



National Veterans Affairs and Rehabilitation Commission

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**STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"THE STATE OF THE VETERANS BENEFITS ADMINISTRATION"**

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Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to express the views of the nearly 3 million members of The American Legion on the current state of the Veterans Benefits Administration (VBA) of the Department of Veterans Affairs (VA). VBA stands at a crossroads in the transition from the 20th century paper system of benefits and the 21st century electronic environment. This transformation occurs in the midst of a difficult environment, yet VA must maintain operations through this period without letting veterans slip through the cracks. The country is presently engaged in wartime operations in the Middle East and South-Central Asia, and the after effects of these wars, as well as previous wars, are still being felt by great numbers of veterans. VBA has, to be fair, made many strides forward in recent history, but there are still many areas that must be addressed. Simply changing the tools without correction of longstanding institutional issues cannot be construed as effective. VA must continue to work to erase the errors of the past if a new model more beneficial to the men and women who have served this nation is to be achieved.

It is easy to note the areas in which VBA has been deficient not merely over the last few years, but as an institution for long periods of their operation. Many of these complaints are not new, but have been the focus of those devoted to advancing the cause of veterans' benefits for decades. VBA struggles with the quality of work and timeliness, not only in the adjudication of claims but also in the implementation of internal regulatory changes and those directed by Congress. Additionally, accuracy of the work produced suffers under the pressure to move the high volume of claims. Criticism has been justly leveled at VBA, and they have struggled to produce satisfactory answers. There are clearly areas for improvement.

Secretary Shinseki has stated an admirable yet challenging goal for VA to achieve timeliness of no more than 125 days for any initial claim as well as an accuracy rating of 98% for those claims processed. This is no easy task, and VA must be mindful of the challenges faced in achieving such a task. VBA must address these factors if they are truly going to be able to meet these goals by the stated deadline of 2015.

QUALITY OF WORK

On March 12, 2009 the VA's Office of the Inspector General (VAOIG) issued a report (Report No. 08-02073-96) entitled "Audit of Veterans Benefits Administration Compensation Rating Accuracy and Consistency Reviews". This report detailed numerous flaws in the current implementation of VA's internal STAR system of quality review and offered some key criticisms.

Some of the more troubling findings included:

VBA's STAR process did not effectively identify and report errors in compensation claim rating decisions. VBA identified a national compensation claim rating accuracy of 87 percent for the 12-month period ending February 2008. We projected that VBA officials understated the error rate by about 10 percent, which equates to approximately 88,000 additional claims where veterans' monthly benefits may be incorrect. In total, we projected about 77 percent (approximately 679,000) of the almost 882,000 claims completed were accurate for the 12-month period ending February 2008. The 87 percent rate is not comparable to the accuracy rate VBA reports in the Performance and Accountability Report because that rate includes pension claims. Further, this accuracy rate only included errors that affected a veteran's benefits. STAR identifies, but does not report, other errors related to the rating decision's documentation, notification, and administration.

To reiterate American Legion testimony on these findings, 203,000 potentially incorrect claims is a troubling number. Further troubling is the inaccuracy of VA's system at reporting its own errors. Without external observation, such as this audit by VAOIG, such errors may never have come to light, and an accurate picture of the overall flaws in the disability system may never have been recorded.

Furthermore:

VBA officials planned to conduct 22 reviews in FY 2008 consisting of 20 grant/denial rate and 2 evaluation reviews. However, they only initiated two grant/denial rate reviews and these were not completed until December 2008. Furthermore, VBA officials did not initiate either of the two planned evaluation reviews to analyze and improve the consistency of disability compensation ratings and to reduce the variances between states.

Even where problem areas or the potential for problem areas to develop are identified, VA is not following up on their own projected plans for analysis. Regardless of the potential of STAR, if it is not implemented as intended, it cannot hope to be an effective tool for correction. The exertion of outside pressure would seem essential to enforcing the application of the procedures in place.

VAOIG concluded:

Without an effective and reliable quality assurance program, VBA leadership cannot adequately monitor performance to make necessary program improvements and ensure veterans receive accurate ratings. Further, without implementing an effective rating consistency program, VBA officials cannot successfully assess or prioritize the improvements needed for claim rating consistency.

In order to rectify the problems existing within STAR, The American Legion proposed that VA could make improvements by implementing a three step process for change.

- 1) Develop a system to compile the results nationwide of the errors found in STAR evaluations. When an error is discovered a record must be kept of that error. However, currently, there appears to be no systematic method to track these errors. This data could be critical to finding patterns, whether on an individual, on a Regional Office (RO) level, or nationally across the scope of VA operations. If this information is indeed gathered, it does not appear to be used in any fashion for analysis to detect trends which could indicate larger, systemic problems within VA. If this is coupled with data gathered on errors at the lower levels from the Board of Veterans Appeals (BVA) and the Appeals Management Center (AMC), VA would be in possession of an excellent tool to assess their quality overall with real details that would indicate the greatest problem areas.

It is not enough to know what VA's accuracy rate is across the system. VA must also know where their greatest areas of concern are in order to determine the areas that could be addressed to provide the most efficient and effective use of resources to correct those problems.

- 2) Utilize the data and patterns gathered from the compilation system mentioned above to plan and implement a program of training. Adequate and effective training has been a key concern noted often in the system of VA adjudication of claims. This data would give the VA the tool they need to see where their employees need training most, and to craft an effective training schedule to maximize the training resources they have. Future training would not be generalized and rote as is currently the case, but would instead be targeted to fix the greatest problems. This would be a method to ensure that what training resources VA has would be used to the greatest possible effect.
- 3) Augment the STAR system for accuracy with outside oversight to ensure the effectiveness of the program. As mentioned above, one of the complaints about the current implementation of the system is a lack of means to determine if the errors highlighted have been followed up. Third party oversight offers the opportunity to provide impartial and critical follow up to ensure compliance. External oversight has long been an important component that The American Legion has advocated.

The American Legion continues to advocate for the compilation of common errors from BVA and AMC remands and grants in the past. If errors are consistently made in the Regional Offices only to be corrected by VA later in the benefits process without feedback to the Regional Office, they will continue at the regional level where the initial errors are being made. This concept also applies to the systemic review nationwide of claims by STAR. If the error reporting of all three entities is combined, it would constitute an even more effective pool of data on deficient areas to enhance VA's understanding of their own inadequacies.

If VBA is to achieve the secondary goal of Secretary Shinseki's bold vision for VA, that of 98% accuracy, it must start with dedicated oversight and diligent analysis of existing patterns of error.

TIMELINESS OF VA

VBA struggles not only with reaching timeliness goals on their claims, but also with achieving timeliness on tasks such as mandated progress reports and the implementation of new regulations.

The stated goal of 125 days for the completion of claims is an onerous task. The current average for the completion of new claims within VA stands at over 160 days. It is important to be mindful that this is not the top end of claims completion, but strictly an *average* time for processing. While improving their timeliness, VBA must ensure that in their haste to process these claims, they are not missing necessary details that contribute to an overall error rate estimated by VAOIG at nearly one quarter of all claims processed. The error rate on American Legion represented claims in Regional Offices is even higher. During Quality Review visits conducted by The American Legion which encompass a weeklong review of operations in Regional Offices, VBA's error rate often reaches a third of all claims evaluated.

In short, VBA must aim to not only speed up their work, but make that work more accurate and more efficient. Currently, electronic tools in development to share records and move claims

through processing will help with this task. It will be important to ensure that the developed electronic tools do not merely repeat the current system of processing claims, but take full advantage of the enhancements offered by processing in an electronic environment.

Recent legislation passed by Congress directed VBA to increase the usage of measures already present to expedite claims such as the ability to grant interim ratings and to grant individual issues as the data supports it while deferring issues requiring more necessary development to later decisions. This addresses one of the problems inherent in the speed of processing. By granting partial amounts of a claim, VBA enables veterans to gain immediate access to the excellent health care available to treat their service connected disabilities and gives them at least partial access to funds to supplement their earning power diminished by these disabilities. VBA however, has been slow in implementing these types of ratings. It is hoped that the tools provided by new electronic measures will make the separation of these issues easier on VA and enable these ratings to go forward.

All of the good intentions of VA and of Congress to improve the system for veterans are for naught if the measures are not implemented. In testimony regarding the implementation of Public Law 110-389, the Veterans' Benefits Improvement Act of 2008, VA acknowledged the many areas in which they were behind schedule in addressing needed studies and publishing final regulations to implement the changes in laws and procedures. Needed details on analysis of the work credit system, and a lack of implementation of a regulatory change meant to assist family members of a deceased veteran in prosecuting their claim are far behind the established deadlines.

This does not address two glaring areas in which veterans are still experiencing substantial delays in the processing of their claims: changes to VA policy regarding the confirmation of Posttraumatic Stress Disorder (PTSD) stressors; and, the establishment of three new presumptive conditions related to the herbicide Agent Orange in Vietnam.

Veterans' groups rightly praised VA for moving forward with a regulatory change in the confirmation of stressors for PTSD for veterans serving in combat zones. Notwithstanding that The American Legion expressed concerns with the proposed regulation's reliance solely on VA diagnoses of PTSD as opposed to private physicians because diagnoses by private physicians are acceptable for any other disorder on the rating schedule. Nevertheless, the overall anticipated impact of this regulatory change was lauded as a great step forward in helping veterans in need.

Often one of the most difficult burdens in PTSD cases, on VA and veterans alike, is the confirmation of stressor incidents in combat zones, where record keeping is spotty at best and clear evidence can be difficult to unearth. Existing regulations regarding incidents in combat have long recognized the difficulties of keeping track of details. VA's proposed regulation will expand that definition for stressor incidents to the entire combat zone, which is important as the majority of service members in theater do not have traditional combat occupations, yet still face many of the same hazards and threats. Without specific combat decorations, often unavailable to non-combat military occupational specialties, veterans face an uphill battle proving that the traumatic events happened.

It is hard to see how VA can meet the new timeliness goal when VBA has to expend more time and resources to decide PTSD claims than almost every other type of claim. Development work on cases such as these can take many long months and, often enough, after these extensive efforts, VA ends up denying many claims that are truly meritorious simply because no evidence exists to corroborate the stressful events. The proposed regulation would help by greatly reducing unnecessary development and allowing VBA to move these cases more quickly to the decision phase. Generally, VA is required to publish a final regulation within 90 days from the publishing of a proposed regulation, yet many months have passed since this deadline and veterans are still waiting. VA must move with greater speed to meet the needs of the veterans.

Perhaps more frustrating is the ongoing delays surrounding VA's addition of three new presumptive conditions associated with Agent Orange. Under the provisions provided for in the Agent Orange Act of 1991, Secretary Shinseki announced last October that VA would add three new conditions: ischemic heart disease, Parkinson's disease, and B-cell leukemias to the presumptive list. Despite lengthy delays waiting for even a proposed regulation, in late March the proposed regulation was published in the Federal Register along with a notation of a decreased period for public comment recognizing the need to move forward with this important change. Even so, the normal deadline of 90 days is rapidly approaching, and will expire before the end of this month. There is little indication that this final regulation will meet this deadline, and veterans must once again wait for long denied justice.

Every day the Legion fields dozens of calls from concerned veterans asking what progress is being made on the final implementation of these regulations. As must be the case with other veterans' organizations, the only answer we can give these veterans is that VA assures us that they are working on it, and we must wait and see.

These delays cost veterans in unseen ways. While it is easy to say there will be no net impact as veterans will be "back paid" once VA finally adjudicates their claims, while they wait for service connection, they must also wait for health care for these conditions. The effects of heart disease and Parkinson's when untreated can be devastating. VA must act to move forward on this and grant these deserving veterans their claims with all due haste so they can receive the preventive health care they are entitled to. The time for delays has long since passed, and this must be a priority for resolution, with no more obstacles thrown in the way of these veterans.

AREAS OF PROMISE

VBA should not be only criticized however. There are areas of progress that represent encouragement and hope that veterans are going to receive their benefits from a more functional system. Whether it is simple, internal changes to help certain Vietnam era Navy veterans by establishing a Brown Water Database, or a myriad of pilot programs and development of the electronic system for the next generation of claim processing, VA is moving forward. Not least of these changes is a renewed willingness to work with the front line soldiers in the battle for veterans' benefits, the Veterans Service Organizations (VSOs), who daily work to obtain deserved benefits for veterans.

VA currently estimates approximately 38 ongoing pilot programs are aimed at understanding and improving operations in the benefits system. With so many irons in the fire, oversight and accountability is paramount. A tracking system to monitor lessons learned and provide transparent analysis of benefits of these pilots is important. Furthermore, VA must continue to involve the users of their systems, veterans and the service organizations who represent those veterans, in the early stages of these programs to identify areas of concern that might not otherwise be identified until far too late in the process to allow for easy correction.

In Little Rock, Arkansas, VA ran a pilot examining changes to the current CPI model of processing claims. The pilot covered applications of Lean Six Sigma techniques from private sector businesses and working in team based, pod structures to facilitate better communications up and down the chain of claims processing. The American Legion believes that when VA workers see only the small, component parts of a claim, they lose sight of the whole picture. Without the perspective offered by the whole picture, the impact of simple procedural errors can be lost and yet with a more complete picture of the entire claims process an employee can better see the impact of the necessary actions in the claim.

Indications gleaned from American Legion visits to this pilot were positive and we hope that beneficial lessons were learned.

In Providence, Rhode Island, VBA has been working with a program where the office operates in an entirely electronic environment. Rather than shuffling through papers and books, the employees have access to all the necessary tools and information right on their computers, taking advantage of electronic options like enhanced search techniques and information sharing. This will be a key component in the operating environment VA envisions for their future business model. This is also a critical lesson that VA seems to be implementing. It is not enough to change the tools and continue to operate under old models. The old models carry with them inherent flaws. When new tools such as e-processing are examined, VA is hopefully utilizing the unique capabilities those tools offer in a different manner than the traditional paper based models.

In Pittsburgh, American Legion staff recently returned from an examination of several ongoing pilot programs. Chief among these programs was the Case Management Development Pilot. This pilot aims to improve public contact with the veteran. Communications from VA have traditionally been more frustrating than helpful for veterans. The Veterans Claims Assistance Act (VCAA) letters have long been noted as being nearly incomprehensible. Now, public contact teams from VA follow up by phone with veterans to ensure that the veterans understand what VA is asking for, and as important, that VA understands what veterans are stating and asking for. Putting a personal face on both the VA and the veteran is a two way street that helps both sides of the equation.

VSOs such as The American Legion are eager to help VA with this public contact and ensure that the veteran also understands the claims from the point of view of an advocate as opposed to a neutral party such as VA. Furthermore, service officers of The American Legion and other organizations can help share the workload with VA. The ultimate goal is to help veterans and when VA and VSOs work in concert with each other, there is great benefit that can be provided

to veterans. We have expressed concerns to VA regarding a greater role that VSOs could play in this program in contacting veterans, and we are hopeful that we can work to improve that relationship.

These and other pilots have benefited from close involvement between VA and the front line users of the benefits system, the VSOs who represent veterans in their claims. With the exception of a recent electronic claim processing pilot in Baltimore, VA has worked to involve VSOs at an early level in the proceedings of pilots, which benefits both sides. Even VA itself has admitted to challenges faced by an increasingly inexperienced workforce. This is not meant to be a criticism. The benefits system can take many years to master, and yet if VA were not hiring new employees, we would face an even greater gap as the most experienced employees retired. It must be an ongoing process.

However, many service officers have many years of experience, and have recognized critical failure and success points within the system during those years. A price cannot be placed on that kind of experience. When those insights are offered early on in the process, sometimes overlooked errors can be corrected early and not late in the process, saving time. Efficiency is what will help VA move forward. VSOs offer an extra set of eyes that can point out things that might otherwise be missed. These are systems that will be used by both VA and VSO alike, and designing them with both end users in mind will only benefit the greater end.

All of these programs will ultimately feed into the Veterans Benefits Management System (VBMS) which will be the operating system of VA's future. While VBMS will not begin its first pilot until November of this year, many of the early indications are that this will be helpful to VA and veteran alike. While final details of the system are not available, it should hopefully include elements which will enhance file sharing electronically and make finding necessary information easier. Furthermore, the ability to electronically organize and display key information should speed processing time. The ability to separate issues and rapidly process those that are ready for decisions – while saving more difficult issues for more lengthy development – can lead to exactly the sort of time saving measures that get the benefits to the veterans in a more timely manner.

Electronic measures cannot be seen as a cure all, though. Institutional attitudes that have placed a greater priority on “moving widgets” than recognizing the importance and impact of the claims on individual veterans' lives must be overcome. Though VA states that quality of work is an equal component to timeliness, the lack of transparency about accuracy statistics as compared to statistics of claims processed and timeliness belies this and must be improved. It does veterans no good to process claims more rapidly if they are still being processed poorly and with a lack of attention to detail. VA must be more forthcoming on how they intend to show their worker and management base that they are measuring them not solely on how many units they move per month, but on the fact that those claims are done without errors that will negatively impact veterans.

The importance of eliminating errors cannot be underestimated. A veteran's only option to correct mistakes made by VA is to appeal the claim. When the public sees headlines about how a veteran is waiting years for their claim to be processed by VA this is almost always indicative

of a claim that is working its way through the appeals process. Errors made at a Regional Office take years to correct, not hours. This can be changed with a greater attention to detail. Quick fixes, where VA acknowledges a procedural error that is costing a veteran benefits and corrects it on the spot, are fixes that not only save the veteran years of delays, they save the VA years of work. Get it done right the first time and there is no need to clog the system with second, third and fourth times.

CONCLUSIONS

Because of the transformation that VBA is going through, there is great potential to move forward. Drawing on positive lessons learned, benefiting from creative and dedicated minds to change the architecture of the system to a more effective model, exploiting the opportunities presented by updated, modern technology, VBA has the potential to truly improve into a veterans' benefits system that veterans can rely on and trust. Provided VA maintains the present attitude of acknowledging mistakes and diligently working to correct them, as well as using individual initiative to creatively improve the process, there is hope that the mistakes of the past can be forgotten and that the system for tomorrow can be the great system that the veterans of America deserve.

VBA will be most effective in this transformation if they continue to engage and work with all stakeholders in the claims process. It is not enough to examine their problems internally. There is good advice to be taken from lawmakers, such as those on this committee, who are dedicated to ensuring that veterans are getting the benefits that the government intends for them to receive; or the VSOs who work in the sometimes frustrating system every day and see firsthand the impact of those errors on veterans' lives. Perhaps most importantly, VA must strive to repair their image with the veterans themselves. Too much trust has been lost.

Veterans must be able to look to their government to uphold its end of a bargain begun when a new recruit first swears the oath to uphold and defend the Constitution of the United States. In the military, a veteran learns the importance of "having the back" of their allies and comrades. VA must have the back of the veterans who have served. VA must work hard to win back this trust, damaged by years of perceptions of broken promises and an unfeeling bureaucracy that treats them like numbers and not people.

To be fair, there have been promising steps forward by this Secretary and administration of VA to own up to their errors, to recognize where they are failing the veterans of this country and to accept the responsibility to repair the damaged trust and the damaged system. As the largest veterans' advocacy organization in the United States, The American Legion believes that this country is and should be capable of providing the best benefits to those who sacrifice so much for their country. We are encouraged by this movement forward by VA and look forward to a continued working relationship with them to ensure that momentum is not lost and that this transformation to a 21st Century system of benefits is truly a great leap forward for veterans.

The American Legion stands ready to answer any questions of this Subcommittee and thanks you again for this opportunity to provide testimony on behalf of our members.