service-connected disabilities. The fact that VA can exercise judgment in awarding total benefits based on individual unemployability is what sometimes suggests apparent disparities in the application of the law.

Research conducted by the CNA and studies undertaken by the IOM reveal several facts about individual unemployability. First, the CNA found no evidence that any significant number of veterans were gaming the system to obtain individual unemployability. Second, the IOM found that the rapid increase in the award of individual unemployability to veterans with mental conditions in recent years stems largely from inadequate rating criteria. Finally, the CNA also concluded that the significant increase in recent years in the award of individual unemployability was caused by shifting demographics in the disabled veteran population.

Based on data developed by the CNA, the Commission recommended that as VA examines and revises the rating schedule it should consider adjusting the criteria used to evaluate select disabilities to better recognize that some are more disabling than previously understood. This action should result in more appropriate scheduler evaluations and a reduced need to resort to individual unemployability to ensure that compensation is correct.

We support the recommendation of the Commission to modify evaluative criteria, especially for psychiatric conditions, to recognize that some symptom patterns are more disabling than previously thought. We believe that more appropriate evaluations will reduce the number of instances where the individual unemployability provisions must be used. However, we strongly oppose the wholesale elimination of this one provision that allows VA to compensate the individual veteran when service-connected disabilities make employment impossible.

In addition, we do not oppose a requirement that those seeking a total evaluation based on individual unemployability should undergo a vocational assessment, provided that it does not delay the decision. In our experience, veterans who seek individual unemployability have been unemployed for months or years before they approach the VA for help. Imposing an additional test that would delay a decision could, and often would, have serious ramifications for the men and women who became disabled while in the service of their nation.

Thank you for the opportunity to appear before you today. I will be pleased to answer any questions you may have.