

**EXAMINING THE BACKLOG AND THE
U.S. DEPARTMENT OF VETERANS AFFAIRS'
CLAIMS PROCESSING SYSTEM**

HEARING
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND
MEMORIAL AFFAIRS
OF THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS

SECOND SESSION

FEBRUARY 14, 2008

Serial No. 110-70

Printed for the use of the Committee on Veterans' Affairs



U.S. GOVERNMENT PRINTING OFFICE

41-370

WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON VETERANS' AFFAIRS

BOB FILNER, California, *Chairman*

CORRINE BROWN, Florida	STEVE BUYER, Indiana, <i>Ranking</i>
VIC SNYDER, Arkansas	CLIFF STEARNS, Florida
MICHAEL H. MICHAUD, Maine	JERRY MORAN, Kansas
STEPHANIE HERSETH SANDLIN, South Dakota	HENRY E. BROWN, JR., South Carolina
HARRY E. MITCHELL, Arizona	JEFF MILLER, Florida
JOHN J. HALL, New York	JOHN BOOZMAN, Arkansas
PHIL HARE, Illinois	GINNY BROWN-WAITE, Florida
MICHAEL F. DOYLE, Pennsylvania	MICHAEL R. TURNER, Ohio
SHELLEY BERKLEY, Nevada	BRIAN P. BILBRAY, California
JOHN T. SALAZAR, Colorado	DOUG LAMBORN, Colorado
CIRO D. RODRIGUEZ, Texas	GUS M. BILIRAKIS, Florida
JOE DONNELLY, Indiana	VERN BUCHANAN, Florida
JERRY McNERNEY, California	VACANT
ZACHARY T. SPACE, Ohio	
TIMOTHY J. WALZ, Minnesota	

Malcom A. Shorter, *Staff Director*

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

JOHN J. HALL, New York, *Chairman*

CIRO D. RODRIGUEZ, Texas	DOUG LAMBORN, Colorado, <i>Ranking</i>
PHIL HARE, Illinois	MICHAEL R. TURNER, Ohio
SHELLEY BERKLEY, Nevada	GUS M. BILIRAKIS, Florida

Pursuant to clause 2(e)(4) of Rule XI of the Rules of the House, public hearing records of the Committee on Veterans' Affairs are also published in electronic form. **The printed hearing record remains the official version.** Because electronic submissions are used to prepare both printed and electronic versions of the hearing record, the process of converting between various electronic formats may introduce unintentional errors or omissions. Such occurrences are inherent in the current publication process and should diminish as the process is further refined.

CONTENTS

February 14, 2008

	Page
Examining the Backlog and the U.S. Department of Veterans' Affairs Claims Processing System	1
OPENING STATEMENTS	
Chairman John J. Hall	1
Prepared statement of Chairman Hall	56
Hon. Doug Lamborn, Ranking Republican Member	4
Prepared statement of Congressman Lamborn	57
WITNESSES	
U.S. Government Accountability Office, Daniel Bertoni, Director, Education, Workforce, and Income Security	9
Prepared statement of Mr. Bertoni	65
U.S. Department of Veterans Affairs, Michael Walcoff, Deputy Under Secretary for Benefits, Veterans Benefits Administration	41
Prepared statement of Mr. Walcoff	109

American Federation of Government Employees, AFL-CIO, J. David Cox, R.N., National Secretary-Treasurer	18
Prepared statement of Mr. Cox	80
American Legion, Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission	33
Prepared statement of Mr. Smithson	96
Center for Naval Analyses (CNA) Corporation, Alexandria, VA, Joyce McMahon, Ph.D., Managing Director, Center for Health Research and Policy	5
Prepared statement of Ms. McMahon	58
Disabled American Veterans, Adrian Atizado, Assistant National Legislative Director	30
Prepared statement of Mr. Atizado	89
Erspamer, Gordon P., Senior Counsel, Morrison and Foerster, Walnut Creek, CA	20
Prepared statement of Mr. Erspamer	83
Institute of Medicine, The National Academies, Michael McGeary, Senior Program Officer and Study Director, Committee on Medical Evaluation of Veterans for Disability Benefits, Board on Military and Veterans Health ..	7
Prepared statement of Mr. McGeary	63
National Organization of Veterans' Advocates, Inc., Richard Paul Cohen, Executive Director	15
Prepared statement of Mr. Cohen	73
National Veterans Legal Services Program, Ronald B. Abrams, Joint Executive Director	17
Prepared statement of Mr. Abrams	76
Veterans for Common Sense, Paul Sullivan, Executive Director	31
Prepared statement of Mr. Sullivan	94
Veterans of Foreign Wars of the United States, Gerald T. Manar, Deputy Director, National Veterans Service	34
Prepared statement of Mr. Manar	101
Wounded Warrior Project, John Roberts, National Service Director	36
Prepared statement of Mr. Roberts	107

SUBMISSIONS FOR THE RECORD	Page
Bilmes, Linda J., Professor, Kennedy School of Government, Harvard University, Cambridge, MA, statement	112
Priessman, Master Sergeant Kurt, USAF (Ret.), Vernon, TX, statement	116
MATERIAL SUBMITTED FOR THE RECORD	
“Wounded Vets, Broken System,” CQ Weekly, April 30, 2007, by Patrick Yoest and Rebecca Adams	119

**EXAMINING THE BACKLOG AND THE
U.S. DEPARTMENT OF VETERANS AFFAIRS'
CLAIMS PROCESSING SYSTEM**

THURSDAY, FEBRUARY 14, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON DISABILITY ASSISTANCE
AND MEMORIAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:15 p.m., in Room 340, Cannon House Office Building, Hon. John J. Hall [Chairman of the Subcommittee] presiding.

Present: Representatives Hall and Lamborn.

OPENING STATEMENT OF CHAIRMAN HALL

Mr. HALL. Please forgive the delay. Once again, thank you all for being here. The Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, hearing on examining the U.S. Department of Veterans Affairs' (VA's) claims processing system will come to order.

Would everyone please rise for the Pledge of Allegiance.

[Pledge of Allegiance.]

Mr. HALL. Thank you.

Today we are here to examine the VA's claims processing systems and its attendant disability claims backlog. There are many areas to explore when trying to determine why the disability claims backlog has reached the point of unmanageability and why this is the second time in a 7 year time period that we have reached this crisis point.

From 2002 to 2007, the disability claims backlog has risen from about 250,000 to nearly 650,000. During the same time period, the Veterans Benefits Administration (VBA) consistently missed its performance targets on nearly all compensation and pension (C&P) claims processing fronts.

These failures engender many questions about the complexity of the system the VA has created and the model upon which it is built.

One of my leading questions concerns the effectiveness of the Claims Processing Improvement (CPI) model regards its suitability to establish meaningful accountability parameters to eliminate the claims backlog and accurately process claims. Thus far, none of the VA's own benchmarks have improved since the CPI implementation and I find this fact disturbing.

Moreover, it seems as if the failure is not necessarily with the system itself, but with the execution of the processes that are supposed to be reinforced with transparent and highly visible accountability measures to make it work.

As outlined by the 2001 report of the VA Claims Processing Task Force led by Daniel L. Cooper, now VA Under Secretary for Benefits, "Accountability includes not only the proposition that a leader is responsible for the actions of the group, but also is accountable for the results of those actions or inactions. This single attribute is the most serious deficiency in the VBA organization."

At the time, Mr. Cooper was referring to VBA's then failed claims processing system, SDN. I think many of those who testify today will concur that these same observations could apply both to today's VBA organization and its claims processing system model, CPI.

One can only wonder where the accountability is in a work credit system whose only meaningful measure is productivity and where quality seems to be an afterthought.

Only about 2 percent of all claims are checked for quality and one in ten claims is processed incorrectly. This error rate is unacceptable and indicates that VA needs to improve its training regimens to ensure uniformity across Regional Offices (ROs) and that highly qualified individuals are processing and adjudicating claims.

Further, I ask why bonuses are consistently paid to managers at both the Regional and Central offices while claims languish. I want VA management to adopt this principle: Be accountable for the backlog, do not pay yourselves anything extra until the veterans are paid.

I know that VA contends that all of its inventory is not backlogged, but try selling these semantics to veterans waiting 183 days and longer for decisions on their claims.

From the Subcommittee's standpoint, based on the VA's current performance, most of the disability claims in its inventory are eventually going to become a part of those claims pending longer than VA's target of 145 days for claims processing. Hence, they will become part of the backlog.

Moreover, the Subcommittee does not consider as progress an increase in the time needed to process a claim from 177 days in 2006 to 183 days in 2007 accompanied by an increase in the VBA's target performance days for processing claims from 125 days up to 145 days during the same time period.

It is interesting that moving the goal from 125 days to 145 days is actually a greater increase than the increase in the backlog from 177 to 183 days.

VA should not conceive of moving its targets to compensate for its poor performance. I am confounded by these actions and would like an explanation and so would our veterans.

I am encouraged that some of the numbers from VA's fiscal year 2009 budget indicated a 19 percent increase in VBA information technology (IT) funding to support efforts to move to a paperless claims environment and increased funding for VETSNET. While technological improvements alone will not solve the backlog problem, they are clearly critical to the solution.

I am also anxious to see the results of IBM's study of the VBA's business processes involved with adjudicating a claim. This type of review is long overdue.

I am also encouraged to see that VA is requesting more money to add 703 full-time employees (FTE), yet I am aware that you have been unable to maximize the performance of the record number of 3,100 FTEs that this Congress ensured you received during the last two funding cycles.

Let us be very clear. This is not just a people problem and adding more people to a broken system cannot be the only answer to vanquishing the claims backlog and improving processing times. To date, this single-minded approach has proven unsuccessful.

I think the major faulty premise in this system is that the VA behaves as if it is only accountable to meet the numerical targets it sets and that Congress tacitly approves. But I want to reinforce to you that you are actually supposed to be accountable to the veteran who has borne the battle, to his widow, and to his orphan.

I believe we need to refocus and refine our Nation's claims processing system to make it accountable to producing better outcomes for our veterans, their families, and survivors.

I thank the witnesses on the first three panels for their thoughtful, solution-oriented testimonies. I hear the frustration in your statements and I look forward to working with you and with the Ranking Member and other Members of this Committee on ways to implement the workable solutions many of you offer.

I know that the backlog has taken on a life of its own. However, it is not bigger than the collective will we will devote to eliminating it and to honing a claims processing system that is veteran-focused, not process-focused.

Last, I know that VA cannot be pleased with its current disability claims processing performance and I look forward to hearing VBA's strategic plan for addressing these concerns.

Secretary Peake has highlighted this issue as one of his top priorities and I hope VA sees Congress as a friend and not a foe in helping to correct the shortfalls in the disability claims processing system.

I believe that just as the Veterans Health Administration (VHA) experienced a revolutionary transformation, it is well time to think of devoting the same type of resources into transforming the VBA. It is time for a paradigm shift.

Our veterans deserve the benefit of our collective resources to ensure that this process is a world-class, 21st century model that reflects their priceless sacrifice for our Nation.

And I would ask that the article from CQ Weekly entitled "Wounded Vets, Broken System," April 30, 2007, issue be entered into the record without objection. Without hearing any, so ordered.

[The prepared statement of Chairman Hall appears on p. 56, and the article referenced, "Wounded Vets, Broken System," CQ Weekly, April 30, 2007, by Patrick Yoest and Rebecca Adams, appears on p. 119.]

Mr. HALL. Thank you very much. I would yield now to Ranking Member Lamborn for his opening statement.

OPENING STATEMENT OF HON. DOUG LAMBORN

Mr. LAMBORN. Thank you, Mr. Chairman, for yielding. I look forward to hearing our witnesses' testimony on how we might address the challenges and opportunities facing VA's compensation and pension service.

In fiscal year 2007, compensation and pension service commonly referred to as C&P performed more than 838,000 rating decisions. C&P also performed nearly 582,000 claims actions that did not require rating decisions.

Yet, despite this tremendous volume of work accomplished, C&P finds itself behind in its struggle to overcome the steady accumulation of claims awaiting action. An array of reasons contributes to this frustrating trend and our witnesses outlined a number of them in their written statements.

Foremost among them will be that VA place more emphasis on accuracy and less on speed. Rating decisions must be done right the first time. I wholeheartedly agree.

But as much as we may ponder and discuss solutions to the multitude of underlying problems, I think we all realize that the time has arrived for a reasonable, yet fundamentally different approach to the problem. If we continue to merely tread water, we are going to sink.

As my Subcommittee colleagues are aware, I have long been an advocate for major reform with regard to the use of information technology. I am heartened to know that they concur with my perspective that it is well past time for VA to embrace IT as a remedy to an outdated paper-based system. VA should be on the forefront of technology in the disability benefits arena and I believe it can be.

Not too long ago, VA's healthcare system was so poor, it was the subject of derision in movies such as *Born on The Fourth of July*. Now, though, VA healthcare is the subject of emulation among a number of high-quality medical models.

I believe that VA can make a similar improvement on the benefits side of the Department. We must be open to considering new ideas, especially in the area of IT, and not be bound by narrow paradigms.

I invite the Members of the Subcommittee, the veterans groups, and others to offer suggestions that will improve the process for our future veterans.

Thank you, Mr. Chairman, and I yield back.

[The prepared statement of Congressman Lamborn appears on p. 57.]

Mr. HALL. Thank you, Congressman Lamborn.

I would like to welcome all of our panelists testifying before the Subcommittee today and remind our panelists that your complete written statements have been made part of the hearing record.

Please limit your remarks so that we may have sufficient time for follow-up questions once everyone has had the opportunity to testify.

Joining us on our first panel is Ms. Joyce McMahon, Managing Director, Center for Health Research and Policy, CNA Corporation; Mr. Michael McGeary, Senior Program Officer and Study Director for the Committee on Medical Evaluation of the Veterans for Dis-

ability Benefits, Board on Military and Veterans Health of the Institute of Medicine; and Mr. Daniel Bertoni, Director of Education, Workforce, and Income Security of the U.S. Government Accountability Office (GAO).

If the panelists would come to the table, please. We welcome you. And, Ms. McMahon you are recognized for 5 minutes.

STATEMENTS OF JOYCE McMAHON, PH.D., MANAGING DIRECTOR, CENTER FOR HEALTH RESEARCH AND POLICY, CENTER FOR NAVAL ANALYSES (CNA) CORPORATION, ALEXANDRIA, VA; MICHAEL McGEARY, SENIOR PROGRAM OFFICER AND STUDY DIRECTOR, COMMITTEE ON MEDICAL EVALUATION OF VETERANS FOR DISABILITY BENEFITS, BOARD ON MILITARY AND VETERANS HEALTH, INSTITUTE OF MEDICINE, THE NATIONAL ACADEMIES; AND DANIEL BERTONI, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

STATEMENT OF JOYCE McMAHON, PH.D.

Ms. McMAHON. Thank you.

Chairman Hall, Representative Lamborn, distinguished Members, I appreciate the opportunity to testify before the House Subcommittee on Disability Assistance and Memorial Affairs today on the subject of the VA's claims processing system.

The testimony I am giving is based on findings and our final report for the Veterans' Disability Benefits Commission (VDBC). In the written testimony I have provided, there is a website link that can provide a full copy of that report.

I am going to summarize from the testimony that we have that is pertinent to the topic of examining the backlog and the VA's claims processing system.

In particular, there were two parts of our study that relate to these issues. We did an evaluation that compared the VA Disability Compensation Program to other Federal disability programs, looking at the claims process.

We also conducted surveys of both raters and Veterans Service Organizations (VSOs) to determine how they felt about the rating process and their ability to work with the claims system.

I am first going to mention briefly some of the comparisons we did across the other Federal disability programs. We looked at Social Security disability income, the Supplemental Security Income, workers' compensation, the disability retirement under the Federal employee system, and U.S. Department of Defense's (DoD's) disability evaluation system.

Our strategy was to look at literature reviews, reports from GAO, congressional testimony, Office of Inspector General (OIG) reports, and interviews with various officials at all of these programs.

We found two difficulties in terms of making these comparisons, the first of which is there is generally a lack of formal evaluation of the effectiveness of specific practices for the non-VA programs. That limited our ability to make direct head-to-head comparisons of methods.

In addition, there are different goals and structures and procedures and claims requirements across the programs. In particular,

the VA system has a great deal of complexity required for the evaluation process, more complexity than may be required for some of these other programs.

To be specific, there is a requirement that the VA disability be a service-connected disability, and multiple VA disabilities are examined. Each disability has to be assessed for a degree of disability to determine an overall disability compensation that is appropriate for the individual.

In particular, the age of claim is an important issue, because the initial disabling event may have occurred years prior to the claim being filed, meaning that the documentation that is provided is old and may have to be requested from DoD. The evidence may have to be resurrected, from old files. So the evidence that is needed to apply to the claim may not, in fact, be very current and this adds to the problem of resolving claims quickly.

We looked at several metrics including timeliness, accuracy, consistency, training issues, and staff turnover. The one that was the most striking was the timeliness issue, in that the VA claims process takes a much longer time to complete than is the case for the other programs.

In part, this may be due to the complex issues that the VA has to deal with in terms of the determination process, but we think that one suggestion that was offered by GAO has tremendous merit. GAO suggested that the VA should look at desegregating the process of the claim so that it can be determined which stages of the claims process contribute most to the total processing time.

In other words, we do not know why it takes as many days as it does. We do not know enough about where the bottlenecks occur. Is it a problem with retrieving old paperwork? Is it getting input from DoD? Is it based on the issue of trying to do medical and clinical assessments? So we think it would be very helpful to look at that process more closely.

I would like to turn now to the discussion of the rating officials, both the VBA rating officials and the accredited Veteran Service Officers in terms of the surveys that we did. These are the first-line people that deal with the claims processing, either doing the claims processing or assisting individuals with the claims processing.

We prepared surveys for each group that were related as parallel as possible so we could ask pretty much the same questions from both groups of people and get their separate opinions. We focused on the challenges in the benefits determination and claims rating process and the raters' perspectives on their performance.

We asked raters to identify their three top challenges, for example, what kind of training they had that they thought made them very effective, what kind of resources were good to help them make the claims decisions, what types of claims were most difficult to process, and what resources would help them do a better job.

In general, the finding was that the overall determination process is difficult to use and, in particular, the VSOs reported that most veterans and survivors find it difficult to understand the determination process, difficult to navigate through the steps, and difficult to provide the needed evidence.

Both raters and VSOs agree that veterans have unrealistic expectations about the process and I think that means unrealistic in terms of what they can do to help the veterans get through the claims process more quickly. That is how the raters perceived it.

Particular things that we found from these surveys include the following: more clinical input would be helpful, especially from physicians and mental health professionals. The claims processes are viewed as being complex and getting more complex over time. And obviously, the more complex the condition that has to be considered, the more time it takes to do an accurate job on getting that done.

Some types of disabilities were identified as being more difficult to assess than others. In particular, rating mental claims is considered to be much more problematic than rating physical condition claims. Again, in particular, Post Traumatic Stress Disorder (PTSD) was singled out as requiring more judgment and subjectivity and being much more difficult and time consuming compared to physical claims. Both groups agreed.

Mr. HALL. Could you summarize, please?

Ms. MCMAHON. Yes, I can.

Among physical disabilities, neurological, musculoskeletal and sense organs were more difficult than the other physical disabilities to rate. It is not just a matter of training, but years of experience on the job that makes raters more confident. And, in particular, both the raters and VSOs believed that the claims rating process generally arrives at the fair and right decisions for veterans.

Thank you.

[The prepared statement of Ms. McMahan appears on p. 58.]

Mr. HALL. Thank you very much, and to remind all of our witnesses, your full statements have been entered into the record.

Mr. McGeary, you are now recognized for 5 minutes.

STATEMENT OF MICHAEL MCGEARY

Mr. MCGEARY. Good afternoon, Mr. Chairman, Members of the Committee.

As the Chairman indicated, I was the Staff Director for the Institute of Medicine's Committee on Medical Evaluation of Veterans for Disability Benefits, which produced the report called, "A 21st Century System for Evaluating Veterans for Disability Benefits," last June. The Committee was established at the request of the Veterans' Disability Benefits Commission and it was funded by VA.

In this report, the Committee assessed the medical criteria and processes used by VA to determine the degree of disability of service-connected veterans. The Committee did not, however, assess the nonmedical aspects of the claims process. So the report does not address all the factors that might affect the timeliness of decisions on claims.

The Committee did not, for example, evaluate the adequacy of staffing nor the capacity of VA's management information systems. Rather, the main focus of the report is on the medical criteria VA uses to assess degree of disability, which are embodied in the VA's schedule for rating disability.

Dr. Lonnie Bristow, the Chairman of the Committee, is scheduled to testify before you on the rating schedule on February 26.

I am here today to review the part of the report in Chapter 5 which focuses on the two steps in the claims process that are medically based, namely, the medical examination step and the rating step.

My written testimony contains statistics on timeliness, accuracy, and consistency of decisions in recent years, which I will not repeat here other than to note that, despite improvements of the time it takes to resolve claims, it is long and the number of pending claims is still large.

The Committee made several recommendations to improve the medical examination process and several more to improve the rating process. These recommendations were primarily aimed at improving the quality of the medical evidence and rating decisions rather than speeding the claims process. But two of the Committee's recommendations promise to get faster as well as better decisions.

First, VA has developed standardized online protocols or templates for documenting the most common disability examinations. VA has conducted studies which indicate that examinations using these templates are not only higher in quality, but reported more quickly, 7 to 17 days more quickly than traditional transcribed reports.

However, the Committee noted that the use of these templates is voluntary and the rate of use is low, although growing. And the Committee recommends, therefore, that the use of the templates be made mandatory.

Second—

Mr. HALL. Excuse me, Mr. McGeary. I am going to ask you, if you would, to pause right there and take a quick recess while we run across the street and vote and come back again.

Mr. MCGEARY. Yes, sir.

[Recess.]

Mr. HALL. The hearing of the Subcommittee is back in session. Please continue Mr. McGeary.

Mr. MCGEARY. Okay. Second, the Committee found that raters should have quicker access to medical expertise. And you just heard from Ms. McMahan that the raters report the need for more medical information to use.

The raters are not medical professionals. If they have a question about the meaning of a test result or if the evidence is inconclusive, they have to refer the case back to the C&P examiners in the Veterans Health Administration, which adds time or, to save time, they can determine a rating based on incomplete information, which is obviously not desirable.

The Committee recommends, therefore, that VA have medical consultants readily available to the raters in the Regional Offices. This does not mean having a medical consultant in every Regional Office, because with modern communications technology, VBA medical consultants could be in a national or in Regional centers.

This recommendation that VBA have its own medical consultants would require congressional action because the U.S. Court of Appeals for Veterans Claims has barred the participation of physicians in adjudicating claims.

The Committee believes that the Court's decision was based on a misunderstanding of the role of physicians in adjudication, which is different from the role of a treating physician.

All other major disability programs, for example, Social Security, DoD's disability evaluation process, "The Federal Employee Compensation Act" Program, Civil Service Disability Retirement Program, either have physicians participating in the adjudication decision or have medical experts readily available to review and discuss claims with the lay disability raters.

So the Committee concluded that adoption of these recommendations, that the templates be made mandatory, and that VBA have medical consultants for raters, would, among other results, possibly improve the timeliness of the decisions.

And this concludes my remarks. Thank you for the opportunity to testify, and I would be happy to address any questions.

[The prepared statement of Mr. McGeary appears on p. 63.]

STATEMENT OF DANIEL BERTONI

Mr. BERTONI. Good afternoon. I am pleased to participate in this discussion of the Department of Veterans Affairs' disability claims process.

Last year, VA provided \$36 billion in benefits to nearly four million recipients. For years, VA's disability program has been plagued by untimely processes, large backlogs, and error-prone decisions. It will be further strained as more Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) veterans seek benefits in the coming years.

In 2003, we at GAO designated VA's disability program high risk because it was based on outmoded concepts and continued to experience management and operational problems. Since that time, we have issued numerous reports with recommendations for change.

Today I will briefly highlight three areas, service delivery challenges facing VA, actions taken to improve performance, and areas where fundamental reform is needed.

In summary, VA continues to experience service delivery challenges. Over the past 4 years, pending ratings-related claims increased over 50 percent to nearly 400,000. Claims pending longer than 6 months have more than doubled to over 100,000.

The time required to resolve appeals is also problematic with a current average processing time of almost 700 days. And VA also faces challenges ensuring that its decisions are accurate and consistent.

VA has taken steps to expedite and improve claims processing such as increasing staff overtime, using retired staff to provide training and claims assistance, shifting workloads to offices with excess capacity, and establishing special teams to prioritize claims for aged veterans as well as returning OIF and OEF veterans.

VA's 2009 budget funds nearly 11,000 claims processing staff, an increase of 2,600 positions, with 32 percent over fiscal year 2007.

While VA acknowledges some temporary declines in productivity until new staff are trained and gain experience, it expects productivity to ultimately increase.

Despite these assertions, we are concerned that incorporating a large number of new staff into the claims process will likely

present substantial human capital challenges relative to hiring, training, and deployment of new personnel.

And even if staffing levels increase, other actions are needed to improve productivity. To that end, VA has continued to expand the number of benefits delivery at discharge (BDD) sites where service-members can apply for benefits prior to discharge and receive expedited claims processing.

To improve decisional accuracy and consistency, VA has begun to enhance its quality assurance processes and develop baseline data to monitor decisional variances, especially for PTSD and other brain injury claims.

Finally, to address longstanding systemic weaknesses, VA and the Department of Defense are piloting a joint disability evaluation system whereby VA performs a single medical exam, rates the disabilities of active-duty servicemembers. This pilot intends to streamline the confusing dual DoD and VA disability systems and ultimately expedite claims processing.

Despite VA's efforts, several factors may impede progress. Claims have increased steadily from about 579,000 at the start of this decade to 838,000 last year. And VA predicts that the current war will place a further strain on operations.

Court decisions are requiring VA to assist veterans in developing claims. They have also expanded workloads. Increased outreach and additional laws and regulations creating new presumptions of service-connected disabilities have added to the volume of claims. Caseload complexity has also increased as more veterans claim multiple disabilities. Thus, continuing to explore new ways to work smarter and more efficiently is essential to increasing VA's productivity.

Going forward, significant program improvements may lie in more fundamental reform. We have noted that VA's programs do not reflect the current state of science, medicine, technology, and the national economy, which has moved away from manufacturing jobs to service and knowledge-based employment. Thus, VA's rating criteria and support services have lagged behind modern concepts of disability and early intervention.

The Veterans' Disability Benefits Commission has recommended that VA's entire rating schedule be updated starting with PTSD, Traumatic Brain Injury (TBI), and other signature disabilities of the current war.

The Dole-Shalala Commission also noted that the current schedule does not sufficiently acknowledge injuries that are new or for which diagnostic criteria are changing rapidly. This is an area of concern to us also.

Finally, we reported that VA's field structure may impede efficient operations. Despite limited ad hoc efforts to consolidate some processes and workloads at VA's 57 offices, claims processing remains unchanged and continues to experience large performance variations.

VA must take a more strategic approach to determining the appropriate structure and division of labor among its field locations.

In conclusion, reexamining claims processing challenges and implementing viable solutions for reform is difficult. However, recent

studies have laid the groundwork to help VA better align its programs with modern concepts of disability.

It is imperative that VA thoughtfully assess the range of options and their potential effects and continue to look for other reforms to further improve its disability programs into the 21st century.

This concludes my statement. I am happy to answer any questions that you may have. Thank you.

[The prepared statement of Mr. Bertoni appears on p. 65.]

Mr. HALL. Ladies and gentlemen, thank you for your attention. We are in the middle of a stack of votes. There are five votes remaining, 5-minute votes supposedly. Each one is 5 nominally. So you are still talking about somewhere in the neighborhood of probably 40 minutes or so.

I apologize. I cannot control the vote schedule. But I will be back and hopefully the Ranking Member will be back as well and we will proceed. Thank you for your patience. You are excused again.

I am officially putting this hearing in recess.

[Recess.]

Mr. HALL. The hearing of the Subcommittee is back in session. There is a privileged motion being discussed on the floor right now that could take anywhere from 1 to 50 minutes or so. I am not sure what is going to happen. We are going to try to move as much as we can through the business at hand today.

So let me ask some questions of our first panelists. And thank you for your patience.

Ms. McMahan, it seems that the bulk of the time, 111 days, according to the VDBC, is taken during the development stage of claims processing, most of which involves acquisition of medical records and a medical examination of a veteran by the VA or its contractor.

Your report to the VDBC also highlights how raters indicated that obtaining needed evidence and the insufficiency of medical examinations was a serious challenge given the time constraints.

During your analysis and comparison of disability programs, did you find that these programs allow the admission of independent outside examinations and, if not, how does it work in the other disability systems?

Ms. McMAHON. Well, I think that it does allow an independent examination. Although when we talked to the raters, they indicated that they would appreciate more of that evidence to help them make their decisions. They did not think they received enough of that information.

So they have pointed out they wanted more information from clinicians, outside physicians, medical rehabilitation people, and material of this nature to help them with the decision process and that was a lack in the overall process.

We are not in a position at CNA, as we are not clinicians, to make recommendations regarding the specific processes that these VA raters do or the other programs do with regard to how they take in their medical evidence. That is a little bit beyond my purview.

Mr. HALL. Okay. Thank you.

In your testimony, you mentioned that your survey results indicated that many raters and VSOs see claims with mental disorder

problems or issues, especially PTSD, as requiring more judgment and subjectivity than claims of physical conditions.

We know from previous hearings before the Subcommittee that there is a tremendous variance between ROs on these claims.

Do you have recommendations for improving the consistency of the outcomes for veterans filing these types of claims and how do you think we can make these determinations less subjective?

Ms. MCMAHON. One way to make it less subjective would be to rely more on medical testimony. I would say again not as a medical person myself, this is basically what I have been told, that one way to do this would be to have an actual one-on-one assessment medically that would lay out the characteristics of the person's case and make a medical recommendation. This is time consuming but it would probably be something that would be helpful.

The issue of consistency across ROs can be dealt with, but it also takes the process further away from the individual person. For example, suppose you consolidated certain types of claims into a specified office. Perhaps it might be that all of the PTSD claims would go to a certain office with raters that were specializing in PTSD claims. You would probably get more consistency. But then you are taking the claim away from the individual Regional Office and from the individual veteran that is talking directly to a claims representative.

So you have a problem in the sense that you can try to specialize some types of claims, perhaps not just PTSD, but neurological claims also, so they are reviewed by certain types of raters, but then you may move away from the process of dealing with claims in an individual RO to some extent.

Mr. HALL. Thank you.

Mr. McGeary, would you please elaborate on your recommendation that VA should implement mandatory use of interactive online versions of the VA examination worksheets? How does this process work now and how could this change affect the processing times for rating claims?

Mr. MCGEARY. VA first started working on the medical exams in the mid-1990s and they developed standard worksheets. They worked up a large number, I think 50 plus worksheets for the most common conditions, for clinicians to use in conducting the C&P exams and in reporting them.

And then they went the next step, which is to develop them into an on-line interactive system. The idea here was that the template would indicate what information was needed. It would provide standardized input, structured and so forth, and would also make sure that everything that was needed would be answered.

And they have been working on developing these templates. They are, I believe at this point, rolled out nationally, but they are not mandatory yet. The Committee thought that they should make them mandatory because VA's own studies show that it improves the quality of the exam, at least in terms of making sure that the information that is asked for is provided and that it is also faster.

I believe the average time for a Regional Office to get an examination report is about 30 to 35 days. And they found that using some of these templates would save 7 to 17 days. That was a cou-

ple of years ago. I am not sure whether they have looked at this lately.

That is why I highlighted this particular recommendation as something that would presumably result in better medical evidence and also shorten the turnaround for doing the exams.

Mr. HALL. Thank you.

Can you provide more detail on your recommendation that raters should have better access to medical expertise, such as having medical consultants in a National or Regional Office which raters would be able to confer with on the tough cases?

Currently it does not happen with most ROs, but I believe it used to be the case that doctors or medical experts were available to raters for medical advice.

Mr. MCGEARY. Yes, sir. In the 1920s, when VA started the compensation program, they had rating boards and there would be a medical person on the board. They also would have a vocational person and a legal person.

When you fast forward to when the U.S. Court of Appeals for Veterans Claims was established, the court began to issue cases in which they were putting a pretty high standard on using doctors in these decisions. So basically, VA dropped having physicians on the rating boards and at the VBA as well.

We looked at the other disability programs as CNA did and found that VA is unique in this regard, that the other programs either have medical advisors or they actually have physician adjudicators.

[Mr. McGreary subsequently provided the following information:]

The Committee's recommendation that VBA have medical consultants for raters should reduce the number of times a case must be returned to the Veterans Health Administration and thus save time spent deciding these cases.

Mr. HALL. Thank you, Mr. McGeary.

Mr. Bertoni, in your written testimony, you note that the VA continues to fall short on its quality assurance program to assess rating accuracy. In fact, by VA's own numbers, one out of every ten cases is adjudicated incorrectly. Many of today's witnesses will testify that it may even be higher than that, closer to three in ten.

Would you please describe your observations of the VA's Systematic Technical Accuracy and Review Program (STAR) and provide any thoughts on how it might be improved?

Mr. BERTONI. Certainly. We have not done an in-depth analysis of the STAR system for some time. I guess the bottom line was that our concern with STAR was that the level and depth of their sampling perhaps at times has been insufficient to generalize and to sort of drill down into the root causes of some of the issues for the inconsistencies and inaccuracies.

To rectify that, I think you really need to look at sampling methodology, your approach, whether you are actually sampling enough cases and your methodology for doing that is going to give you a reasonable assurance that this is or is not a true soft spot or bottleneck in the system or quality assurance issue. And that has been our concern with the STAR system.

Mr. HALL. You also mentioned that VA may need to look at more fundamental reforms for improving its disability program in the long term.

Do you have any specific closing thoughts on that matter?

For instance, we will hear later today from the VA about its IT improvements and plans, something that Congressman Lamborn and I have been advocating.

Could you comment on what role you think technology might play and whether it is the panacea?

Mr. BERTONI. Absolutely. You know, technology is not the panacea, but it can make everyone's life more pleasant and result in more accurate and more consistent decisions.

I think before you talk about technology, I think you really need to, as I always say, to follow the process, to really understand the weak points, the bottlenecks, the parts of the process that really do call for reengineering.

Once you have done your due diligence and done that analysis, then you should write the system requirements that you need to write and build your systems around the new reengineered, more efficient system. And at the end of the day, you will end up with a more effective process.

I think what happens so many times at Federal programs, and we have seen it before, is agencies will take existing manual or inefficient processes and just embalm them into the new technology. And what you have is new technology that are simply built around faulty processes and techniques.

So that is the issue. You really need to look at reengineering the process, defining the system you want to use for that process, and building a system around it.

Mr. HALL. Thank you.

You highlight in your testimony how the complexity of claims is adding significantly to the challenges that the VA is facing in getting rid of its claims backlog and in decreasing processing times.

In fact, VA reported that the number of cases with eight or more disabilities increased from 21,800 to 58,500 between the years of 2000 and 2007.

Given your familiarity with the VA and its team and workflow concept instituted under CPI, would you say that its claims processing model is equipped to or flexible enough to handle this dynamic of claims complexity given that the claims processing times and the backlog have worsened?

Mr. BERTONI. I probably cannot talk specifically as to whether the current model would be sufficient or not. We have not done the drill or done the analysis on the claims processing model that we probably should do in the near future.

I was just talking to someone on your staff earlier that it is probably a good time for us to go in and do a top-to-bottom review of the claims processing structure to get a sense of where the soft spots are, where the problems are and have a better sense of that.

But in terms of the multiple impairments, I think in general, any time you have increasing complexity in a case, you want to make sure you have the most streamlined, efficient, effective process in place that is going to allow you to address that.

Complexity is not going to go away. We have an aging beneficiary cohort. We have people coming in with some very complex impairments, especially the OIF/OEF veterans coming in with some TBI and other serious brain injuries, that and many other body systems are going to be affected.

So I think I do not know exactly whether the current system is equipped to handle those impairments. But to the extent that it is not, it could be problematic and we would need to go in and really look at that and we have not.

Mr. HALL. Thank you, Mr. Bertoni, Mr. McGeary, Dr. McMahon. Thank you for your patience. Your spoken testimony was entered into the record as well as your written testimony. Minority Counsel will enter questions for the record. With our gratitude for your patience, you are now excused.

I have votes once again on the floor, so I am going to run across the street and come back. And this hearing will be in recess until then.

[No questions were submitted.]

[Recess.]

Mr. HALL. The Subcommittee is reconvened and is called to order. Thank you again for your patience. Welcome to our second panel, Richard Cohen, Executive Director of the National Organization of Veterans' Advocates, Inc. (NOVA); Ronald Abrams, the Joint Executive Director, National Veterans Legal Services Program (NVLSP); J. David Cox, National Secretary-Treasurer, the American Federation of Government Employees (AFGE); and Gordon Erspamer; is that correct?

Mr. ERSPAMER. Erspamer.

Mr. HALL. Erspamer, thank you, Claims Attorney from California.

Your full statements, as usual, are entered in the record and you will each be recognized for 5 minutes starting with Mr. Cohen.

STATEMENTS OF RICHARD PAUL COHEN, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.; RONALD B. ABRAMS, JOINT EXECUTIVE DIRECTOR, NATIONAL VETERANS LEGAL SERVICES PROGRAM; J. DAVID COX, R.N., NATIONAL SECRETARY-TREASURER, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO; AND GORDON P. ERSPAMER, SENIOR COUNSEL, MORRISON AND FOERSTER, WALNUT CREEK, CA

STATEMENT OF RICHARD PAUL COHEN

Mr. COHEN. Thank you, Chairman Hall and Members of the Committee.

I will not belabor what we all know about the VA's shortcomings in claims processing except to say that this Committee needs to keep in mind the devastating effects on real people because we are not really talking about inventory and we are not talking about production standards. We are talking about veterans and their families, veterans who die without their benefits or live impoverished, lose their homes or their vehicles.

Now that we are at war in two theaters, we know that there is a flood of injured veterans who are going to be turning to the VA

for the benefits they deserve and now almost 7 years after the Claims Processing Task Force report in October 2001, we still have an unconscionable backlog of over more than a half a million claims, with decision delays of greater than 3 years and in many cases greater than 5 years.

The main reason for this is VA funding which is too low leading to inadequate staffing and inadequate training. It is time that we, as a country, recognize that the VA's funding is a cost of war and we need to adequately fund the VA so they have adequate staff and adequate training.

We were told how complex the system is. It is a complex system, but the VA training has been less than 10 or about 10 hours a year. Their raters consistently demonstrate lack of knowledge and training. They have a staff of about 14,000 who are handling 1.4 million claims and these people still do not know how to apply the VA law when it applies to presumptions, and when it applies to the benefit of the doubt.

The VA is proud to tell you about an accuracy rate of over 80 percent. I am here to tell you that is an internal number which has no reality in the real world and if you look at the numbers of the BVA decisions, the number of reversals and remands, because the case was not adequately developed or was decided wrongly, you will see that the accuracy rate is below 20 percent.

This accuracy rate is more than just an academic exercise. It directly leads to more appeals which leads to more backlogs. If the VA could decide the cases correctly the first time, it would not have the cases coming back and we would not have hamster-wheel justice that everyone is talking about.

Instead of fixating on delays and on accuracy, the VA has decided to institute their extraordinary award rule, in 2007, which puts a chilling effect upon raters who now know that, if they state that the veteran was incorrectly denied benefits for a long time, that claim will be reviewed in a Central Office in Washington, D.C.

Not only does it put a chilling effect on the raters causing them not to make the right decision, but it in effect punishes veterans who are finally able to convince raters, with further review and after further delays, that the decision was wrong initially and they are entitled to more money.

This is a big mistake by the VA. This rule has resulted in, apparently, at least 500 claims in a 4-month period of 2007 being reviewed.

The production standards are improper. There is no way that someone can make three to five decisions each day. It takes longer than that to review the file and to make a proper decision. And the raters have said in a survey that they cannot keep up with those production standards.

In addition, the VA has maliciously refused to adjudicate Agent Orange claims of Blue Water vets that the Haas decision said veterans were entitled to. There is also a movement afoot, that members of NOVA have been seeing to deny PTSD benefits to combat vets.

Finally, the Veterans Claims Assistance Act (VCAA) is a mistake as applied. Congress needs to tell the VA that they should give

claim-specific information to the veterans so they can know how to handle their case.

Thank you.

[The prepared statement of Mr. Cohen appears on p. 73.]

Mr. HALL. Thank you, Mr. Cohen.

Mr. Abrams, you are now recognized for 5 minutes.

STATEMENT OF RONALD B. ABRAMS

Mr. ABRAMS. Thank you, Mr. Chairman, Councils.

I have several things to say and it is always enjoyable for me to talk about the VA claims process.

In 1987 as a VA employee, I was asked to testify, and I recommend to the Committee that you get a copy of serial number 100-4 where they analyzed pretty much what you are analyzing today and you will see many of the same comments talking about what is wrong with the VA system. That is about 21 years ago.

Unfortunately, not much has changed. The VA obviously needs more and better people to adjudicate claims. The system is complicated and they could use people who get paid at a higher rate if they are accountable for their work.

And, of course, unless work is measured rationally and people are evaluated based on a system that considers the needs of veterans and not the bureaucracy, things will not change. I say that again. You can go to a paperless system. You can introduce doctors to give medical opinions. But if the workers in the VA system are going to be promoted and given bonuses on productivity by moving a claims file from desk A to desk B, because that is how they internally measure, you are not going to make major changes in this system.

Please encourage the VA to measure work from the point of view of the claimant, not the bureaucracy. As part of my job in the VA, I worked in and was in charge of quality. And one of the things that we learned how to do was to look at it from the point of view of the claimant. The claimant just gets letters from the VA.

Have any of you ever looked at a statement of the case? There is usually about 8 pages to 14 pages of complete boiler-plate. Some statutes and regulations that are quoted are relevant. Others are not. Then there is a short paragraph as to why the claim was denied.

VCAA letters, as Richard said, are not claim specific. They are just generalized. They give no real help to veterans. We need to fix that.

In order to test this system, NVLSP took on a few test cases, hard cases, cases where medical opinions were necessary, where lay evidence was necessary. We made two basic assumptions, that working with the VA was not worth our time and that we knew the system as well as they did and we would go out and get all the evidence necessary. We would get the doctors to evaluate the claimants based on our knowledge of the rating schedule.

It took us about 8 months to get all that evidence. It took the VA 1 week to grant benefits at the hundred-percent rate. I say that to you because it is not important to veterans how quickly the VA makes the initial rating or decision. It is important in the overall

scheme how quickly they come to a fair conclusion in the claim. That is the key measure.

The VA adjudication system is rife with premature denials based on inadequate development, and failures to recognize important issues. All of that is driven by the need for production. This is not just based on my time working for the VA, which I did for many years. It is based on over 40 recent quality reviews conducted for the American Legion. All of these reviews are available to you. I know that Mr. Smithson of the Legion is testifying in the next panel.

As far as doctors being available, it is a good thing if doctors are available to give medical advice to raters, but we certainly would not be happy if they were voting on their own medical opinions.

Also, all of those opinions should be in writing and freely available to the veteran so that he or she could obtain evidence to rebut them because we have found in our experience that you can rebut very effectively VA medical opinions. Why? Garbage in, garbage out. The VA, in many cases, does not ask the right questions to its doctors and based on that, they get misleading medical opinions.

If I had more time, I would go into that in detail. Possibly you will want to ask me about that.

Thank you very much, and I will be happy to take any questions.

[The prepared statement of Mr. Abrams appears on p. 76.]

Mr. HALL. Thank you, Mr. Abrams.

Mr. Cox, you are now recognized.

STATEMENT OF J. DAVID COX, R.N.

Mr. COX. Chairman Hall, thank you for the opportunity to share the views of the American Federation of Government Employees on a very urgent matter of the growing claims backlog.

As the sole representative of VBA employees who process these disability claims, AFGE knows firsthand about the hardships to our veterans from the backlog of 650,000 pending claims. This is a disservice to veterans and unacceptable to AFGE members, including the many veterans and service-connected veterans who work at VBA.

We want to assist you in any way we can to address this crisis. The Veteran Service Representatives or VSRs and rating specialists who develop and rate cases are an extremely valuable resource and a source of guidance to this problem.

I was a registered nurse at the VA for 23 years. I acquired most of the skills I needed from nursing school. In contrast, VBA claims processing skills are learned entirely on the job. No one understands better than a VBA claims processor how to fix the VBA claims process.

Sadly, our input is no longer welcomed by management. At the national level, we are left out of groups addressing claims process improvement, training, performance standards, or skill certification. At the local level, management refuses to consider suggestions made by employees. These days, VBA management wants one thing from its workforce, make the numbers.

AFGE and the VSOs who represent the frontline users of this process are the critical eyes and ears on the ground that can identify and oversee VBA reform.

Therefore, we urge Congress to establish a joint VSO/AFGE Advisory Committee to focus on the claims process. As long as VBA production standards continue to be driven by politics rather than methodology, all attempts to improve the claims process and employee training will be undermined.

And very often, these standards are set by managers with little or no claims processing experience. As a result, critical on-the-job training is cut short by managers anxious to put employees back in the assembly line. Make no mistake, these training gaps do contribute to the backlog. We must stop rewarding Regional Office Directors for quantity above all else. Claims accuracy and effective training should also be a part of their performance measures.

We concur with *The Independent Budget* recommendation to give more accountability to the Compensation and Pension Service Director for the performance of the Regional Office Directors.

We also need a lot more accountability when it comes to implementing claims process reforms. When the claims process improvement initiative was implemented in 2002, it was supposed to provide a uniform national model for all Regional Offices. Instead, 6 years later, we have 57 varieties in 57 different offices.

The first step in any reform process should be a time-motion study of the staffing needed to process different types of claims. To date, VBA has made minimal attempts to gather this critical data.

We urge you to proceed cautiously with artificial intelligence. In its current stage of development, it cannot begin to replace the ability of an experienced employee to identify and analyze all the relevant evidence in each veteran's record. In contrast, a paperless record system is within our technological reach and long overdue.

Centralization is no panacea for fixing the claims process. VBA has centralized its 57 call centers down to nine and is planning to centralize the fiduciary program. Yet, things are only getting worse. Centralization increases the distance between the veteran and the employees serving them.

Veterans and taxpayers deserve a real cost benefit analysis of the impact of centralization on claims accuracy and timeliness and access for veterans.

AFGE also supports *The Independent Budget* recommendation to complete the phase-in of VETSNET, but we urge VBA to make good on its promise to address glitches in VETSNET that are also slowing down the claims processing such as requiring employees to input the same veteran information multiple times. Employees should be able to submit reports of VETSNET's problems and other insights about the claims process to an online suggestion box that is taken seriously by management.

Finally, AFGE is concerned that the claims process improvement pendulum has swung too far turning the claims process into an assembly line. There are many benefits when employees work the entire claim from the application to the appeal, including eliminating the extra time required for another employee to have to relearn the same claim.

Our members really feel the loss of weekly case management meetings that used to give them the opportunity to discuss challenging claims, changes in the laws, and best practices.

We look forward to working with Chairman Hall and the other Members of the Committee to improve this process and to serve American veterans.

[The prepared statement of Mr. Cox appears on p. 80.]

Mr. HALL. Thank you, Mr. Cox.

Mr. Erspamer.

STATEMENT OF GORDON P. ERSPAMER

Mr. ERSPAMER. Thank you, Chairman Hall. I really appreciate the opportunity to be here today to deliver what I think is probably somewhat of a unique perspective amongst all the panelists you are going to hear from.

I want to attack this problem, and I will accept Mr. Abrams' framing of the definition, that of the basic fairness of procedures, from a different standpoint.

I pose the question, what do you suppose is the most institutionalized form of discrimination in statutes and regulations today? I would suggest to you that it is our veterans in that suspect classification because veterans are the victims of the most institutionalized versions of discrimination.

What do I mean by that? I am referring to basic procedural rights rooted in the due process clause of our Constitution.

First of all, veterans have at the Regional Office level no right to a lawyer, at least no right to pay a lawyer. They have no right to subpoena documents. The VA has that right, but rarely uses it. The veteran has no right to compel the attendance of witnesses, no right to issue subpoenas to VA doctors, for example, who may have critical evidence in support of or in contravention of a claim.

Most often, it is the case that the veteran's treating physician is a VA physician. Yet, the veteran cannot call that doctor to testify at a hearing to support his claim.

There is also no discovery. The veteran gets no discovery at any stage of the system. For example, if the veteran has been the subject of some misconduct by the VA or there is some critical evidence that is within the VA's control or the control of another governmental agency, the veteran gets no discovery.

And then when you add to it the defects that are built into the structure of the Court of Appeals for Veterans Claims, I think you have a system that does not comport with the basic requirements of due process.

And with respect to the court, I will mention one thing, but there are a number of problems, and that is a problem that has been referred to many times by former Chief Judge Nebeker of the Court of Appeals for Veterans Claims, and that is the court has no power to force Regional Offices to obey its decisions. They violate the decisions with impunity repeatedly over and over again.

If any of you have ever read the Myth of Sisyphus, there is a solitary figure that climbs a hill, rolls a rock up a hill only to see it come down again. I would liken the VA system to that because each veteran must roll that rock up the hill. Even if there are a hundred thousand other veterans with the same claim, each has to go the entire mile and push that rock up that hill in order to get a relief.

There have to be improvements in the procedures and that is why I have proposed a Veterans Bill of Rights. And I have attached it to my testimony and I will go through it briefly in a moment.

But there is a second aspect to this institutional discrimination against veterans and one that the Committee is probably not even aware of, and that is the limitations on the rights of veterans to ever go into court. The Veterans Court is purely a paper record appeal. All other citizens of this country have the right to go into court and I mean the Article 3 courts, the Federal District Courts.

And when you look at the positions the Veterans Administration over the years has taken in cases involving veterans, it is deplorable. They take the position, for example, in recent litigation that we filed, Morrison and Foerster, on behalf of veterans, that veterans have no entitlement to medical care, notwithstanding the efforts of Congress to create the 2 year statute for medical care under the "Dignity for Wounded Warriors Act."

According to the VA, there is no ability to enforce those rights at all in Federal Court because the veterans lack a property interest in the benefits, because there is no entitlement to benefits, because medical care is completely at the discretion of the VA. We decide what care you get, when you get it, and how you get it, and no one else can question us.

Those are very, very basic problems with the system and I think the Congress needs to do something about this by passing legislation that says, look, veterans, you do have a basic property right under the Fifth amendment and the receipt of disability and death compensation, veterans, yes, you do have an entitlement.

When you are a disabled veteran who has served our country and been wounded in Iraq or Afghanistan or heaven help us died there, you have a right to those benefits and you have the rights that all other citizens in this country, to have access to the courts and meaningful access at a meaningful time in a meaningful way. And that is the basic tenant of due process.

And I would be happy to take questions, but I would just close with just an observation. There are many myths that have been circulating about the VA process for many, many years. I have been in the thick of it for a long time. I have seen it from the inside. I have seen it from the perspective of litigation against the Veterans Administration. And I can tell you that these are myths. You need to find some way to get beyond the myths and find out what is really happening and we need to bring the country around to where everyone is working for the veteran. The veterans need it now more than ever.

Thank you.

[The prepared statement of Mr. Erspamer appears on p. 83.]

Mr. HALL. Thank you, Mr. Erspamer and to the rest of our second panel.

First of all, I had an opportunity this morning at the breakfast with the Secretary of the Army and Chief of Staff and numerous other brass to speak with them about some of these issues and possible solutions we are talking about. And the Surgeon General and I were speaking about hopefully what will soon be an electronic handshake or handoff of information from DoD to VA.

Also, when I was in Landstuhl, Germany, on my way back from Iraq in October, I visited with our returning soldiers and also with the staff and the Commander who assured me that in December, 2 months ago, we would be able to start handing off the onion, as he called it, that is being created of electronic records.

We have come far from having a description of the wound written or the injury written with magic marker on the forehead of the soldier as he is put in the helicopter a few years ago. Now I am told of having an electronic record that travels from the battlefield, has another layer added in the helicopter, has another layer added at Balad describing the treatment, the medications, et cetera, in the plane to Germany, another layer in the hospital in Landstuhl, and then the entire electronic record coming back here to the United States to Walter Reed or Bethesda or wherever the service man or woman is returning to for further treatment.

I am not under any illusion about this except for the fact that I am being told that this is beginning to happen. And this panel is not perhaps as in tune to that aspect of the solution as some of the other panels that we have heard from and that we will hear from.

But I would start with you, Mr. Cohen. How much of a difference would it make in your opinion if a veteran's claim could start with a report from DoD that states what they have observed and diagnosed, what the condition of the returning soldier or veteran is as they enter VA's care?

Mr. COHEN. It sounds wonderful on paper. However, the reality is that we are hearing horror stories of servicemembers who have breakdowns in Iraq, go for medical treatment, and are then told to sign off on a paper saying they have a preexisting personality disorder which then becomes the kernel of this onion, so to speak, and follows them into the VA system.

And when they file their claim for Post Traumatic Stress Disorder and anxiety, they are told, no, this is a noncompensating preexisting medical condition which you had when you entered service even though it does not appear on your induction physical. There is some danger of that and that concerns me very much.

Mr. HALL. Any idea what percentage of those kinds of inaccuracies or misdiagnoses we are looking at?

Mr. COHEN. No. I do not have any numbers on that, but I have seen some information, which seems to indicate that there is a certain percentage of the people, maybe as high as a quarter of the diagnoses coming out as personality disorders even though there is no preexisting condition noted in an induction physical. And that concerns me very much about the VA then accepting diagnoses put in by the DoD.

Mr. HALL. Or as Mr. Abrams put it, garbage in, garbage out.

Mr. COHEN. Yes.

Mr. HALL. Only done electronically.

Mr. ERSPAMER, could you please describe for us with a little more detail your recommendation that VA scrap its paper-based system and develop a system that allows information to be shared between the VHA and VBA?

Mr. ERSPAMER. Yeah. I think it has been covered in some of the other testimony. I think the VA needs to gradually move, and you

cannot do it in one day, but to a paperless system where all the claims files, all the medical information on the medical side and on the VBA side are all shared, where simultaneous users can share that file at the same time. It is all imaged on a computer, somewhere where they can all get access to a database.

I cannot believe in today's world that we do not have that already because the paper record system for reasons I have explained in my testimony just creates enormous problems. We have to tackle the problem and maybe we do it a year at a time. We work back a year at a time every year. We move back in time until we get them all on a computer system. And I think that is absolutely essential.

Mr. HALL. You indicate in your testimony that you think the abandonment of claims could be as high as 99 percent.

Mr. ERSPAMER. Yes.

Mr. HALL. How did you arrive at that figure?

Mr. ERSPAMER. Well, in the prior litigation we did, which is mentioned in my testimony, we actually got discovery from the VA on the claim abandonment rate. And that is the number. It is somewhat dated. It has been more than 10 years old. That was the rate that existed back then. And so I am using that as a basis for going forward. And whether it is 90 percent, 95 percent, or 99 percent, it is way too high.

The bottom line is a lot of those claims that are abandoned are valid claims and they only get abandoned because the veteran does not have a lawyer and he gets very frustrated in trying to deal with a very complicated system that is totally baffling.

Mr. HALL. How many claims were you talking about at that point?

Mr. ERSPAMER. I do not remember the exact number at that time. But it would probably be, I would guess, would be around half of what it is today in terms of total number of claims.

The big thing you need to understand is that the problems and the most important issue is the Regional Office level because most claims never get beyond the Regional Office level. They do not get to the appellate stage. The claims are abandoned for one reason or another at the Regional Office level and they die there.

And what I am suggesting to you is they do not die because the claims are bad or they are invalid. They die because lack of access to counsel and because of the individual veterans get frustrated and give up. And I know that to be the case. I have seen many examples of it in my own experience.

Mr. HALL. Thank you.

Mr. Cox, it seems that the main flaw with the CPI model of claims processing is the lack of accountability. You highlight this problem in your testimony on pages three and four when you say that VBA is not held accountable for the quality and consistency of training at each RO nor the quality or accuracy of its completed work.

Could you elaborate on that statement?

Mr. COX. Yes, sir. VBA is very numbers driven. Every day, it is produce your numbers. You have to get out the number of claims. There is the performance standards, those type things.

We do not believe that there is the focus on the quality of work. I have heard other people give testimony today about the number of claims someone is expected to produce versus the quality of the work product that they produce in the end.

And each Regional Office again has different processes with training. You need people to do the work, so you cut the training program short. We need you back on your job. We cannot let you go for training today to give people the necessary skills.

And, again, the big issue with people that do the work in VBA, they do not come with ready set skills for those jobs. They come with skills, but it is all on-the-job learning. Doctors, nurses, lawyers, whoever, come with skills by basic education to do that type work. But in VBA, it is all on-the-job learning. Hire someone to work in VBA today, they are going to be seasoned and ready to produce work at a good level maybe 2 to 3 years from now.

Mr. HALL. Thank you.

And would you please enlighten us more about the current use of IT in claims processing at VBA? For instance, the RBA2000, BDN, VETSNET, how do these systems work together? What limitations or benefits do they pose for VBA employees?

Mr. COX. In my discussions with the employees who work at VBA, the way these programs work and the boxes come open on the computer. And, you know, I am not a computer guru, sir. But the boxes come open or they enter information. It does not automatically update and populate the other fields in the system. If they are entering data into one box, then when the next box comes up, they have to enter the same data again.

And the way work flows in the development of claims and reviewing the claims that, again, they have to come all the way out of one area to go into another area where if the system was more integrated, they could immediately move from one spot to the other.

Mr. HALL. So the lack of integration for development and adjudication of claims is part of the problem?

Mr. COX. Yes, sir.

Mr. HALL. Could you further explain why you think the VA's current IT artificial intelligence efforts to move to a paperless environment are not the silver bullet for fixing the claims processing system and how long do you think those plans will take to impact claims processing in the short term and the long term? What do you think the effect will be? Is the current system capable of accepting artificial intelligence (AI) improvements without other process improvements?

Mr. COX. Again, I think there are things that you can do that would improve the processing of claims with the information technology. You can never replace the human element and how the claims are reviewed and understanding the data and those type things.

AFGE supports the paperless record. In VHA where I worked for many years, while we are the world leader in the paperless record and the electronic record and to be able to have that in VBA, these claims examiners would not be constantly sitting down now writing a letter to someone chasing down this record or that record. It

could all be there electronically very quickly. But I think you cannot develop a system that will take away the human element, sir.

Mr. HALL. Thank you.

Mr. Abrams, you commented on the obtuseness or the obscurity of VCAA letters to veterans and how unhelpful they are or how difficult they are for the lay person to understand.

Mr. ABRAMS. Yes.

Mr. HALL. Do you have more specific suggestions or—

Mr. ABRAMS. Well, we would like them to be claim specific. One of the problems is a veteran might file enough evidence to clearly prove one of the three elements of service connection and what he really needs to submit is evidence on element three, but he has got one and two at least started.

The VA letter will not really get into that. He will go out and he will go and repeat and spend his money and his time in some cases trying to reprove something that should have been conceded.

Part of that is the way the VA has set up how its Regional Offices work. They have divided these groups of adjudicators into teams and the people who are making the final decision are not the people who are developing the claim. So the people developing the claim are leery of conceding certain factual predicates.

That also impacts on examinations. Too many times we have seen a VA examination go to a doctor for PTSD where the veteran has a Combat Infantryman's Badge and the doctor looks at it and is not told to concede the fact that the veteran was in combat and that if he alleges a stressor linked to combat to concede that the stressor occurred.

So the doctor looks at the records and goes I do not see any stressor. I cannot diagnose PTSD. So the vet is told you do not have PTSD. And he spends his money to go to a private doctor to diagnose PTSD when really the issue was stressor and the VA made an error in not telling the doctor to concede the fact that he was exposed to combat and suffered a stressor.

These are the kind of things that need to be fixed. But, again, I stress unless you change the work measurement system, all of these are minor cures. The major cure is to get the VA to do it right in the first instance.

Mr. HALL. Thank you.

We, my office, had a 60-year-old claim, 84-year-old veteran, Navy, World War II, who had been misdiagnosed for 60 years. Just a couple months ago we got him a PTSD rating of 100 percent, which he deserved all along after having two ships blown out from under him in the Pacific.

Mr. ABRAMS. Mazeltov.

Mr. HALL. Well, thank you. But, you know, I am glad he lived to see it.

I want to thank you. You have all been very helpful and very patient.

And starting with Mr. Cohen and then anybody else who wants to comment on this last question, would you elaborate on what you mean when you say VA should focus more on accuracy and not speed?

It seems to be a theme that has been mentioned by all of our witnesses in processing claims. Since the VA denies that this is the

basis for determining production standards, speed that is, describe how VA should change this result and focus on quality, not quantity.

Mr. COHEN. Well, the OIG report, which interviewed people who were involved in ratings leaves us with the conclusion that, in fact, speed is the criteria that people who work for the VA live or die by in terms of their awards and their bonuses.

Now, at the same time, that same evaluation by OIG revealed that 50 percent of the people who were doing the ratings said the speed criteria prohibits them from adequately developing the claim before they decide it and from deciding it correctly.

We know that in order to decide a claim correctly, you have to decide whether this particular claim should be service connected, whether the impairment should be service connected, the proper rating, and the proper effective date. All these things are decisions that have to be made right. If they are not made right in the beginning, what we end up with is the 190 days in the Regional Office system and then you get a denial. And then 90 percent of them are abandoned.

I know that is true because in the 15 years that I have been representing veterans, I have yet to find a case where a veteran came to me with a claim that had not already been filed and abandoned.

So at the time they are ready to go into court, they may have filed this claim twice or three times and abandoned it each time after they got their initial denial.

But when someone continues on it, then they are facing another 2 years in the Board of Veterans Appeals and it probably, because it was not developed properly, will come back again to haunt the VA and increase their backlog.

If they took the time to develop it properly and to decide it properly, then they would not face the same claim again. But this requires adequate training because this is a complex area of the law.

And our experience shows that the people who are doing the ratings do not have an adequate understanding of the rules and regulation they are supposed to rate it under. They are not keeping up with the court decisions. So they are not really able to effectively and accurately decide a claim.

Mr. ERSPAMER. May I just add one more point to that, Mr. Chairman? Back in the 1980s when I was doing the Norris case and taking discovery in that case, which went to the United States Supreme Court, the issue of incentive compensation system in the VA was a central issue in that case. It is the same system today. Some bells and whistles have been changed, but it is fundamentally the same system.

The problem is if you create a financial incentive with the adjudicators that conflicts with doing the case right, that is a system that is bound to fail. You cannot pit the financial interest of the rater or the adjudicator against the interest of the veteran.

It is a system that is flawed in the inception and it has never been changed. It needs to be changed. And I think that is one thing all of the people on this panel probably agree with. That system has severe problems and they have been endemic for many, many years. No one has ever paid any attention to it.

You know, there were two attorneys at the BVA who were indicted for doctoring and removing records from claim files in order to create an immediate basis for a remand decision, a quick remand decision about 10 years ago that involved thousands of claims.

And that illustrates the depth of the problem and it is still there even though there have not been any recent indictments. The problems are still there.

Mr. HALL. Mr. Cox, would you care to add anything to that?

Mr. ABRAMS. I do, too.

Mr. COX. I think I would add to it from the medical perspective. Who would you want to do your cardiac bypass, the physician who can turn out the most and make the most money in the day or the one that can turn out your surgery with the best outcome and with the least complications and the best survival rate?

And I agree with my colleagues. Do the claim properly first out, get it right, get that veteran what they deserve, so that they do have that good life thereafter and are taken care of.

Mr. HALL. Thank you.

Mr. Abrams, last word.

Mr. ABRAMS. Well, I want to answer you with a story. We had a case where a veteran filed a claim for a bilateral leg condition. The VA did not have his service medical records. But in its eagerness to adjudicate the claim, the VA wrote him a letter and asked for continuity of symptomatology. The veteran did not answer within 60 days and his claim was denied and it went away.

I was working for the VA at the time. I picked the case up on quality review. After the claim had been put back in the file bank, the veteran's service records came in. They showed that the veteran lost both his legs due to machine gun fire. I called the veteran. I said why did you not submit evidence. And he said how can I prove continuity of symptomatology when I do not have my legs anymore.

The man was entitled in today's dollars to over \$3,000 a month. Now, we quickly fixed it and got him his money, but that was simply the Regional Office trying to do something quickly to get work credit and it impacts—

Mr. HALL. Mazeltov.

Mr. ABRAMS. Thank you.

But I want to read you what I wrote in 1987 talking about Gordie Erspamer and his lawsuit. I was working for the VA at the time. I was their legal advisor. And I said if Mr. Erspamer can show that our system pits the financial interest of adjudication officers, which today are service center managers, against the fair and reasonable treatment of our claimants, he would well be on his way to proving the VA does have an unfair, adversarial claims adjudication system.

It is clear that the people in this panel all say that there is too much emphasis on productivity, not on quality. And in our solutions, we have to be reasonable. The VA needs more people to do this. But if they are going to get the people, let us make them accountable for doing the claims correctly at first.

Independent quality review, a different work measurement system, and all the other improvements will help. And that will

change this system. The VA will have to be brought kicking and screaming into this, but it will work.

Mr. HALL. Minority Counsel has a couple of questions.

Mr. LAWRENCE. Thank you, Mr. Chairman.

On behalf of the Ranking Member, Mr. Erspamer.

Mr. ERSPAMER. Yes.

Mr. LAWRENCE. You stated that 99 percent of the claims at the Regional Office are abandoned. Could you elaborate on where you arrived at those numbers? Do you mean that if a claim is denied and somebody does not appeal the decision, is that what you consider an abandoned claim?

Mr. ERSPAMER. It would include that circumstance. And I think I explained this in part in my first answer, but I think Mr. Cohen, I believe, gave a further explanation.

Most claims, the veteran starts out representing himself, files a claim, gets a denial decision. If he does not appeal within a certain period of time, it lapses and that claim is deemed abandoned.

Most often, veterans try a second time at the Regional Office or a third time or a fourth time or a fifth time. Eventually they may try to get some help somewhere along that process.

And with each abandonment, the effective date, he loses the effective date unless he can show CUE, clear and unmistakable error. So the problem is you get the same claim over and over and over again. The veteran often abandons it.

And the statistics I gave you, the 99 percent as I indicated earlier, came from discovery in the Norris litigation. And that is a dated figure, but it is probably roughly what it is today. I do not know any reason why it would change.

But if you look at the number of claims filed, you will see that the same veteran files a claim over and over and over and over again. It is not efficient for the system either.

Mr. LAWRENCE. Well, let me ask this.

Mr. ERSPAMER. Yeah.

Mr. LAWRENCE. If somebody opens a claim for, say myopia, that is not service connectable by statute and they do not appeal that decision that would then be considered an abandoned claim by the standard that you apply?

Mr. ERSPAMER. Well, no. The standard I would apply assumes that we do not really know whether a particular claim is abandoned because it is a bad claim or it is a good claim, where the veteran does not have a lawyer or whatever. We do not know the answer to that question.

Some abandoned claims are abandoned because perhaps the veteran thinks it is not a very good claim. I do not start from the proposition of assuming that veterans file false claims or invalid claims. There probably are a few of them.

But, yes, in that 99 percent, probably are some claims that are abandoned because they are without merit. I would agree with that part of your assumption in your question.

But I can tell you very many times from having studied many claim files in litigation that many abandonments are abandonments of valid claims and they are abandoned because a veteran does not know what to do. He does not know how to appeal or he lets the time run. That is a very common occurrence.

And if you looked at the appeal dispositions, you will see that many dispositions on appeal are by summary dispositions because the veteran has not complied with the statutory time requirement. It is just too bad because a lot of deserving veterans lose out.

Mr. LAWRENCE. Thank you, sir.

I will be interested in the VA's response, what their take on that is.

And for, Mr. Cohen, you said the VA's accuracy rate is 80 percent, that it is actually more like 20 percent. And could you elaborate more on how you arrived at that?

Mr. COHEN. Yes. If you look at the report of the chairman of the Board of Veterans Appeals and you look at the number of merit decisions where the Board decides either that they are reversing the decision of the Regional Office or that the claim was inadequately developed and sent back for redevelopment and you calculate out adding those two together, you will find out that it is over 80 percent of the claims either have to be sent back because the Regional Office did not do its job, made a rating without an adequate record, or outright denied it improperly.

A lot of the cases that we see that get reversed by the Board involve things like presumptions, benefit of the doubt, and my own personal favorite is lack of clear evidence of aggravation. The VA is very fond of saying, well, you had a condition before you came into service and it should not be service connected because the change in your condition was not aggravated by service.

The burden is on the VA to show it was not clearly aggravated by service and what we usually have is we usually have the veteran's doctor saying I believe that it was aggravated by service, the VA doctor saying, oh, it was not aggravated by service. So you have one piece of evidence on one side, one piece of evidence on the other side. Obviously you cannot make a decision which way it goes.

The standard should say there is no clear evidence of lack of aggravation and the veteran wins. That is not the way the Regional Office does it. Frequently the Board will have to correct them on that.

Mr. LAWRENCE. All right, sir. Thank you.

Thank you, Mr. Chairman.

Mr. HALL. Thank you.

Thank you to our panel. You have been most helpful and we will do our best to take all the information we are gathering and make some progress on these very important issues. You are now excused.

And we would ask our third panel to come join us at the table, the witness table, Adrian Atizado; Assistant National Legislative Director of Disabled American Veterans (DAV); Paul Sullivan, the Executive Director, Veterans for Common Sense (VCS); Steve Smithson, Deputy Director of Veterans Affairs and Rehabilitation Commission, the American Legion; Gerald Manar, Deputy Director, National Veterans Service, the Veterans of Foreign Wars of the United States (VFW); and John Roberts, National Service Director of the Wounded Warrior Project (WWP).

Thank you, gentlemen, for your patience as well. As usual, your full written statements are entered in the record. And you will each be recognized for 5 minutes starting with Mr. Atizado.

STATEMENTS OF ADRIAN ATIZADO, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; PAUL SULLIVAN, EXECUTIVE DIRECTOR, VETERANS FOR COMMON SENSE; STEVE SMITHSON, DEPUTY DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, AMERICAN LEGION; GERALD T. MANAR, DEPUTY DIRECTOR, NATIONAL VETERANS SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES; AND JOHN ROBERTS, NATIONAL SERVICE DIRECTOR, WOUNDED WARRIOR PROJECT

STATEMENT OF ADRIAN ATIZADO

Mr. ATIZADO. Thank you, Mr. Chairman.

Mr. Chairman, Members of the Subcommittee, I am pleased to have this opportunity to appear before you on behalf of the DAV to address the Department of Veterans Affairs disability claims backlog and claims processing system.

Mr. Chairman, it is evident that the claims backlog is growing and it is doing so successively each year. The complexity of the workload has grown as veterans are claiming greater numbers of disabilities and the nature of such disabilities are ever more sophisticated.

At the current rate, we can reasonably expect VA's caseload to pass 1 million claims at the current rate. However, if the most recent trend in increased staffing is sustained and recommendations that the DAV and The Independent Budget are utilized in conjunction, we believe VA can gain control of the growing claims backlog.

In addition to the mismatch of VBA staffing and workload, the DAV has maintained and has been confirmed, as mentioned in previous panels, by the VA's Office of Inspector General's survey that VA should invest more in training its adjudicators and that such training should have a higher priority.

The DAV has consistently stated that quality is the key to timeliness. Higher quality has a multiplier effect that reduces duplicative work and stems the flow of additional claims to an already overburdened system.

With additional tools through training, the DAV also believes VA should hold its adjudicators accountable for higher standards of accuracy. In fact, the VA acknowledged in 2000 that management needed tools to monitor individual performance. This led to the Systematic Individual Performance Assessment or SIPA Program.

Unfortunately, due to inadequate resources, the VA abandoned this initiative in 2002 and proficiency is now apparently subjectively assessed by supervisors based on their day-to-day perceptions of employee performance.

We submit to you, Mr. Chairman, that without any standard quality assurance review on the individual level, we do not believe optimum quality can be expected nor achieved.

DAV believes various oversight and policy changes should be concurrently implemented to reduce VA's claims backlog while also improving services to VA's clientele.

For example, numerous developmental procedures in the VA's claims process collectively add to the enormous backlog of cases. However, some of those developmental procedures are arbitrarily abused causing overdevelopment of a pending claim.

Specifically the VA consistently refuses to render decisions in cases where the claimant has submitted a private medical examination and opinion until such time as VA has had its own medical examination and opinion obtained. We believe such egregious behavior should be curbed, Mr. Chairman.

In light of the known hardships of prosecuting claims based on combat injuries and the type of warfare currently waged in Iraq and Afghanistan, the DAV believes Congress should also amend section 1154(b) of Title 38. This would clarify what type of military service would be treated as having engaged in combat.

The DAV urges Congress to consider defining a veteran when engaged in combat as one who during active service served in a combat zone for purposes of section 112 of the Internal Revenue Code of 1986 or predecessor provision of law.

Mr. Chairman, this concludes my oral testimony. We hope the Subcommittee will review these recommendations and those in my written testimony for inclusion in your legislative plans.

Again, thank you for the opportunity, and I would be happy to answer questions you may have.

[The prepared statement of Mr. Atizado appears on p. 89.]

Mr. HALL. Thank you, sir.

We will now recognize Mr. Sullivan for 5 minutes.

STATEMENT OF PAUL SULLIVAN

Mr. SULLIVAN. I would like to thank Chairman Hall and Members of the Subcommittee for inviting Veterans for Common Sense to offer solutions on eliminating the enormous backlog of 650,000 claims at VA Regional Offices.

First, as a friend and former aide to the late Congressman Tom Lantos, I just wanted to recognize his great service on behalf of veterans, civil liberties, and human rights. I am sad to see him have passed away.

In addition, since today is Valentine's Day and it is hospitalized veterans day, I would hope we would also keep hospitalized veterans in our thoughts today.

VCS wants to start off by thanking the VBA Regional Office employees who are here in this hearing room. Veterans for Common Sense wants to help the VBA employees help our veterans.

Now, regarding VBA's massive claims backlog, a failure to address this claims catastrophe has needlessly increased suffering among our returning veterans.

According to published government and news reports, the number of broken homes, unemployed veterans, drug and alcohol abuse, homelessness, and even suicide are all rising, problems that are expected to worsen unless VBA resolves the claims backlog.

VCS believes we must focus on two priorities. The first is veterans must come first and the second is veterans' claims must be decided accurately within 30 days.

There are two ways to bring reform to VA. The first is an overhaul approach in the long term and the second is an incremental approach in the short term. There have been lots of incremental approaches, a lot of them great ones suggested here.

VCS supports the Veterans' Disability Benefits Commission report. We also support the recommendations by Harvard Professor

Linda Bilmes, the recommendations made by Gordon Erspamer from Morrison and Foerster, the veterans groups, AFGE, NOVA, and the NVLSP. Now, those are all long-term solutions.

Now, in the short term, there are two quick things that Congress can do. One would be to pass a law that would simplify and expedite claims processing at Regional Offices. This would allow VA employees to automatically approve claims for TBI and PTSD. This means fewer errors and faster benefits for the hundreds of thousands of veterans expected to file TBI and PTSD claims after serving in Iraq and Afghanistan.

This change is needed because the military does not document all bomb blasts and all combat events, thus making it hard for VA to verify and to process TBI and PTSD claims.

Our proposal would establish that a deployment to the war zones means VBA concedes there was a concussive blast or psychological stressor sufficient to cause the TBI or PTSD.

Another short-term solution for VBA is enforcing accountability. Almost everyone up here has mentioned accountability.

In 2001, the current Under Secretary for Benefits was fully informed about all of VBA's vast problems while leading the Claims Processing Task Force. While in office, he should have planned for expanding VBA when the President started the Afghanistan and Iraq wars.

He should have been aware of briefings given by me to some of his top aides about the claims crisis exacerbated by a flood of claims from veterans. This serious problem of Iraq and Afghanistan war veterans was first reported on the front page of the Wall Street Journal in 2003.

VCS believes that Congress should hold the entire Administration, VBA, VA, Office of Management and Budget (OMB), and the White House accountable for systemic leadership failures to assist our disabled veterans. If we change the laws, but we do not change the leadership that is failing to implement the laws, we are still going to be crashing VA over and over again.

For these reasons, VCS believes that the current Under Secretary for Benefits should step down and be replaced with a non-partisan career official loyal to veterans, not the White House and not the OMB.

In conclusion, Veterans for Common Sense believes VA, VBA, congressional leaders, and others should work closely with VBA employees, academics, VSOs, and advocates to find common-sense solutions. The first, of course, is to change the law for presumptions of PTSD and TBI.

To finish, as General Omar Bradley said, we are dealing with veterans, not procedures, with their problems, not ours. VCS asks if Congress cannot fix this problem, then who will?

Thank you, Mr. Chairman. I will be glad to answer any questions.

[The prepared statement of Mr. Sullivan appears on p. 94.]

Mr. HALL. Thank you, Mr. Sullivan.

Mr. Smithson, you are now recognized.

STATEMENT OF STEVE SMITHSON

Mr. SMITHSON. Good afternoon, Mr. Chairman. Thank you for this opportunity to present the American Legion's views on the VA claims backlog and the claims processing system.

As of February 9th, 2008, there were more than 657,000 total claims pending in the Veterans Benefits Administration, more than 402,000 of which were rating cases. There has been a steady increase in VA's pending claim backlog since the end of fiscal year 2004 when there were more than 320,000 rating cases pending.

The majority of the claims processed by the VBA's 57 Regional Offices involve multiple issues that are legally and medically complex and time consuming to adjudicate. Providing quality decisions in a timely manner has been and will continue to be one of the VA's most difficult challenges.

Inadequate staffing levels, inadequate continuing education, and pressure to make quick decisions resulting in an overall decrease in quality work has been a consistent complaint among Regional Office employees interviewed by American Legion staff during Regional Office quality checks.

It is an extreme disservice to veterans, not to mention unrealistic to expect VA to continue to process an ever-increasing workload while maintaining quality and timeliness with the current staff levels.

Despite the recent hiring initiatives, Regional Offices will clearly need more personnel given current and projected future workload demands.

Since 1996, the American Legion, in conjunction with the National Veterans Legal Services Program, has conducted quality review site visits at more than 40 Regional Offices with the purposes of assessing overall operation.

Our quality review team visits a Regional Office for 1 week and conducts informal interviews with both VA and Veteran Service Organization staff. The team also reviews a random sample of approximately 30 to 40 recently adjudicated American Legion represented claims. We find errors in approximately 20 to 30 percent of the cases we have reviewed.

The most common errors include inadequate claim development leading to premature adjudication of claim, failure to consider reasonably inferred claims based on evidence of record, ratings based on inadequate VA examinations, and under-evaluation of disability, especially mental conditions.

In our opinion, these errors are a direct reflection of VA's emphasis of quantity over quality of work and validate our concern that emphasis on production continues to be a driving force in most VA Regional Offices, often taking priority over such things as training and quality assurance. This frequently results in premature adjudications, improper denials of benefits, and inconsistent decisions.

Unfortunately, VA's end product work measurement system as discussed in detail in my written statement creates a built-in incentive to take shortcuts so that the work credit can be taken. This system in effect rewards Regional Offices for the gross amount of work they report, not whether the work is done accurately or correctly, often resulting in many claims being prematurely denied.

Last, I would like to direct your attention to some nonlegislative remedies VA could use to help address its current unmanageable backlog. Several recommendations are discussed in detail in my written statement.

In closing, the best way to help veteran claimants is to fix the entire VA claims adjudication system. Piecemeal solutions do not work and should be avoided. The VA work measurement system should be changed so that VA Regional Offices are rewarded for good work and suffer a penalty when consistent bad decisions are made.

Managers, rating specialists, and Board of Veterans' Appeals (BVA) law judges and attorneys should be awarded for prompt, careful work and they should also be held accountable when they make bad decisions. American veterans seeking VA disability benefits deserve better treatment than what they are currently getting from VA.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Smithson appears on p. 96.]

Mr. HALL. Thank you, Mr. Smithson.

And, Mr. Manar, is that the correct pronunciation of your name?

Mr. MANAR. That's correct. Thank you.

STATEMENT OF GERALD T. MANAR

Mr. MANAR. Chairman Hall, thank you for this opportunity to present the views of the 2.4 million veterans and auxiliaries of the Veterans of Foreign Wars of the United States on the VA claims processing system.

My written testimony discusses at length many events over the last 30 years which have changed the world in which claims are adjudicated. Annual legislation, staffing limitations, implementing and modifying regulations, changes in leadership, mismanagement, failed oversight, and court decisions are just a few of the reasons why the backlog at VA stands perilously close to 900,000 compensation, education, and appeal cases.

We hope that you consider our testimony as you ponder what, if anything, you can do or should do in the coming weeks and months to help the VA better serve veterans.

This hearing today focuses on the claims processing system. Invariably when looking at the process, it is easy enough to ask VA why do you do it that way. Why does it take, for instance, so long to develop a claim when the insurance industry can decide a claim in a matter of days?

The answer lies in the unique set of rights afforded veterans by a grateful Nation in recognition of their service to our country. The insurance industry requires the insured to provide the information it needs to pay a claim. If the insured does not provide the information in a timely manner, the claim does not get paid.

The VA on the other hand is required by law to try and obtain nongovernmental information not just once, but twice, before the burden shifts to veterans. And the VA must spend whatever time is necessary in its efforts to get governmental records. The VA must either receive government records or be told that they do not exist.

The point here is that VA operates by a very different veteran-friendly set of rules which imposes burdens on the government that are not faced by private industry. As a consequence, any comparison between VA and private industry is like comparing apples to, say, canines. They are not in the same genus, species, class, or family.

We believe that there is no quick fix to fixing the problems in VBA. There is only the opportunity for steady and deliberate improvement.

Again, we are convinced that there is no magic bullet. Any single plan that makes the claims processing system simple and easy will make things only marginally simpler and easier on the VA and will occur at the expense of the rights and benefits of at least some veterans, dependents, and survivors. Any such plan is simply unacceptable.

There are a number of things that can be done to improve service and maximize efficiencies. The claims processing improvement model dictates the physical structure of claims processing teams within a Regional Office Service Center. It imposes uniform structure, staffing, and duties on Regional Office management. They deviate from the model at their peril. It has been in place for over 5 years and it has known limitations and problems.

Two years ago, a group of supervisors and managers were asked to study the CPI model and make recommendations for its improvement. Although they spent months diligently working on the task and reportedly made at least several significant recommendations, their report has never been finalized and the changes they suggested have not been implemented.

Since it is our view that the claims processing improvement model has significant problems and limitations, we recommend that an impartial third party critique its strengths and weaknesses and recommend changes that will improve the structure through which claims are processed.

We discuss in our written testimony the current VBA policy of denying replacement staff to offices which are not performing well. In our view, VA either needs to adequately address the problems in those offices or shift the claims processing to other offices since veterans in those jurisdictions are the ones who suffer the most from extended delays and poor quality.

We have offered other suggestions and observations in our testimony on the VCAA, how to encourage ready-to-rate cases, informal claims, the use of computer technology, and how to migrate claims processing to an all electronic environment. We hope that you find them to be informative and useful.

In the end, it is our belief that VBA has difficulty effectively dealing with change. They appear to react to change rather than anticipate it. They need to learn how to better manage change to minimize its impact on employees and veterans.

In our view, VA needs to change its corporate attitude and work toward adjusting to change, managing change, and accommodating the challenges that come with change. If they can do that, if they accomplish that, then we are certain that veterans can be and will be better served than they are today.

The programs are sound. The protections afforded veterans' rights are justified and necessary. We caution, however, against any radical action that changes veterans' programs for the sole purpose of solving the backlog and timeliness problems.

The VFW does not support proposals by Professor Linda Bilmes nor the Dole-Shalala Commission recommendations concerning the compensation program.

Thank you for this opportunity to testify before you today. I will be happy to respond to any questions you may have.

[The prepared statement of Mr. Manar appears on p. 101.]

Mr. HALL. Thank you, Mr. Manar.

Mr. Roberts.

STATEMENT OF JOHN ROBERTS

Mr. ROBERTS. Thank you, Mr. Chairman, distinguished Members of the Committee.

Our written testimony is on record, so I will highlight a few items.

I would like to start off with agreeing with some of the comments made by Mr. Abrams on the second panel. I have a unique experience. Prior to my position with the Wounded Warrior Project, I was a supervisor with VBA.

I agree until you change the current measurement system for production, you are going to continue to have a problem. When you put employees into a position where they have to worry about their job and not the veteran, you are going to have a problem. It becomes an "us" versus "them" type situation.

Currently I disagree with some of the comments made earlier on other panels. I believe quality is an issue for VA because I have seen more employees in trouble for quality issues than I have production.

So as a supervisor, I would do a random selection of cases per employee per month. And this was computer generated. It had no influence on whether I liked the employer or not. The computer generated what I was going to review and what I was not going to review. Therefore, their employee never knew what was going to be taking a look at for their quality issues. So some of the issues I agree with. Some I disagree with.

Now, clearly the Wounded Warrior Project deals strictly with only the OIF/OEF generation of veterans. However, all these problems, they affect all generations of veterans.

Therefore, everybody that has come before you today does have their own ideas, their own recommendations. However, there is no easy fix. That has been said several times. There is no silver bullet.

We do recommend any advancement on technology be researched. However, that is not going to be a quick fix or solution to the problem.

The VA does have in its authority to award what is called a prestabilization rating to the newly injured, which this would allow VA to get money in the hands of the servicemen being discharged from service as soon as possible and then they can go back and look at the other issues.

As a National Service Director, I have traveled from military facilities across the country. On one visit to Camp Lejeune, I wit-

nessed what I considered a one-stop shopping. They actually had a fully functional team within Camp Lejeune which consisted of a supervisor, a rating specialist, veterans service representatives. Each one of them, they had medical professionals there to conduct exams. The file never had to leave Camp Lejeune. It was done right there, which I question sometimes why it is not done at all the major military facilities.

I understand BDD is in place. But if you can put people at all the major military facilities, it seems like it would cut down on some of the shuffling files back to other locations.

Now, complying with the recommendation of the Veterans' Disability Benefits Commission to incorporate medical expertise into the rating process, by necessity, VA disability compensation claims are being rated by individuals who lack medical experience. As a result, if more explanation is needed on a particular exam, a further delay is created when the file is required to be sent back to the examiner for clarification.

To remedy this, WWP agrees with the VDBC recommendation that VA raters should have ready access to qualified healthcare experts who could provide advice on medical and psychological issues that arise during the rating process.

Currently, right now I do know when I was a supervisor that VA gave limited access to VBA employees to access VHA records outside their area of jurisdiction. This is an easy fix, I believe, if you give more VBA access to other VHA facilities. That is something that could be easily done.

Most of our recommendations are very simple. I am very familiar with the CPI process. We are not advocating the removal of it as this would cause even more problems than you have now. However, we are in favor of allowing Regional Offices the flexibility to adjust their current system they have in place to utilize the strengths of their employees.

Each office has employees that are better at one thing or another. If you allow people to adjust the current system, the current CPI system, they may have better processes in place they could use at their own office. Not every system works for every office across the country.

Currently ROs are graded on the number of claims they complete each month. Because cases can be complex, there are different times in development process based on the complexity of the claim. However, you could take one with PTSD, brain injury, and an amputation. But if you go ahead and grant the amputation, you get money in the veteran's hands. You can go back at a later time and finish out the other issues that are more complex.

As I said, our written testimony is on record. Therefore, we welcome any questions you may have. Thank you.

[The prepared statement of Mr. Roberts appears on p. 107.]

Mr. HALL. Thank you, Mr. Roberts.

Mr. Roberts, for the generation of veterans that the Wounded Warrior Project serves, a lot seems to hinge on getting accurate information from DoD.

There seems to be an effort underway to get medical records to the VHA, but does that also benefit the VBA in the same way? Is there something missing in this records transfer process?

Mr. ROBERTS. Well, right now it is. You know, in my recent testimony last month when I came in, there is a problem now. You have National Guard, you have Reservists, and then you have regular active-duty servicemen deploying and at any given time, they are redeploying on numerous occasions.

When they redeploy, the records go with them. When they come back, they refile a claim and you have to start the process all over again. Unfortunately, you have the record management centers that are receiving these records, DD 214s.

There are so many different factors that play into why it takes so long to get a claim finished that if the records came straight from DoD into wherever that veteran is going to be located, if it is at the military facility where you staff personnel to rate the claims right there before they even leave to go to their home of record, yeah, that would be an easy transfer. You take them from one location, one building to another building. It would benefit VBA in that aspect.

Mr. HALL. Thank you.

Mr. Smithson, you mentioned that the American Legion does quality reviews, so I am sure you are familiar with the CPI model of claims process that VA employees.

We have heard during our last hearing on artificial intelligence a description of how six teams of people handle one claim.

What is your opinion or your observations about that process and should we keep it or go back to a case management model or somewhere in between?

Mr. SMITHSON. Well, when we go out and do our quality review visits, we talk to people. We talk to both the VSOs and the VA personnel, both managers and the front-line people. And we have heard a consistent theme of problems or complaints about the CPI model.

The first one is basically it is an assembly line mentality. Under the old case management system, there was more of a pride in ownership. Now it is an assembly line. You move it on.

There also tends to be, I do not know whether it is intentional or it is just a product of the system, but we have heard that there tends to be discouragement of communication between, say, developers and raters. You know, the developers do the development. They move it on to the raters. There is not any interaction in the process.

One case in point, and we have heard this from both raters and developers, rating veterans service representatives (RVSRs) and veterans service representatives (VSRs), is the examination request process. The VSR has to write up that exam request for the doctor. They put the information they want from the doctor, medical opinion, that type of thing, and oftentimes they are not properly trained to write it up. They are not the one rating the claim, but they are the one having to write it up for the rater to come back and then look at.

And so we have heard from both the VSRs and the person who actually rates the claim that there needs to be more communication in that process, possibly letting the rater be involved in that process of doing the exam request versus the developer. So that has been a problem.

And also we have also heard the rotation of employees tends to cause problems as well. And we also learned during our visits that some offices do certain parts of the CPI and some offices tend to ignore certain portions.

So I do not know if the whole thing should be scrapped, but it definitely needs to be examined because both the managers and the people that actually have to implement it, the frontline workers, have concerns.

Mr. HALL. Thank you.

Mr. Manar, you stated in your written testimony that VA leadership has experimented with different claims processing models and configurations of work activities.

Can you give us more details as to what sort of experiments these were or how long the VA has been experimenting with these claims processing models and did any of them have potential that you thought was worthy of following up on?

Mr. MANAR. In the context in which you use it, experiment probably is too strong a word. I was thinking over the course of my career with the VA. I started with the VA at a moment in time when they were just moving into the units and section concept.

As the adjudication officer out in Los Angeles, I was charged with incorporating the case management concept and to bringing it into fruition. And then finally I finished up my career at the Washington Regional Office under the CPI model.

So I have had an opportunity to experience it all and each model has its own pluses and minuses. I am convinced, however, that there are significant flaws in the CPI model. It is only marginally less flawed than the case management system.

It could be it is just because I grew up in it and I was most comfortable with it, but I think that the unit and section concept approach offered the greatest flexibility while still allowing a relatively small group of people to focus on and manage a particular batch or digit range of the cases in front of them. It seemed to me that there was greater accountability under the unit and section concept than more currently.

The CPI model has so many flaws and problems that it is difficult to describe in a short period. So that is it. If I could wave a magic wand, I think we would go back about 10 years and try and do it the old-fashion way, which seemed to process claims pretty efficiently and quickly. And I think quality, if not any better, was certainly no worse than it is today.

Mr. HALL. Thank you.

Mr. Sullivan, did you want to comment on that same question?

Mr. SULLIVAN. No.

Mr. HALL. No? Okay. Well, in that case, Mr. Sullivan, could you provide any information on why National Guard and Reserves are nearly three times as likely to have their claims denied?

Mr. SULLIVAN. Mr. Chairman, I wish I could give you a thorough answer. What we have done at Veterans for Common Sense is identified the problem.

About a year ago when we analyzed the claim activity of Iraq and Afghanistan war veterans, we identified that Guard and Reserve were about twice as likely to have their claim denied than

active-duty soldiers. And now that rate is almost three times as high, fourteen percent versus 5 percent.

What we would like to know is, is it because of a lack of outreach? Is it a lack of the records being unable to be found? Is it a lack of redeployment? We do not know.

What we would like to do is ask that it be investigated to find out what it could be. But it is a significant problem because it seems to be getting worse.

Mr. HALL. That is a powerful piece of information. Colonel Norton, one of our witnesses in a hearing recently said, his slogan that stuck in my head was "same service, same battlefield, same benefits." And he was talking about educational benefits in that particular hearing, but I would say, you know, that the same should go for all of the benefits, and disability included.

Mr. SULLIVAN. Mr. Chairman, some of it may eventually be addressed if, for example, benefits delivery at discharge was forward deployed at National Guard and Reserve armories and demobilization sites. Again, there are a lot of reasons why this might be happening.

I think what we should try to do here is to find out what are the facts, what is going behind it, and then to try to find some solutions. But BDD, expanding that more thoroughly for National Guard and Reserve, it does not currently exist for them, may be part of the answer to solving it.

Mr. HALL. Thank you.

Mr. Atizado, you mentioned quality in your statement as a key issue. So could you tell us more about what you envision as a better approach for the VA? How can individual managers and employees be more accountable and is there a better approach than the STAR Program?

Mr. ATIZADO. Thank you, Mr. Chairman.

The STAR Program has a number of limitations and one of which is it does not allow for any kind of root cause analysis, any kind of trend analysis. And it is only limited to the Regional Office level, not down to the section or individual level.

As I had mentioned in my testimony, the SIPA Program which was created and eventually abandoned in 2002, we were hopeful that would actually get funded the following year or any subsequent fiscal year, but unfortunately that has not.

The reason we believe that a more individualized quality review or quality assurance program should be in place is simply because if you do not know what the problem is, how can you propose a solution to it? And if we cannot somehow show where the issue is, whether it is a single individual or a group of individuals or a particular process, you know, the DAV comes from the position that adjudicators and rating specialists and developers are all inherently in the job to do service for veterans. The problem we see is that the workload is dragging that away from them.

Our relationship with the adjudicators hinges on their attitude. If they are open for debate or a discussion to assist the veteran, it makes the quality of the claim and the decision of the claim more in favor of the veterans, particularly if the evidence supports that.

Unfortunately, as my colleagues have mentioned, they are getting beat down by the requirements to produce rather than produce

good work. And we believe that some kind of tool, whether it be the SIPA Program or some other standardized quality review instrument, be utilized or should be utilized to achieve the quality we are looking for.

Mr. HALL. Thank you.

The Minority Counsel will submit the Ranking Member's question for the record.

[No questions were submitted.]

Mr. HALL. You have all been most helpful and patient and I thank you all. This panel is now excused.

And we would ask our fourth panel to join us, Michael Walcoff, Deputy Under Secretary for Benefits, U.S. Department of Veterans Affairs; Diana Rubens, Associate Deputy Under Secretary for Field Operations of the Veterans Benefits Administration; Bradley G. Mayes, Director of Compensation and Pension Service, Veterans Benefits Administration of the U.S. Department of Veterans Affairs.

Thank you also for your patience. Had we known, we would have called this meeting to start at four o'clock instead of two o'clock. But at any rate, thank you for being here. And, of course, your statement is entered in the record as written, so feel free to highlight or shorten it or whatever you choose.

Mr. Walcoff.

STATEMENT OF MICHAEL WALCOFF, DEPUTY UNDER SECRETARY FOR BENEFITS, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY DIANA RUBENS, ASSOCIATE DEPUTY UNDER SECRETARY FOR FIELD OPERATIONS, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. WALCOFF. Mr. Chairman, thank you.

Mr. Chairman, Members of the Subcommittee, thank you for providing me the opportunity to appear before you today to discuss the Veterans Benefits Administration's claims inventory and claims processing system.

I am pleased to be accompanied by Ms. Diana Rubens, VBA's Associate Deputy Under Secretary for Field Operations, and Mr. Brad Mayes, VBA's Director of Compensation and Pension Service.

My testimony will focus on two efforts we currently have in progress to improve claims processing, our aggressive hiring initiative, and an independent study of the claims process conducted by IBM Global Business Systems.

Before I begin discussing our efforts to improve the claims process, I would like to talk about the inventory and productivity.

As of January 31st, 2008, VBA's pending inventory was 397,077 claims. And I want to stop here because I want to talk about some of the other numbers that have been kind of mentioned in previous testimony.

There were several people, Mr. Cohen, I believe, mentioned 650,000. He also talked about 177 days in the same paragraph that he talked about 650,000. And I would tell you that I believe that

is a little unfair in that the 177 days is how long it takes us to do our rating claims which is the 397,000. If you throw in our non-rating claims which gets it to 650,000, our timeliness is about 130 days. So if we are going to use the 650, then let us use the 130 in terms of timeliness.

And I believe that Mr. Manar threw in education claims to take the number up around 800,000. And our timeliness on education claims, especially supplementals, is approximately 12 days. So that would really bring our timeliness down. But I do not think that would be an accurate reflection of what we are here for today.

Basically I believe the 397,000 number are the group of cases that we are really talking about at this hearing and the timeliness for that is about 180 days.

There are numerous factors that contribute to that number. The two primary ones being the increase in the number of claims filed and the increased complexity of those claims. The numbers of veterans filing initial disability compensation claims and claims for increased benefits has increased every year since fiscal year 2000.

In fiscal year 2007, we received 838,141 rating-related claims compared to 578,000 in fiscal year 2000, a 45-percent increase. This high level of claims activity is expected to continue over the next years due to claims from Operation Iraqi Freedom and Operation Enduring Freedom veterans, the addition of type two diabetes as an Agent Orange presumptive disability, more beneficiaries on the rolls with resulting additional claims for increased benefits, and improved expanded outreach to active-duty servicemembers, Guard and Reserves, survivors, and veterans of earlier conflicts.

VBA's inventory has remained at approximately the 400,000 level for the last year. During that time, VBA has become much more productive, over 21 percent more productive compared to 2 years ago.

If you look at the current fiscal year alone, our production is already up 13 percent compared to fiscal year 2007. In fiscal year 2008, we expect to make decisions on over 878,000 claims and in 2009, that number goes to 942,000. Our increased productivity will eventually have a significant positive impact on our inventory.

VBA is continually seeking new ways to decrease the pending inventory of disability claims and shorten the time veterans must wait for their decisions. Key to our success will be ongoing long-term effort to enhance and upgrade our claims processing system through integration of today's technology.

In the near term, we have two initiatives that I want to highlight. In fiscal year 2007, we implemented an aggressive nationwide hiring initiative. More than 1,800 new employees have been added since January of 2007 and our hiring plan will add an unprecedented 3,100 additional employees by the end of this fiscal year.

To enhance rapid integration into the veterans claims process, we have modified our employee training program to focus on initial training on specific claims processing functions. This will allow new employees to become more productive earlier in their training and at the same time allow our more experienced employees to focus on the more complex and time-consuming claims.

By more effectively utilizing both newly hired employees and experienced claims processors, we expect to reduce the pending inventory and improve claims processing in 2008.

From October 2007 until January 2008, the IBM Global Business Services conducted a detailed review of our business process involved with adjudicating a claim beginning with the application receipt and ending with notification to the claimant.

To date, IBM has provided VBA with a gap analysis which identifies the gaps between VBA's current process and IBM's envisioned process. The gap analysis also includes short-term and long-term recommendations to help VBA improve its processes.

Overall, IBM's recommendations validate areas for efficiency gains already identified internally. Both the short-term and long-term recommendations made by IBM focus on the phases of the claims process and special activities under VBA's control.

The short-term recommendations are incremental enhancements VBA can make to the existing business process to realize benefits and efficiency in productivity in the near term.

Because our current claims process is heavily reliant on paper and the movement of paper claims folders, the greater efficiencies will be gained as a result of IBM's longer term recommendations to move to an electronic paperless environment.

Managing work flow, monitoring performance, and tracking the number of claims processed are critical to maintaining processing efficiencies. The average number of medical disabilities or condition claimed on an original application is increasing.

To further enhance our ability to monitor performance, the study recommends the creation of a performance measurement system focused on tracking the number of medical disabilities or issues claimed.

VBA agrees with the idea of adding an issue-based performance measurement system to our current reporting system. This system will provide us with a better understanding of our workload and productivity. However, at the same time, VBA must ensure that our claims processors stay veteran focused.

To achieve large-scale improvements, VBA must make a fundamental shift in how we process C&P claims.

All of the study's long-term recommendations focus on IT enhancements that will allow VBA to move into a paperless environment, one where work can be managed electronically and automation can reduce manual activities, thereby freeing resources for more value-added decisionmaking.

IBM believes that one of the first steps for VBA in this transition is to enhance the current veteran's online application or VONAPP. VBA is currently coordinating with VA's Office of Information and Technology to resolve all data and privacy and security concerns surrounding the use of an electronic signature.

In addition, we are working through VA's General Counsel to resolve any regulatory issues regarding the need for a wet signature.

Using the virtual VA application, VBA has also initiated two pilot efforts to test our ability to shift to a paperless environment and to test the utility of imaging technology. Through these pilots, we continue to refine our business process and identify necessary

enhancements that will allow us to expand the use of imaging technology.

We are also leveraging the lessons learned from the imaging accomplishments in our Insurance, Education, and Loan Guaranty programs.

As VBA transitions to paperless processing, claimants' access to information will expand. The study team recommends the creation of a secure web portal so that claimants can access claim information and request transactions online.

Currently, claimants may check the status of their claim by calling a toll-free number or by visiting a Regional Office or through a Veteran Service Organization. VBA has a secure web portal called the Veterans Information Portal. The primary external users of this portal are lenders and appraisers who are assisting veterans in the Loan Guaranty Program. Through this portal, external users can access web-enabled computer applications.

Currently there are no disability compensation business applications available to external users through the portal. But efforts are underway as the President's Commission on Care for America's Returning Wounded Warriors also recommended that VA and DoD develop an interactive web portal.

In conclusion, we believe that the independent study by IBM validates our current course of action to improve claims processing timeliness, particularly with regard to information technology. Despite ongoing challenges, VBA continues to develop new strategies to improve claims processing and reduce the time veterans must wait for decisions.

Mr. Chairman, this concludes my testimony. I would be happy to respond to any questions that you may have.

[The prepared statement of Mr. Walcoff appears on p. 109.]

Mr. HALL. Thank you, Mr. Walcoff.

When do you expect that the Subcommittee could see the IBM report?

Mr. WALCOFF. I think Monday is the official day that we get it and I will be glad to give you whatever we get on Monday.

Mr. HALL. That is great. Thank you. I am looking forward to that.

Congratulations on your new position.

Mr. WALCOFF. Thank you, sir.

Mr. HALL. And as former chief person for field operations prior to elevation to this position, I am sure your experience will serve our veterans well.

Could you please describe the current claims processing system model used by the VBA called CPI and the current number of days that each step in the process uses?

Mr. WALCOFF. The CPI model is a process where the teams are divided by particular functions within the claims process. We have a function called triage where employees will look at mail when it comes in. They put it under control and they make a determination as to whether work can be done quickly, immediately, or whether it has to go through a longer process of development before a decision is made.

Assuming that the work does have to be developed, it is then passed on to the predetermination team which is responsible for

developing the claim. That includes sending out VCAA letters. It includes going out for medical evidence. It sometimes includes going out for service medical records or service treatment records. It sometimes means going out for private medical evidence. It could be going to Joint Services Records Research Center (JSRRC) to get stressor information on a PTSD claim.

There are all kinds of different types of development that has to be done and this is the process that takes the longest in developing for that evidence waiting for the evidence to come back. And I will give you some timeframes in a minute.

The third process after the case has been developed is to certify it as ready to rate and it is then sent to the rating board where a rating specialist will rate the case.

Once the case is rated, it goes to a fourth team called the post-determination team where it is gapped, meaning it is printed out on a piece of paper and it is authorized. The award is actually paid in the post-determination team.

That would be the typical claim that you would have. There is another team called the appeals team that would only get involved in cases where a veteran has appealed the decision. So that is the basic process.

The average time it takes to work a claim, and I am going to do this off my memory, so I might be off a couple days, but it will give you a little bit of an idea. It takes us about 8 to 10 days to put the case under control and do that triage process that we talked about.

It then gets sent to the pre-determination team. It takes them about 30 days to begin the development of the case. And there is an area that we can improve in. From the time it goes to triage to pre-D on average, we need to quicken the time that it will take for a VSR to begin the development on that case.

The development itself does not really take that long, but waiting for the evidence to come back is what really takes long. That takes right now about 63 days for all the evidence to come back from the various places. And there are a lot of reasons for that.

Under VCAA, we have to give a certain amount of time for a provider to respond. And under certain types of conditions, if he does not respond in 60 days, we give another 30 days for them to respond. So that is why it takes so long on this particular process.

When all the evidence comes in, it actually moves fairly quickly from there. The rating specialist, it goes into the rating team and it takes about somewhere, I would say, between 14 and 20 days for the rating team to be finished with the case.

It then goes to the post team and it takes there, I would say, about 15 days for it to go through that process. So that is 30 and 60 is 90 and 30 is 120. Depending on the case and how long that part takes where we have to develop evidence, it takes you to around 170 days.

Mr. HALL. Thank you.

And is this an effective model in your opinion and, if so, why has the VA backlog increased almost threefold since its implementation along with a notable rise in processing times?

Mr. WALCOFF. Well, there are several answers to that. First in terms of whether it is an effective model, I will compare it to the

model that it replaced which is what we called the BPR model. It was a model that was developed by Joe Thompson who was a former Under Secretary. And it involved a situation where an employee would not pass the case from one person to another. They would be responsible for all the elements involved in a case.

And I will tell you that when I came into Washington in the Associate Deputy Under Secretary role, I was brought in by Joe Thompson who was Under Secretary at the time and was a supporter of that model at that time.

But what we found was that our work had become so complex and so difficult that our VSRs were having a lot of trouble being able to master all aspects of what a VSR does and at the same time, having to do all the different aspects of VSR work on any given day.

And the reason the CPI model was adopted was the idea that by specializing in a particular function, an employee could learn it, could get comfortable with it, and get good at it. And that is the basic philosophy behind the CPI model.

Now, why has our inventory gone up so much? Well, I can give you a couple reasons. One was we got down to 253,000 at the end of fiscal year 2003. And on September 23rd of that year, there was a court decision called PVA versus Principi, I guess it was at the time. Yes. And that decision said that we could not deny any issue of a claim until it had been pending a year. Within 3 months, because of that court decision, our inventory went from 253,000 to 354,000.

It was finally remedied by legislation passed by Congress. But by that time, we had already gone up 101,000 claims. So that is part of why we are in the shape we are in.

In addition to that, our receipts have continued to go up. We went through a period when we were in a hiring freeze. So while we had receipts going up, while we were losing experienced employees, we were not hiring for about 18 months. Now that is a while ago and we have been hiring now for about 2 years. But we are still paying to a certain extent for that period where we did not hire.

But I believe that with the hiring we are doing now, with the training we are doing, and I think with the total number of employees that we are going to have available to us, we will bring the backlog down.

Mr. HALL. And the loss of experience is slow to be made up when you are bringing new people on board. So that is understandable.

I am curious that witnesses here have taken issue with the VBA's work credit system which is used to measure the productivity of your employees. I know that you disagree. I think that you disagree that the system sacrifices quantity over quality.

But who is accountable for the accuracy of a veteran's claim and the decisions made in adjudicating it? For instance, if an RVSR makes an error in making a rating or a VSR commits an error in the development resulting in an avoidable remand, are there any actions taken?

Mr. WALCOFF. Well, who is responsible? I would say that the employee is responsible for the part of the claim that they did.

And I will tell you that I do disagree with a lot of the statements that were made on previous panels, statements that in effect said that all VBA cares about is productivity and that we do not measure quality at the individual level.

STAR does not measure quality at the individual level. I agree with what the DAV rep said about that. And the reason for that is that STAR is a quality assurance program. It is not a quality control program. It is not meant to measure quality at the individual level.

We do have measures in place tied in with the individual performance standards of all VSRs and all rating specialists that require that five cases a month be reviewed for each employee. And what is reviewed is the part of the work that they were responsible for.

So if it is a VSR who was on the pre D team, the work they did in developing the claim would be what would be reviewed. If you are a rating specialist, then the rating would be the part of the case that would be reviewed. That is a part of our performance standards.

I thought Mr. Roberts made a point as somebody who was a supervisor that he has actually seen more employees be put under performance reviews for quality than he saw for productivity. So I think that certainly proves by a very neutral witness the fact that we do have a quality program.

Mr. HALL. Although it is not abnormal to realign targets as realities change, in your testimony, you talked of the addition of 1,800 employees since January 2007. Yet, during the same time, VA has moved its claims processing target from 125 days in 2007 to 145 days for 2008.

Could you explain why?

Mr. WALCOFF. The change was made because 125 days we felt was not realistic. And to put a goal out there that we just did not feel there was any way we were going to make we felt was, and I guess I will use the word, in some way intellectually at least dishonest.

And the 145 days, I was asked by counsel whether that was a goal that I really felt was realistic and I absolutely believe it is. I do not know whether we will make it or not, but I honestly believe that with all the staffing we are getting that we should be able to make 145 days. And that is why we put that out as our goal.

Mr. HALL. Well, certainly we have to get there before we get to 125.

Mr. WALCOFF. We do. We do. And certainly, sir, strategically, and I think we talked about this a little bit at the hearing that we had in New York, strategically I would like to see us get to 125 days and I have not given up on that. But I think that in terms of, you know, the years that we are talking about, 2009, 145 is more realistic.

Mr. HALL. During this same time period as former Director of Field Operations, can you tell us how many Regional Office Directors received a bonus?

Mr. WALCOFF. I do not know the number off the top of my head. I would say that it is probably half. I would say it is probably about

50 percent. That is not an exact number, but I would say that is in the ballpark.

Mr. HALL. And in your previous position, you also received a bonus. Can you look at that with some objectivity? With the current and historical performance of VBA in processing claims, what do you think of that? In your new position, are you expecting or are you eligible for receiving a bonus and what would that depend on?

Mr. WALCOFF. I am not going to offer a personal comment on whether my bonus was justified. I would suggest that you talk to the two people that rated me, Ron Aument and Admiral Cooper.

In the position that I am in right now, I am eligible for a bonus. Whether I get one is going to be up to Admiral Cooper and the Secretary.

Mr. HALL. Fair enough.

As a long-time employee with the VA who has occupied several positions of leadership with the VBA, could you explain the seemingly sudden shift in priorities at the VBA to information technology improvements?

While I am happy to see VA make affirmative moves in this direction to help increase the efficiency in processing claims for our veterans, I have to say I am not convinced, nor were a number of our witnesses, that the shift is a panacea for all that ails the system.

Mr. WALCOFF. It is not a panacea. I definitely agree with that. I mean that if I am giving the impression that by going paperless, the day after we go paperless, our timeliness will immediately improve by, you know, 50 percent, that certainly is not true and I am not saying that our quality will automatically improve or anything else.

But I think it is a tool. I think it will give us a lot more flexibility in terms of how we handle the work. You know, there has been a lot of discussion. We always hear discussion about consistency and our quality.

And I can tell you that right now there has been suggestions, for instance, just to give you an example on how this could help us, there have been suggestions about PTSD claims. You get inconsistency from office to office. Why do you not just have all PTSD claims processed at a particular office?

Well, on the surface, that sounds like, that might be a good idea. That way, you have all people in one building doing them. You can, centralize your training. You can make sure everybody is doing it the same way, that sort of a thing.

Well, the problem is that most PTSD claims are along with several other issues so that you have a claims folder with the PTSD information in there along with the information about, say, five or six other issues. You really cannot pull out certain pieces of the paper and send them to another office and then leave the paper that is left to the office where the claim was filed.

If we went to an electronic system, it would be very, very simple to have a particular office have access to the part of the file that deals with PTSD while at the same time, the home office could have access to the rest of the file at the same time.

That is a great example to me of how going to a paperless system will absolutely help us in terms of our flexibility and allow us to do some things that we cannot do today.

Mr. HALL. Well, it would seem to me that is true and also all offices could have access to the same information——

Mr. WALCOFF. That is right.

Mr. HALL [continuing]. At the same time. One of our earlier hearings was on artificial intelligence and some of our witnesses were suggesting from their academic or private-sector experience that a system could be set up, which would process 80 to 90 percent of the claims or the portions of claims that were brought by veterans because there would be definitive either presumptive causes or definitive medical records that would establish a clear, visible, undeniable aspect of that claim and leave the 10 or 20 percent that were more difficult to be handled by the human part of the process that you described before.

Do you think that is at all realistic and what would your comments be about that?

Mr. WALCOFF. I am going to make a comment and then I am going to ask Brad to comment.

If you remember when I talked about how long it takes to do different parts of the claim, the actual rating of the claim really does not take that long. What really takes a long time is the part of the development, the deciding what evidence is needed and then having to wait for all that evidence to come back.

Having an expert system or I call it an expert system which you are referring to, to help on the rating aspects of it, I think that the way I understand expert systems, it could help us on the quality aspect because everybody would be sent down the same path answering the same questions as they work through a claim which would, I think, provide for more consistency.

But I am not sure that it would save that much time because that part of the process does not take that much time to begin with.

What do you think, Brad?

Mr. MAYES. Well, I agree with that, Mr. Chairman. Two comments. First of all, we are pretty effective once we gather all of the information and evidence needed to make a decision. We are pretty effective at making the decision. We are doing it 13, 15 days, something in that neighborhood.

Second of all, the algorithms that would be needed to evaluate evidence and the probative value of that evidence in some cases would be, I think, very complex.

And, thirdly, the third point that I would make is that is the fundamental decision and obligates the U.S. Government to that veteran. I would think that where we are making that critical obligation, that commitment, that we would want to have a person involved in that decision-making process.

Rather, I would like to see us, if we are going to look at this type of technology, let us leverage that technology up front in the process, taking information from an application, using that technology to see if there is basic entitlement. Does the claimant have status to file the claim in the first place? Are they a veteran? Use that

technology up front and help in this process, the development process, which takes more time.

So I would suggest that probably more bang for our buck if it could be achieved in the front part of the process as opposed to that part of the process where we are already doing it timely and also we are making that critical obligation.

Mr. HALL. There are a number of Members, I would say most if not all of the Subcommittee, who feel strongly that we should find a way to start providing disability benefits, at least partial benefits to our veterans as soon as possible, if not immediately upon filing a claim. There must be a way for this to be done, even as other aspects of the claim are still adjudicated.

And I realize that we do not want to make this more complicated and more expensive and we are running the risk of doing both. But at the same time, the hardest thing for us as individual Members of Congress in our districts when we deal with cases that come through our door there or as Members of the Committee or the Subcommittee is to justify 125 days, 145, 180, whatever it is, before some money starts to flow and some part of the claim is recognized.

I just wanted to ask if rating a claim actually is not the part that takes the longest, why are there over 800 cases ready to rate in Baltimore and close to 1,000 in Philadelphia?

Mr. WALCOFF. You know, I do not know. I would have to look to see what the ratio is in terms of rating specialists to VSRs. I do not know whether they have been instructed to concentrate on development with the idea that the area Director is planning on brokering some of those cases out. If you want, I can get back to you on that.

[The following was subsequently received from Mr. Walcott:]

At the end of May 2008, there were 733 claims awaiting a rating decision in Baltimore and 392 awaiting a decision in Philadelphia. The national average processing time is 15 days from the time a claim is determined to be ready to be rated until the rating is completed. During this period, the Rating Veterans Service Representative (RVSR) reviews all evidence in the claims file, ensures that VA has met its duties to notify and assist, and makes a determination related to service connection, degree of disability, and effective date. Additionally, the decision time includes any required second-signature reviews by senior RVSRs. At the Philadelphia Regional Office, the decision time is 8.2 days, while this process currently takes 20.6 days in Baltimore.

To assist the Baltimore office in providing more timely claims decisions, additional staffing has been authorized, and cases are being brokered from Baltimore to other regional offices with capacity to assist in rating these claims. Baltimore has hired 51 employees since January 2007. This fiscal year through May, Baltimore brokered over 1,500 claims to other regional offices for rating.

Mr. HALL. Sure. That would be great. I understand there are similar numbers in some of the other ROs.

Mr. WALCOFF. Sir, there are some offices that have been, based on a lot of different factors, and, Diana, you may want to comment on this, instructed to put all of their resources toward development with the idea that we have capacity maybe in the rating area in another office.

And we want to try to get them as much as possible where they have trained rating specialists. So we might tell an office to con-

concentrate on getting these cases ready to rate and we will get them rated for you.

Mr. HALL. So each office does not have trained rating specialists?

Mr. WALCOFF. Well, it depends. I mean, certainly every office has trained rating specialists. Do they have enough depends on several things.

It could be that they have recently had losses where it is taking a while to get the replacements trained so that they are temporarily in a situation where they do not have enough.

It could be that their receipts are up more in a particular area than they are nationwide which is causing a shortage in a given area. There are a lot of different reasons why that might be.

Mr. HALL. On a visit to Landstuhl, Germany, I was informed that efforts are underway to have the medical records for OIF/OEF soldiers leaving the medical facility available in an electronic format upon arrival on American soil.

How accurate is that or how close to that are we and what are VA's efforts and the status currently of efforts to have access to these records and to establish the level of disability or injury?

Mr. WALCOFF. You want to take that?

Mr. MAYES. Sure. That is one of the lines of action that is underway right now with the Senior Oversight Committee. I know that Dr. Tibbits from VA's OI&T staff has been working with some individuals over at DoD at a high level.

I do not know the exact status of the electronic transfer of those types of records. But I am aware that there are some records apparently that are available in the personnel file that we can actually access right now. But it is very limited.

Ideally, we have the entire service treatment record available online. I mean, that is the ultimate goal and I know that is what the line of action team is pursuing.

Mr. HALL. Does the IBM report address this in particular?

Mr. WALCOFF. Not really. They did not get into the whole idea of electronic records in our relationship with DoD. It is not covered.

Mr. HALL. Can any of you tell us how compatible or incompatible the DoD and VA systems are from a computer software standpoint? How close are we to being able to actually transfer that information?

Mr. WALCOFF. I cannot answer the question. I do not know. I know that we are working with DoD on several different levels to try to be able to share records. But in terms of the medical records themselves. I do not know the answer.

Mr. HALL. Mr. Cohen, I believe it was, on one of the other panels, was talking about inaccuracies or misdiagnoses in the DoD side and his concern about them being transferred to VA and being used as a starting point for whatever follows.

Do you have any opinion as to the accuracy of what you are getting from DoD?

Mr. MAYES. I do not think we would necessarily question, for example, a diagnosis by a medical care provider if it is in the service treatment records. But I can speak to the fact pattern that Mr. Cohen talked about. He mentioned that service personnel were being diagnosed with personality disorder and being put out of the military.

As long as they do not have a disqualifying separation, they file a claim with us and there is evidence of a neuropsychiatric disorder, whether or not there was a diagnosis of personality disorder or not, then we will go ahead and develop that claim. We will pursue that claim.

And in many cases, I should not say many, I am aware of cases where there was a personality disorder that was referenced on the DD-214 and, yet, we got a diagnosis of a condition that is subject to compensation and have awarded disability benefits in those cases.

So the point here is that we will treat that claim just like any other claim as long as there is no barred benefits and we will adjudicate it. We will develop for the evidence and in some cases, order an exam if appropriate and pay benefits if appropriate.

Mr. HALL. That is good to hear. I am still curious if there is a percentage. But do you want to hazard a guess?

Mr. MAYES. I do not have data that I am aware of that would show how many service personnel put out for personality disorder where we have seen those diagnoses.

Mr. HALL. I mean, we have heard about it, but it is anecdotal and hard to quantify from my point of view in any way. But it is a concern, especially if we are thinking that, as some people have suggested to the Subcommittee or to the full Committee, that the parallel in the health maintenance organization/private sector world would be a diagnosis of a doctor.

I go into an emergency room or go in to see my doctor and he takes an X-ray, says I have a broken leg, whatever. Either he or I file with the insurance company and that starts, you know, the claim out. And if we could rely on the medical records transferred from DoD and have that peg or at least approximate the level of disability that we are going to be looking at so that it sort of starts the process up.

The question is, how reliable that is and what would trigger a reexamination being necessary? Could that be done on a random basis?

I mean, you can never remove the human component completely. But we are hoping that the electronic and the AI aspect of this is going to help us reduce those parts of claims and those claims which are obviously valid and not have your people spending time on things that theoretically could be simple enough that they would be rated or processed by electronic means. It is being done in other areas of government and apparently successfully.

The American Legion testified today about the brokering of claims which involve transferring claims from the Regional Office of jurisdiction to another Regional Office to adjudicate the claim, usually from a poor-performing RO to a high-performing RO. Apparently this brokering concept was instituted around the time of implementation of the CPI model. The Legion believes that this was intended to be a short-term solution as VBA does not have a tool in place to measure the quality of brokered work.

Could you explain for the Subcommittee how and why VBA brokers its claims? Is this a resources, training, or management problem? Are these claims being checked for quality and how does the brokering figure into the strategic plan for processing claims?

Mr. WALCOFF. I can definitely do that since I was very involved in the decision to start the extensive brokering that we do.

It really does not have anything to do with the CPI model per se. You have heard testimony and I think, you know that we do have variation in terms of performance from office to office around the country.

I wish I could tell you that all 57 of our offices were performing very, very well—equally well. But the fact is that for a lot of different reasons, we have some offices that have more of a backlog than other offices do.

In addition to that, we have organizations called Resource Centers that were set up back in 2000, 2001. The purpose of them being set up originally was to work the diabetes claims that were going to be coming in when the new presumptive was passed. For a lot of reasons, that is not what they were used for.

But we have started using them or started using them back around 2002 to handle the work that was backing up at some of our stations that were not doing as well.

And the philosophy is that, and I will use an example, sir, of your home office of New York, that if a veteran lives in the southern part of New York in New York Regional Office that he should not have to wait an extra 80 to 100 days, let us say, to get that case done because he happens to live in New York where if I move that case to Salt Lake City or Milwaukee, I can get the case probably turned around in 30 days.

And that is the basic philosophy. The fact is we do not have, in my view, New York veterans or Utah veterans. We have veterans of this country and they all deserve to get their case worked as quickly and as accurately as possible.

And if we can find a way to keep that case from sitting some place and get it moved and get it worked, we are going to do that. And that is really the basic philosophy behind brokering.

Now, the answer to the other part of it, I know it was mentioned in here by somebody that we do not do quality checks on the brokered cases and that is not true.

Brad, you might want to talk about that.

Mr. MAYES. Yeah. We are now including the brokered work as part of our Systematic Technical Accuracy and Review Program or the STAR Program. So I believe there was a limitation at one point in attributing those cases to the Regional Office that actually did the work, but we are incorporating brokered work into those reviews.

Mr. HALL. CPI was supposed to eliminate the inconsistencies in ROs, so—

Mr. MAYES. Well, okay. Let me—

Mr. HALL [continuing]. Was that the idea?

Mr. MAYES. What he was talking about, the quote that I guess that somebody read out of Admiral Cooper's task force, what he was referring to had to do with the fact that when he came in, he found that every office was processing work in a different way.

We would put a policy out from Central Office. The C&P Service would put a policy out and we found that there were offices that were deciding, yeah, that is a good policy. I am going to do that policy. And then there were other offices that said, you know, I do

not agree with that. I am just going to ignore it. And then there were other offices that said, well, I am going to do it, but I am only going to half do it because Joe Thompson is going to be gone soon anyway, so, you know, it will all go away.

And Admiral Cooper felt, based on his background of being in the Navy for 33 years that that was an unworkable system. Once the headquarters' organization puts a policy out, everybody has to follow it. You cannot have the people in the field making a decision as to whether they like that policy or not and deciding whether to apply it or not.

We would put IT applications out and offices would make their own decisions as to whether they were going to use them or not. So, therefore, it really became difficult as you would try something new to see whether it would work in a given place because a given place was not necessarily the same as three other places.

And that is what he meant in terms of consistency, that the offices need to be structured the same, meaning they all should be under the CPI model, and that everybody should follow the policies that are decided. There will be time for discussion, that type of a thing. But once a decision is made, everybody does what they are told to do. And that is what he meant by consistency.

Mr. HALL. You will be happy to know this is my last question, Mr. Walcoff.

Mr. WALCOFF. That is fine.

Mr. HALL. It has been mentioned several times before the Subcommittee that providing a prestabilization rate, as outlined in title 38, as well as possibly expanding the Benefits Delivery at Discharge Program would help provide many veterans who are waiting for the adjudication of claims.

Could you give us your thoughts on these ideas?

Mr. WALCOFF. I think one of the things that we have discussed actually fairly recently that we are concerned about is that I do not think our people in the field are making proper use of the pre-stabilization ratings.

Just in looking at the numbers that we see, it appears like there should be more of them and that is one of the things that I am going to talk to Diana about working with the service to see what we need to do to find out why stations are not using pre-stabilization ratings.

Now, one thing I will tell you, sir, is that on the seriously injured cases, there is an assumption that if on a given case it took us, say, 150 days to process the case, that means that the veterans did not receive anything for 150 days.

In most of those cases where the condition that is actually the most serious, let us say it is an individual with an amputation, that amputation, that leg amputation should be able to be rated based on the service treatment records from Walter Reed.

Now, that does not mean we can take the end product on the case because maybe he also filed for a hearing loss and for a back condition or whatever. But the way our process, the way our procedures are laid out, the Regional Office is supposed to pay for the amputation, get that money out to the individual, and then develop for everything else. That is the procedure that we have so that in

a situation like that, the veteran would not have to wait the 150 days.

Mr. HALL. Is that happening to your knowledge?

Mr. WALCOFF. I believe it is happening, but I will tell you that anecdotally, I have heard some people complain to me that because you do not get credit for the case, you know, when you put the 40 percent out for the leg that stations are holding off on doing that until they can do the whole case.

And I will tell you that I tell them and I have told Brad in terms of his STAR reviews that that is one of the things I want them looking at. And if we find any cases where they are doing that, I want to know about it because that is absolutely contrary to the policy we put out and it is contrary to doing the right thing.

Mr. HALL. Well, thank you for expressing that sentiment and for passing it on to your employees. I think this Subcommittee would agree wholeheartedly with that approach.

And thank you for testifying. Thank you for being here. Thank you for waiting so long, Mr. Walcoff, Ms. Rubens, Mr. Mayes. We may have other questions that we will submit in writing to you. And thank you for the work that you do and have a good evening.

The Minority will submit questions on behalf of the Ranking Member and the record will stay open for 5 days.

[No questions were submitted.]

Mr. HALL. Okay. I just wanted to thank you again for your work on behalf of our Nation's veterans and thank everyone who testified. Some of you from the beginning are still here. We look forward to working with all of you on those important issues involved with improving the claims process system.

This hearing now stands adjourned.

[Whereupon, at 6:25 p.m., the Subcommittee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. John J. Hall, Chairman, Subcommittee on Disability Assistance and Memorial Affairs

Today we are here to examine the VA's claims processing system and its attendant disability claims backlog.

There are many areas to explore when trying to determine why the disability claims backlog has reached the point of unmanageability and why this is the second time in a seven-year time period that we've reached this crisis point.

From 2002–2007, the disability claims backlog has risen from about 250,000 to nearly 650,000. During the same period, the VBA consistently missed its performance targets on nearly all compensation and pension claims processing fronts.

These failures engender many questions about the complexity of the system VA has created and the model upon which it is built. One of my leading questions concerns the effectiveness of the Claims Processing Improvement (CPI) model and its suitability to establish meaningful accountability parameters to eliminate the claims backlog and accurately process claims. Thus far, none of VA's own benchmarks have improved since its implementation, and I find this fact disturbing.

Moreover, it seems as if the failure is not necessarily with the system itself but with the failed execution of the processes that are supposed to be reinforced with transparent and highly visible accountability measures to make it work.

As outlined by the 2001 VA Claims Processing Taskforce Report, led by Daniel L. Cooper, now VA Under Secretary for Benefits Cooper, "accountability includes not only the proposition that a leader is responsible for the actions of the group but also is accountable for the results of those actions or inactions. This single attribute is the most serious deficiency in the VBA organization." At the time, Dan Cooper was referring to VBA's then-failed claims processing system, SDN. I think many of those who testify today will concur that these same observations could apply both to today's VBA organization and its claims processing system.

One can only wonder, where is the accountability in a work credit system whose only meaningful measure is productivity and where quality seems to be an afterthought. One where only about 2% of all claims are checked for quality and 1 in 10 claims is processed incorrectly.

This error rate is unacceptable and indicates that VA needs to improve its training regimens to ensure uniformity across ROs and that highly qualified individuals are processing and adjudicating claims.

Further, I ask why are bonuses consistently paid to managers at both the Regional and Central Offices while claims languish. I want VA management to adopt this principle—be accountable for the backlog, don't pay yourselves anything extra until the veterans are paid.

I know VA contends that all of its inventory is not backlogged, but try selling these semantics to veterans waiting 183 days and longer for decisions on their claims. From the Committee's standpoint based on the VA's current performance, most of the disability claims in its inventory are eventually going to become a part of those claims pending longer than VA's target of 145 days for claims processing. Hence, part of the backlog.

Moreover, the Committee does not consider an increase in processing times from 177 days in 2006 to 183 days in 2007, accompanied by an increase in VBA's target performance days for processing claims from 125 days to 145 days during the same time period as progress and neither do our veterans. VA should not conceive of moving its performance targets to compensate for its poor performance. I am confounded by these actions and would like an explanation—so would our veterans.

I am encouraged by some of the numbers from VA's FY 2009 Budget that indicates a 19% increase in VBA IT funding to support efforts to move to a paperless claims environment and increased funding for VETSNET. While technological improvements alone won't solve the backlog problem they are clearly critical to the so-

lution. I am also anxious to see the results of IBM's study of the VBA's business processes involved with adjudicating a claim. This type of review is long overdue.

I am also encouraged to see that VA is requesting more money to add 703 FTEs; yet I am aware that you have been unable to maximize the performance of the record number of 3100 FTEs that this Congress ensured that you receive during the last two funding cycles.

Let's be very clear, this is not just a people problem and adding more people to a broken system cannot be the only answer to vanquishing the claims backlog and improving processing times. To date, this single-minded approach has proven unsuccessful at best.

I think the major faulty premise in this system is that the VA behaves as if it is only accountable to meet the numerical targets it sets and Congress tacitly approves.

But, I want to reinforce that you are actually supposed to be accountable to the veteran who has borne the battle and to his widow and his orphan. I believe we need to refocus and refine our Nation's claims processing system to make it accountable to producing better outcomes for our veterans, their families and survivors.

I thank the witnesses on the first three panels for their thoughtful, solution-oriented testimonies. I hear the frustration in your statements and I look forward to working on ways to implement the workable solutions many of you offer.

I know that the backlog has taken on a life of its own. However, it is not bigger than the collective will we devote to eliminating it and to honing a claims processing system that is veteran-focused, not process-focused.

Last, I know that VA cannot be pleased with its current disability claims processing performance, and I look forward to hearing VBA's strategic plan for addressing these serious concerns. Secretary Peake has highlighted this issue as one of his top priorities and I hope the VA sees Congress as a friend and not a foe in helping to correct the shortfalls in its disability claims processing system.

I believe that just like the VHA experienced a revolutionary transformation, it is well-time to think of devoting the same type of resources into transforming the VBA. It is time for a paradigm shift.

Our veterans deserve the benefit of our collective resources to ensure that this process becomes a world-class, 21st century model that reflects their priceless sacrifice to our Nation.

**Prepared Statement of Hon. Doug Lamborn, Ranking Republican Member,
Subcommittee on Disability Assistance and Memorial Affairs**

Thank you Mr. Chairman for yielding.

I look forward to hearing our witnesses' testimony on how we might address the challenges and opportunities facing VA's Compensation and Pension Service.

In fiscal year 2007, Compensation and Pension Service, commonly referred to as C&P, performed more than 838 thousand rating decisions.

C&P also performed nearly 582 thousand claims actions that did require rating decisions.

Yet, despite the tremendous volume of work accomplished, C&P finds itself behind in its struggle to overcome the steady accumulation of claims awaiting action.

An array of reasons contributes to this frustrating trend, and our witnesses outlined a number of them in their written statements.

Foremost among them will be that VA place more emphasis on accuracy and less on alacrity, rating decisions must be done right the first time.

I wholeheartedly agree . . .

But as much as we may ponder and discuss solutions to the multitude of underlying problems, I think we all recognize that the time has arrived for a reasonable, yet fundamentally different approach to the problem.

If we continue to merely tread water, we are going to sink.

As my Subcommittee colleagues are aware, I have long been an advocate for major reform with regard to the use of information technology.

I am heartened to know that they concur with my perspective that it is well past time for VA to embrace IT as a remedy to an outdated paper based system.

VA should be on the forefront of technology in the disability benefits arena, and I believe it can be.

Not too long ago, VA's healthcare system was so poor it was the subject of derision in movies such as "Born on the 4th of July."

Now, VA healthcare is the subject of emulation among a number of high-quality medical models.

I believe VA can make a similar ascension on the benefits side of the Department. We must be open to considering new ideas, especially in the area of IT, and not be bound by narrow paradigms.

I invite the members of the Subcommittee, the veterans groups, and others to offer suggestions that will improve the process for our future veterans.

Thank you, Mr. Chairman. I yield back.

**Prepared Statement of Joyce McMahon, Ph.D., Managing Director,
Center for Health Research and Policy,
Center for Naval Analyses (CNA) Corporation, Alexandria, VA**

Chairman Hall, Representative Lamborn, distinguished members, I appreciate the opportunity to testify before the House Subcommittee on Disability Assistance and Memorial Affairs of the House Committee on Veterans' Affairs today on the subject of the VA's Claims Processing System. This testimony is based on the findings reported in *Final Report for the Veterans' Disability Benefits Commission: Compensation, Survey Results, and Selected Topics*, by Eric Christensen, Joyce McMahon, Elizabeth Schaefer, Ted Jaditz, and Dan Harris, of the CNA Corporation (CNA). Details on the specific findings discussed here can be found in the report, which is available at <http://www.cna.org/domestic/healthcare/>. The report also includes reference sources.

The Veterans' Disability Benefits Commission (the Commission) asked CNA to help assess the appropriateness of the benefits that the Department of Veterans Affairs (VA) provides to veterans and their survivors for disabilities and deaths attributable to military service. Specifically, the Commission was charged with examining the standards for determining whether a disability or death of a veteran should be compensated and the appropriateness of benefit levels. The overall focus of our effort was to provide analyses to the Commission regarding the appropriateness of the current benefits program for compensating for loss of average earnings and degradation of quality of life resulting from service-connected disabilities for veterans. We also evaluated the impact of VA compensation for the economic well-being of survivors and assessed the quality of life of both service-disabled veterans and survivors.

We also explored other issues for the Commission and documented those results. Pertinent to this testimony is that we were asked to:

- Compare the VA disability compensation program to other disability programs.
- Conduct surveys of raters and Veterans Service Officers (VSOs) with regard to how they perceive the processes of rating claims and assisting applicants.

First we will discuss how we compared the VA disability compensation program to other disability programs with respect to the ratings process. We will then summarize the primary relevant findings based on conducting surveys of raters and VSOs.

Comparing the disability ratings process across disability programs

The Commission asked us to compare VA's program with other federal disability compensation programs in order to determine whether there are any useful practices that VA could adopt to improve its own operations. Our first task was to identify the major criticisms of operations in the VA disability program. We reviewed a variety of publicly available sources that discussed problems with VA performance, including reports from the Government Accountability Office (GAO), reports from the VA Office of the Inspector General (OIG), and congressional testimony.

Next we spoke with the relevant VA staff to get the most current information on the areas being criticized. We interviewed people in the Veterans Benefits Administration's (VBA's) Compensation and Pension Service, VBA's Office of Employee Development and Training, the Board of Veterans' Appeals, and the Office of the General Counsel. We discussed specific aspects of VA operations that were identified as problematic and the approaches that the other disability programs take in those areas. Our focus was limited to federal programs paying monetary benefits to disabled individuals, including Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) under the Social Security Administration (SSA), Workers' Compensation under the Federal Employees' Compensation Act (FECA), disability retirement for federal employees under the Federal Employee Retirement System (FERS) and the Civil Service Retirement System (CSRS), and DoD's Disability Evaluation System (DES).

We found that there were no formal evaluations of the effectiveness of specific practices in other programs in the areas identified as problematic for VA. We decided to first determine whether a program used a practice different from VA's and then to consider whether the other program's practice might be an improvement over VA's. We consulted a variety of sources, including GAO reports, congressional testimony, and personal interviews. We spoke with staff in various offices in the Social Security Administration, the Department of Labor, the Office of Personnel Management, and DoD.

Differences noted across disability compensation programs

There are many differences across the disability programs in terms of purpose, administrative processes, eligibility, benefits, and size. These differences may limit the potential applicability for VA of lessons from the other programs. For example, each disability program has different administrative processes for filing claims and making appeals. The various disability compensation programs also have different criteria for determining eligibility and benefit levels, and different purposes of the monetary compensation, varying from partial or full replacement of earnings to an income supplement, or even to compensation for a shortened career.

The purpose of the VA program is to compensate disabled veterans for earnings lost due to their disability, although there is no mechanism for calculating individual-specific earnings losses (except for cases of Individual Unemployability (IU)). A disability is defined as either an injury or a disease that resulted from service or as a pre-existing injury or disease that was aggravated by service. A veteran can have multiple disabilities, each of which is assigned a rating reflecting its severity. The combination of the disability ratings for all disabilities determines a veteran's level of compensation.

The amount and type of information needed for each program are important determinants of how difficult and time-consuming it is to process and resolve a claim. For example, the VA, FECA, and DES programs all require that a disability be a consequence of an individual's job in order to be eligible for compensation. The connection between employment and disability is straightforward to demonstrate sometimes, but not always, especially for VA cases in which the injury or disability may have occurred many years previously, and may require providing extensive documentation. Although in general the VA program does not require a decision about how much the disability affects a particular veteran's employment and earnings (except for IU cases), it does require raters to determine the extent and nature of multiple disabilities.

Measures of performance

For any disability compensation program, three important measures of performance in claims processing are timeliness, accuracy, and consistency. In addition, we consider issues involving training, productivity standards, and staff turnover.

Timeliness

Beginning with timeliness, we note that the time required to decide and resolve a claim depends on how complex the design of the program is. For example, although the VA program does not need to know a claimant's earnings history, it does need to determine service connection and severity for each disability, and each claim can have multiple disabilities.

Compared to the other disability programs, VA performance in terms of timeliness is poor. The average time for VA to complete a claim (without appeals) in FY2006 was 177 days. In comparison, the average for SSDI was 88 days in FY2006, and OPM staff reported that the FERS/CSRS average is currently 38 days. In general, the FECA and DES programs also reported shorter times to adjudication than the VA average.

Because of the differences across programs in the work required to process a claim, it is difficult to say whether VA's timeliness problems are due to the complex nature of its disability decisions, staffing shortages, low productivity, or some other factors. To know how best to address its problems with timeliness, it would be useful for VA first to disaggregate that 177-day average so that it understands what stages of the claims process are contributing most to the total processing time.

With respect to specific strategies to improve timeliness, VA already does make use of "Tiger Teams" to deal with cases that are designated as high priority at any given time, such as very longstanding cases or cases where the veteran is very old or terminally ill. Because the success of those teams comes from the fact that they are made up of the most experienced staff, unfortunately the Tiger Team approach is not something that VA can replicate on a larger scale (i.e., there are not enough experienced employees to staff a large number of Tiger Teams). VA might also learn from SSA's new Quick Disability Determination (QDD) process, which involves

using a predictive model to identify cases with a relatively high probability of being granted benefits and then trying to act on those cases within 20 days.

Accuracy

Accuracy is another major dimension of the quality of claims processing. VA's accuracy rate in 2006 was 88 percent. Accuracy is based on whether all issues in the claim were addressed, whether the claim was developed in compliance with the Veterans Claims Assistance Act, and whether the rating decision, effective date, and payment date were correct. VA's accuracy is below the overall accuracy rate for SSDI, which is 96 percent, but the difference is not large. However, when comparing accuracy one should remember that the programs have different requirements for processing a claim. In particular, the fact that VA has to rate the severity of a disability creates more potential for error than the yes-or-no disability decision that is required for SSDI.

We were unable to obtain overall accuracy rates for the other programs. However, in comparing other programs' practices with VA's, the only practice that is substantively different from VA's is SSA's practice of focusing on the most error-prone type of cases. Incorporating this element could be worthwhile for the VA because it would result in a disproportionately large gain in accuracy for any given increase in the number of reviews.

Consistency

Measuring consistency in disability programs is difficult, and none of the programs currently has a measure of consistency of the level that GAO recommends for that task, including the use of multivariate analysis to examine disability decisions while controlling for various factors, and in depth independent review of statistically selected case files. Although VA has studied recommendations to improve consistency, the lack of consistency evaluations across programs makes it impossible to compare consistency.

Possible ways to improve consistency might include standardizing training for raters, improving standardization of medical examinations, and consolidating the rating process into fewer locations. In addition, it is worth noting that there have been criticisms of SSA regarding consistency, which in part may be due to the task of determining medical eligibility, which involves considerable subjectivity.

Physical consolidation is also a way to reduce inconsistency in disability programs, and it is an approach that is already being considered by VA. VA disability compensation claims are currently processed in 57 Regional Offices (ROs), and GAO has recommended that VA consolidate some of its disability compensation operations as one way to improve claim processing quality and reduce variation across regional offices. VA reports that it does in fact have plans to consolidate some of its disability claims processing in the future, based in part on past successes in consolidating some other areas of operations. However, this may create less in-person access for some veterans.

SSA has a similar regional variation to that observed for the VA. The other programs face fewer consolidation issues or concerns, because they are much smaller programs and have fewer offices and locations for processing claims.

We also considered a variety of other issues that were identified as potential problems for the VA. We considered the claim that the VA emphasizes quantity over quality in performance evaluations of individual employees, which might lead to hasty decisions that would in turn lead to appeals and more backlogs. However, an emphasis on productivity has been identified as having the potential to negatively affect accuracy in SSA as well. The tension caused by quantity standards, even if accompanied by quality standards, appears to be an issue for the other disability compensation programs as well as for VA.

Training Issues

VA has also received criticisms in the area of staff training. However, examination of the other disability programs shows that VA certainly is not lagging behind in its training efforts. None of the other programs seems to have any formal evaluation of their training either. VBA has also recently focused on increasing the standardization of training. It is worth noting that no other disability program has VA's level of standardization.

Staff Turnover

For the VA program, high staff turnover is viewed as creating a problem for the quality of claims processing by lowering the overall level of expertise. By comparison, it is not clear that the one-year attrition rate for VA disability examiners differs from the rate for all new federal employees. However, minimizing turnover is especially important for VA because of the lengthy training time required for claims

processing. GAO has recommended that it might be useful for the VA to take steps to quantify the reasons that raters resign. In any event, VA is not the only disability program facing the problem of high staff turnover, which has been identified as a particularly difficult issue for SSA. The other disability compensation programs reported similar staff turnover concerns.

Summary of comparisons across programs

Except for the very important issue of timeliness, VA does not appear to be underperforming in comparison with other disability programs. Recent training improvements seem promising for improving VA timeliness in the long term, but effects will not be seen for a while. Some of VA's problems with timeliness could be the result of a complex program design, with multiple disabilities per claim, the need to determine service connection (sometimes many years after separation), and the need to assign a disability rating to each disability. For VA to develop a focused strategy to improve timeliness, it first needs to determine the stages of the claims process that are contributing most to the total elapsed time required to complete a claim.

Raters and VSOs survey results

With regard to the benefits determination process, the Commission asked us to gather information by conducting surveys of VBA rating officials and accredited veterans service officers (VSOs) of National Veterans Service Organizations (NVSOs). The intent was to gather insights from those who work most closely with the benefits determination and claims rating process. Through consultation with the Commission, we constructed separate (but largely parallel) surveys for raters and VSOs. We focused on the challenges in implementing the laws and regulations related to the benefits determination and claims rating process and perspectives on how the process and rating schedule perform.

Survey content

The surveys explored issues involving training, proficiency on the job, and resource availability and usage. Respondents were asked about what they considered to be their top three job challenges. They were also asked about how they decided or established specific criteria related to a claim, how smoothly the rating process went, the perceived capabilities of the various participants in the process, which types of claims were most difficult to process, and what resources would improve the claims process.

Assessment

The overall assessment indicated that the benefits determination process is difficult to use by some categories of raters. Many VSOs find it difficult to assist in the benefits determination process. In addition, VSOs report that most veterans and survivors find it difficult to understand the determination process and difficult to navigate through the required steps and provide the required evidence. Most raters and VSOs agreed that veterans have unrealistic expectations of the claims process and benefits.

Raters and VSOs noted that additional clinical input would be useful, especially from physicians and mental health professionals. Raters felt that the complexity of claims is rising over time, and that additional resources and time to process claims would help. Some raters felt that they were not adequately trained or that they lacked enough experience. They viewed rating mental disorder claims as more problematic than processing physical condition claims. They viewed mental claims, especially PTSD, as requiring more judgment and subjectivity and as being more difficult and time-consuming compared to physical claims. Many raters indicated that the criteria for IU are too broad and that more specific decision criteria or evidence would help in deciding IU claims.

Specific findings

The findings identify several problematic issues related to the benefits determination process that bear on the challenges inherent in implementing, assisting, and navigating the claims process, including:

- Both raters and VSOs identify additional clinical input on rating teams as potentially useful, especially from physicians of appropriate specialties and from mental health professionals. VSOs identify rehabilitation specialists and medical records specialists as other potentially useful sources of input.
- There is a relatively wide range of perceived training adequacy, perceived proficiency in knowledge, skills and abilities (KSAs), KSAs relevant to the performance of the rater's role, and years of rating experience among rating officials that appears to be related to raters' ability to implement the process and their ease at rating and otherwise deciding claims. Raters who feel less well-trained

or less proficient and those who have fewer years of rating experience generally find the process more problematic.

- Raters' perceptions regarding their training adequacy and their KSA proficiency are both somewhat related to their perceptions of the availability of the resources they need to decide a claim such as computer system support, information and evidence, time, and administrative/managerial and clerical support. As perceived training adequacy and KSA proficiency increase, so does perceived resource availability.
- In many respects, rating or otherwise deciding mental disorder claims is generally more problematic than rating or deciding physical condition claims. Both raters and VSOs see claims with mental disorder issues, especially PTSD, as requiring more judgment and subjectivity than claims with physical condition issues. Raters and VSOs also indicate that it is less likely that mental disorder issue claims rated by different raters at the same VA Regional Office would receive similar ratings. Raters and VSOs also both indicate that deciding the various criteria of a claim is more problematic for mental disorder than for physical condition claims.
- A significant majority of raters indicate that more specific decision criteria or more specific evidence regarding individual unemployability (IU) would be helpful and that the criteria for IU are too broad.
- Rating physical conditions in several body systems or subsystems also appears problematic. Raters identified neurological and convulsive disorders, musculoskeletal disorders (especially involving muscles), and disorders of special sense organs (especially eyes), along with mental disorders (especially PTSD), as the most difficult to rate, the most difficult to apply the Rating Schedule to, and the most time consuming to rate.
- Time to rate or otherwise decide a disability claim is a scarce resource and a major challenge for raters; it is also a challenge for VSOs and their veteran and survivor clients to get claims decided in a timely manner. Time appears to be most challenging when raters are deciding complex claims, and raters report that they see claims getting more complex over time.
- A large majority of raters reported that they had insufficient time to rate or otherwise decide a claim, and both raters and VSOs reported that there was too much emphasis on speed relative to accuracy.
- Obtaining needed evidence, especially given the challenge and scarcity of time and the insufficiency of many medical examinations (in particular from private examiners, according to raters) is a challenge in its own right.
- Separately rating the impact of a disability on quality of life and lost earnings capacity was not supported by a majority of either raters or VSOs. The use of computerized decision support technology was not supported by raters; however, raters reported that the use of standardized assessment tools and more specific criteria for rating and deciding mental health issues—especially PTSD—would be useful.
- The process is difficult for most veterans and survivors to understand and navigate. Assisting clients to understand the process and the evidence needed for it is a major challenge for VSOs. A majority of VSOs further report that they disagree that the process is satisfactory to most of their clients. A majority of both raters and VSOs indicate that they believe veterans have unrealistic expectations of the claims process and the benefits they should receive.
- Overall, most raters and VSOs report that they believe that the claims rating process generally arrives at a fair and right decision for veterans. Further, in general, raters and VSOs assessed the performance of their VSOs (and each other) as good; however, most raters reported that they believe VSOs inappropriately coach their clients.

Summary of survey findings for raters and VSOs

The purpose of these surveys was to provide the Commission with insights and perspectives from those on the frontlines of the benefits determination process—VBA rating officials who rate and otherwise decide disability claims, and VSOs who assist veterans and their survivors to prepare, present, and prosecute disability claims. The findings presented in the previous section portray a picture of a benefits determination process that is difficult to use by some categories of raters, difficult to assist by many VSOs, and difficult to navigate or understand by most veterans and survivors.

In summary, these survey results and findings highlight some specific issues that reflect challenges inherent in the benefits determination process. Addressing these challenges may assist in improving the overall VA rating process.

**Prepared Statement of Michael McGeary, Senior Program Officer and
Study Director, Committee on Medical Evaluation of Veterans for
Disability Benefits, Board on Military and Veterans Health,
Institute of Medicine, The National Academies**

Good morning, Mr. Chairman and members of the Committee. My name is Michael McGeary. I am a Senior Program Officer of the Institute of Medicine (IOM) and served as the staff Director of the IOM's Committee on Medical Evaluation of Veterans for Disability Benefits. Established in 1970 under the charter of the National Academy of Sciences, the IOM provides independent, objective advice to the Nation on improving health.

The Committee on Medical Evaluation of Veterans for Disability Benefits (the Committee) was established at the request of the Veterans' Disability Benefits Commission and funded by the Department of Veterans Affairs (VA).

In its June 2007 report, *A 21st Century System for Evaluating Veterans for Disability Benefits*, the Committee assessed the medical criteria and processes used by VA to determine the degree of disability of service-connected veterans. The Committee did not, however, assess nonmedical aspects of the VA disability claims process and therefore the report does not address all factors that might affect the timeliness of decisions on claims. The Committee did not, for example, evaluate the adequacy of staffing levels or the performance of management information systems.

Chapter 4 of the report focuses on the medical criteria VA uses to assess degree of disability, which are embodied in the VA's Schedule for Rating Disabilities. Dr. Lonnie Bristow, who chaired the Committee, is scheduled to testify before you on the Rating Schedule on February 26. Chapter 5 of the report, which I am here to review today, focuses on the medical examination and disability rating parts of the claims process. Chapter 5 includes background information on the organization of the claims process and some statistics on workload trends and the timeliness and accuracy of decisions, which I will summarize briefly.

Disability Claims Workload—Veterans Benefits Administration (VBA)

Between 2000 and 2006, the annual number of claims from veterans for disability compensation increased by 56 percent (from 420,000 to 650,000). VA was able to decide 630,000 claims in 2006, almost as many as were filed, but the backlog of pending claims increased. At the end of 2006, 378,000 claims were pending, 83,000 of them for more than six months.

Disability Claims Workload—Board of Veterans Appeals (BVA)

Between 2000 and 2006, the annual number of formal appeals filed on VA Form 9 increased by 42 percent (from 33,000 to 46,000). Although there were fewer Veterans Law Judges (VLJs) in 2006 than in 2000, the annual number of completed decisions grew, but not enough to keep the backlog of cases pending at BVA from doubling from 20,000 to 40,000. This did not include about 130,000 appeals being reconsidered at the regional office level, either before going to BVA or on remand from BVA.

Timeliness of Disability Decisions—VBA

The average elapsed time from the date the claim requiring a disability decision is received to the date it is decided at the regional office level was 177 days in 2006, up from 166 days in 2004 but down from 223 days in 2002.

Timeliness of Appeals Decisions—VBA and BVA

The average number of days to resolve appeals by VBA and BVA was 657 days in 2006, more than the 529 days it took in 2004 but less than the 731 days it took in 2002.

Accuracy

VBA and BVA each review a sample of decisions for quality assurance purposes. In 2006, 88 percent of rating-related cases met VBA's accuracy standard, compared with 80 percent in 2002. BVA's rate of deficiency-free decisions was 93 percent in 2006, compared with 88 percent in 2002.

Consistency

VA does not assess consistency of decisionmaking on a regular basis. There are indications of substantial variability in decisionmaking from state to state, for example, in the average number of disabilities per veterans; average combined degree (or severity) of disability; average rating level for each of the 14 body systems; percentage of veterans service connected for PTSD, for ratings of 100 percent, and for

individual unemployability; and in the percentage of appeals in which the appellant is successful.

IOM Committee Recommendations for Improving the Medical Examination Process

The medical aspects of the claims process that the Committee looked at were, first, the medical examination process and, second, the disability rating process.

Applicants for disability compensation are asked to provide their medical records and, under the duty-to-assist law, VBA helps them obtain those records, especially their service medical records. In nearly every case, VBA has applicants undergo a compensation and pension, or C&P, examination performed by a Veterans Health Administration (VHA) or contractor clinician. The reports of these C&P examinations become part of the medical evidence that VBA's raters use to evaluate the degree of disability of the veteran and to assign a rating between 0 percent and 100 percent in 10 percent increments. The rating level in turn determines the amount of compensation the applicant will receive.

The Committee found that VBA and VHA have improved the quality and timeliness of medical examinations greatly in the last 10 years but made three recommendations for further improvements. First, VA has developed standardized examination worksheets for more than 70 common conditions, to increase completeness and consistency of examination reports. VA does not, however, have a regular process for updating the worksheets. Most were developed a decade ago, and the Committee found some outdated tests and procedures. The Committee recommended, therefore, that VA implement a process for periodic updating of the disability examination of the worksheets, which should be part of, or closely linked to the process for updating the Rating Schedule recommended by the Committee, with input from an expert advisory Committee, also recommended in the report.

Second, VA has developed interactive online versions of the examination worksheets, which result in quicker and higher quality reports than dictated reports. VA has not made use of the online templates mandatory, and the Committee recommended that VA make them mandatory.

Third, the Committee found that VA's quality review of the examination process was more procedural than substantive, measuring whether a requested item is included in the report, not whether the item is accurate. The Committee recommended that VA establish a regular assessment of the substantive quality and consistency, or inter-rater reliability of examinations and, if the assessment finds problems, to address them, for example by revising the templates or adjusting the training program.

IOM Committee Recommendations for Improving the Rating Process

After the information needed to adjudicate a claim is collected, including the C&P examination report, the veteran's file is given to a nonmedical rater, who compares the information in the file with the criteria in the Rating Schedule to determine the rating level. The Committee offered three recommendations for improving the rating process.

First, the Committee found that accuracy rate of rating decisions has increased steadily since VA introduced a quality review program in 1998, from an accuracy rate of 64 percent to 88 percent in 2006. The sample size is small, however, only enough to determine the overall accuracy rate of regional offices, not the accuracy of decisions at the body system or diagnostic code level. GAO and VA's Office of Inspector General have noted indicators of variability in decision outcomes and urged VA to identify disabilities subject to a great deal of decisions variability, understand the reasons for the variability, and act to reduce the variability where possible. The Committee recommended that VBA periodically assess inter-rater reliability at the diagnostic code level and study the accuracy and validity of ratings. For example, VBA could have a sample of claims rated by two or more raters and analyze the degree of consistency in the ratings given. It could sample ratings given for a particular diagnostic code across field offices to analyze inter-rater and inter-office differences.

Second, the Committee found that raters should have better access to medical expertise. The raters are not medical professionals. If they have a question about the meaning of a test result or if the evidence is inconclusive or incomplete, they have to refer the case back to VHA, which adds time, or make a decision based on incomplete information, which affects accuracy. The Committee recommends that VBA have medical consultants available to raters in the regional offices. With modern communications technology, VBA medical consultants could be in a national or in regional centers.

At one time, there were physicians on the rating boards, but the U.S. Court of Appeals for Veterans Claims barred the participation of physicians in rating decisions. The Committee believes that the court's decision was based on a misunderstanding of the role of physicians in adjudication, which is different from the role of treating physicians. All other major disability programs, such as Social Security's, DoD's disability evaluation process, and the Federal Employee Compensation Act program and civil service disability retirement programs, either have physicians or other appropriate clinicians involved in the adjudication decision or have medical experts readily available to review and discuss claims with lay disability raters.

The third recommendation regarding the rating process is to develop and mandate uniform training and certification programs across all regional offices with standardized objectives and outcomes. At the time of the report, VA was well along in developing a training and certification program for C&P medical examiners, which was due to be deployed in the current fiscal year, 2008. VBA had implemented a certification program for its veterans service representatives but, although plans were being made, no such certification program existed for raters. The Committee recommended that VBA develop a training program for raters, using advanced techniques, and evaluate the program rigorously.

Conclusion

The June 2007 report of the Committee on Medical Evaluation of Veterans for Disability Benefits recommended further improvements in VA's medical examination and rating processes. These recommendations were aimed at improving the quality of medical evaluation and rating processes in terms of accuracy and consistency rather than at increasing the timeliness of decisions. However, several of the recommendations promise to improve timeliness. The recommendation to mandate the use of online medical examination templates, should speed the completion of examination reports, and the recommendation to provide raters with access to medical consultants, should reduce the need to refer case files to VHA for medical opinions.

This concludes my remarks. Thank you for the opportunity to testify. I would be happy to address any questions the Subcommittee might have.

Prepared Statement of Daniel Bertoni, Director, Education, Workforce, and Income Security, U.S. Government Accountability Office

Veterans' Disability Benefits: Claims Processing Challenges Persist, while VA Continues to Take Steps to Address Them

GAO Highlights

Why GAO Did This Study

The Subcommittee on Disability Assistance and Memorial Affairs, House Veterans Affairs Committee, asked GAO to present its views on the Department of Veterans Affairs' (VA) disability claims process. This statement discusses (1) claims processing challenges VA faces, (2) steps VA is taking to address these challenges, and (3) opportunities for more fundamental reform.

GAO has reported and testified on this subject on numerous occasions. GAO's work has addressed VA's efforts to improve the timeliness and accuracy of decisions on claims, VA's efforts to reduce pending claims levels, and concerns about decisional consistency. This testimony is based on a body of past work, updated as appropriate to reflect the current workload and initiatives.

What GAO Found

Despite taking steps to improve its disability claims process, VA continues to face challenges, specifically in reducing the number of claims pending, speeding up the process of deciding claims, and improving accuracy and consistency of decisions across regional offices. For example, between fiscal years 2003 and 2007, the inventory of claims awaiting a decision by VA grew by more than 50 percent to a total of about 392,000, and the average number of days claims were pending increased by 3 weeks to 132 days. Further, GAO and VA's Inspector General have identified concerns about the consistency of decisions across regional offices. Factors affecting VA's claims-processing performance may include increases in the number and complexity of claims being filed and the potential impacts of laws and court decisions.

VA continues to take steps to help improve claims-processing performance, including requesting funding for additional staff. The President's fiscal year 2009 budget

request funds an increase of more than 2,600 additional full-time equivalent employees over fiscal year 2007 levels to process claims.

Beyond the steps VA is taking to address its claims processing challenges, opportunities for significant performance improvement may lie in more fundamental reform of VA's disability compensation program. Such reforms could include reexamining program design such as updating the disability criteria to reflect the current state of science, medicine, technology, and labor market conditions. It could also include examining the structure and division of labor among field offices. Recent studies conducted by presidential and congressionally appointed commissions have recommended some fundamental changes, including updating VA's rating schedule, which provides the basis for decisions about eligibility for benefits.

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to comment on the claims-processing challenges and opportunities facing the Department of Veterans Affairs' (VA) disability compensation and pension programs. Through these programs, VA provided about \$37.5 billion in cash disability benefits to more than 3.6 million veterans and their survivors in fiscal year 2007. For years, the claims process has been the subject of concern and attention by VA, Congress, and veterans service organizations, due in large part to long waits for decisions and large numbers of claims pending a decision. Further, we and VA's Inspector General have identified concerns about the consistency of decisions across regional offices. These concerns have continued and been magnified as veterans of the conflicts in Iraq and Afghanistan, and survivors of servicemembers who have died in those conflicts face similar issues as they seek VA disability benefits. In January 2003, we designated modernizing VA and other federal disability programs as a high-risk area, because of these service delivery challenges, and because our work over the past decade has found that these programs are based on outmoded concepts from the past. More recently, the President and Congress established commissions to study VA's disability compensation system.

You asked us to discuss our views on VA's disability claims process. Specifically, my statement today addresses (1) claims processing challenges VA faces, (2) steps VA is taking to address these challenges and (3) opportunities for more fundamental reform. My statement draws on a number of prior GAO reports and testimonies that were conducted in accordance with generally accepted government auditing standards. (See related GAO products.) We updated information as appropriate to reflect the current status of VA claims processing workload and initiatives.

In summary, despite taking steps to improve its processing of disability claims, VA continues to face challenges, specifically in speeding up the process of deciding claims, reducing the number of claims pending, and improving the accuracy and consistency of decisions across regional offices. For example, between fiscal years 2003 and 2007, the inventory of claims awaiting a decision grew by more than 50 percent to a total of about 392,000, in part because of increased filing of claims, including those filed by veterans of the Iraq and Afghanistan conflicts and from VA's increased outreach to veterans.¹ During the same period, the average number of days these claims were pending increased by 21 days, to an average of 132 days. Further, we and VA's Inspector General have identified concerns about the consistency of decisions across regional offices. Some of the factors affecting VA's claims processing performance may include increases in the number and complexity of claims being filed such as those for Post Traumatic Stress Disorder (PTSD), reopening of existing claims, and the potential impacts of laws and court decisions. VA has taken a number of steps to help improve claims processing performance, including requesting funding for additional staff, establishing "tiger teams" to help process certain claims, and expediting the processing of claims filed by veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF). The President's fiscal year 2009 budget request funds an increase of over 2,600 full-time equivalent employees from actual fiscal year 2007 levels to process compensation claims. While the infusion of a large number of staff has the potential of increasing VA's claims processing capacity, quickly absorbing these many staff will likely present human capital challenges for VA such as how to develop, train, and deploy them.

Beyond the steps VA is taking, opportunities for significant performance improvement may lie in more fundamental reform of VA's disability compensation program.

¹ Rating-related claims are primarily original claims for disability compensation and pension benefits, and reopened claims. For example, veterans may file reopened claims if they believe their service-connected conditions have worsened.

This would include reexamining program design as well as the structure and division of labor among field offices. For example, after more than a decade of research, we have found that VA's and other federal disability programs have not been updated to reflect the current state of science, medicine, technology, and labor market conditions. More specifically, VA's rating schedule, upon which disability decisions are made, is based primarily on estimates made in 1945 about the effect of service-connected impairments on the average individual's ability to perform jobs requiring manual labor. We and at least two recent commissions—the President's Commission on Care for America's Returning Wounded Warriors, commonly referred to as the Dole-Shalala Commission, and the Veterans' Disability Benefits Commission—appointed to study VA's disability compensation system, have recommended updating VA's rating schedule, among other fundamental reforms.

Background

VA pays monthly disability compensation benefits to veterans with service-connected disabilities (injuries or diseases incurred or aggravated while on active military duty) according to the severity of the disability. VA also pays additional compensation for some dependents—spouses, children, and parents—of veterans.² VA's pension program pays monthly benefits based on financial need to certain wartime veterans or their survivors.³

When a veteran submits a claim to any of the Veterans Benefits Administration's (VBA) 57 regional offices, a veterans service representative is responsible for obtaining the relevant evidence to evaluate the claim. Such evidence includes veterans' military service records, medical examinations, and treatment records from VA medical facilities and private medical service providers. Once a claim has all the necessary evidence, a rating specialist evaluates the claim and determines whether the claimant is eligible for benefits. If the veteran is eligible for disability compensation, the rating specialist assigns a percentage rating based on degree of disability. A veteran who disagrees with the regional office's decision can appeal to VA's Board of Veterans' Appeals and then to U.S. federal courts.⁴

VA Continues to Face Challenges in Improving Its Claims Processing

VA continues to experience significant service delivery challenges—large pending workloads, lengthy processing times, and inaccurate and inconsistent decisions. A number of factors contribute to these challenges, such as an increase in the numbers and complexity of the claims veterans are filing and the effects of recent laws and court decisions. These factors have eroded some of the earlier gains VA made in reducing claims backlogs. For example, VA made progress in fiscal years 2002 and 2003 reducing the size and age of its pending claims inventory, but it has lost ground since then.

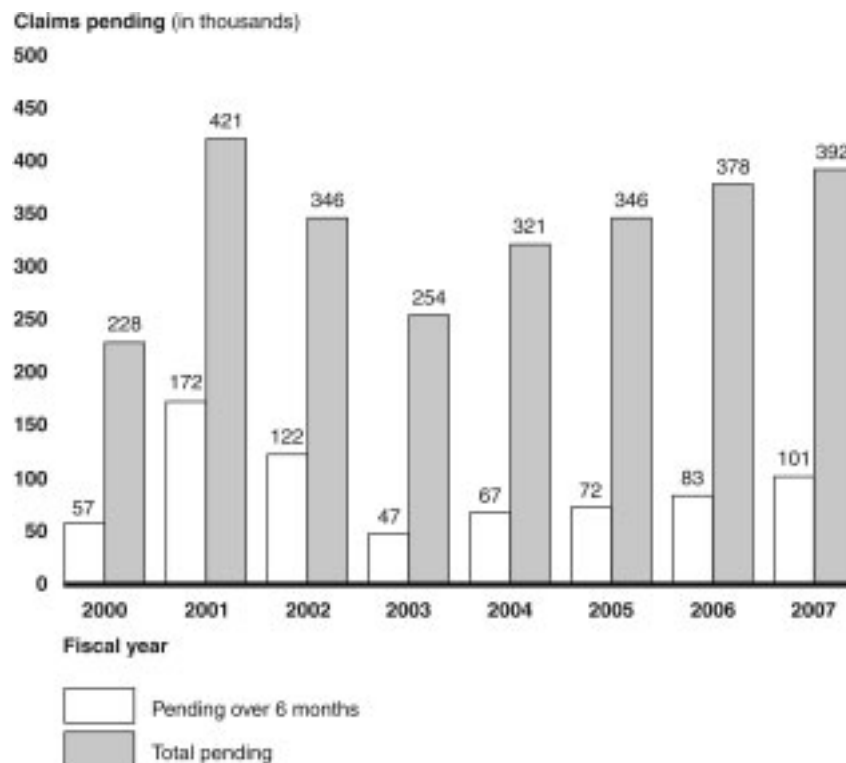
VA's inventory of claims awaiting a decision and their average time pending has increased significantly in the last 4 years, in part because of an increase in the number of claims received. The number of pending claims increased by more than 50 percent from the end of fiscal year 2003 to the end of fiscal year 2007 to about 392,000. During the same period, the number of claims pending longer than 6 months more than doubled from about 47,000 to about 101,000 (see figure 1).

² 38 U.S.C. § 1115 provides for payment of additional benefits for qualifying dependents of veterans whose disability is rated not less than 30 percent.

³ Veterans qualify for pensions for non-service connected disability if they have low income, served in a period of war, and are permanently and totally disabled for reasons not service-connected (or are aged 65 or older). 38 U.S.C. § 1521 and 38 U.S.C. § 1513.

⁴ Appeals from the Board of Veterans Appeals go to the U.S. Court of Appeals for Veterans Claims, and finally to the U.S. Court of Appeals for the Federal Circuit, under certain circumstances.

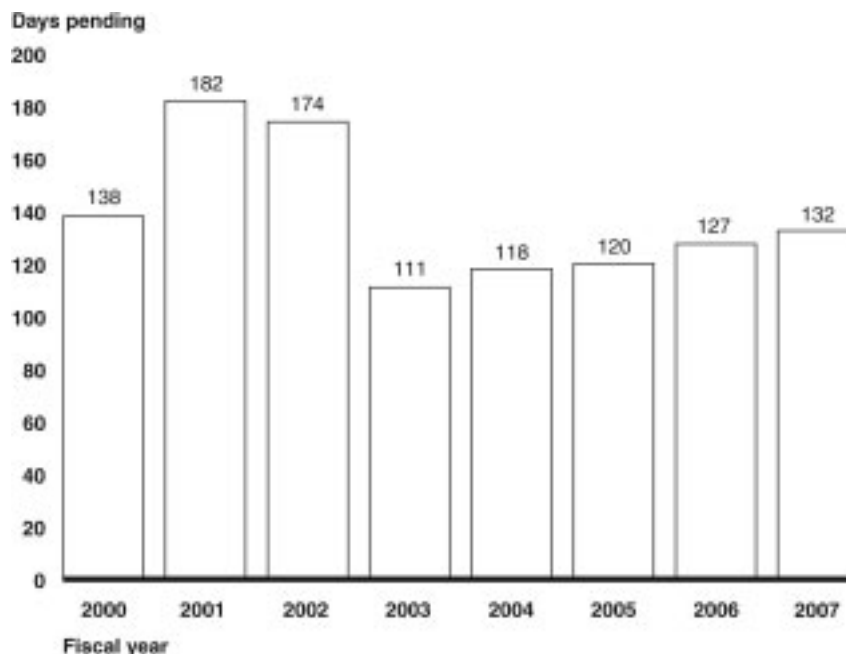
Figure 1—Rating-Related Claims Pending at End of Period, Fiscal Years 2000–2007



Source: VA data.

Similarly, while VA reduced the average number of days claims were pending from a high of 182 days at the end of fiscal year 2001 to 111 days at the end of fiscal year 2003, the average age of pending claims crept back up to 132 days by the end of fiscal year 2007, as shown in figure 2.

Figure 2—Average Days Pending for VA Compensation and Pension Rating-Related Claims, Fiscal Years 2000–2007



Source: VA data.

A number of factors are contributing to this increase in VA's inventory of pending claims, and their average time pending. First, there has been a steady increase in the number of claims filed—including those filed by veterans of the Iraq and Afghanistan conflicts—from about 579,000 in fiscal year 2000 to about 838,000 in fiscal year 2007, an increase of about 45 percent. VA projects claims receipts to increase to about 872,000 in fiscal year 2009 and cautions that ongoing hostilities in Iraq and Afghanistan, and the Global War on Terror in general, may further increase its workload. VA also attributes increased claims receipts to its efforts to increase outreach to veterans and servicemembers. For example, VA reports that in fiscal year 2006, it provided benefits briefings to about 393,000 separating servicemembers, up from about 210,000 in fiscal year 2003. VA has also noted that the number of veterans receiving compensation has increased by about a half million from fiscal years 2000 to 2007. VA anticipates the number of reopened claims will increase as compensation recipients—many of whom suffer from chronic progressive disabilities such as diabetes, mental illness, and cardiovascular disabilities—reopen claims for increased benefits as they age and their conditions worsen.

Another factor affecting processing times is the complexity of cases, in both terms of numbers and types of disabilities veterans are claiming. According to VA, some veterans are citing more disabilities in their claims than in the past and these claims can take longer to complete because each disability needs to be evaluated separately. VA reported that the number of cases with eight or more disabilities claimed increased by 168 percent—from about 21,800 to about 58,500—from 2000 to 2007. Additionally, VA notes that it is receiving claims for new and complex disabilities related to combat and deployments overseas, including those based on environmental and infectious disease risks and Traumatic Brain Injuries. Further, VA reports receiving increasing numbers of claims for compensation for PTSD, which is generally more difficult to evaluate, in part because of the evidence required to link the disorder to a particular event. According to VA, from 1999 through 2007, the number of veterans receiving compensation benefits for PTSD increased from 120,000 to nearly 300,000.

Further, a number of statutes⁵ and court decisions⁶ related to VA's disability claims process have affected VA's ability to process claims in a timely manner. For example, VA stated that the Veterans Claims Assistance Act of 2000 significantly increased the length and complexity of claims development by adding more steps to the process and lengthening the time it takes to develop and decide a claim. VA also notes that legislation and VA regulations have expanded benefit entitlement, adding to the volume of claims. In recent years, statutes have created new presumptions of service-connected disabilities for many Vietnam veterans and former prisoners of war.⁷ Also, VA expects additional claims receipts following enactment of legislation that allows certain military retirees to receive both military retirement pay and VA disability compensation.⁸

VA Continues to Take Steps to Improve Claims Processing

VA is taking several steps to improve claims processing. Some near-term initiatives include the increased use of overtime and use of retired VA employees to provide training and to assist in processing claims. VA reported it currently employs 70 rehired annuitants. VA expects these annuitants to complete 23,000 rating decisions in 2008. VA has also used other initiatives such as brokering claims between offices to help manage its claims inventory and establishing special teams to assist in the processing of claims. For example, VA established teams to process disability claims for veterans 70 years and older and for expediting claims of OIF and OEF veterans. In 2007, VA announced an initiative to provide priority processing of disability claims for all OIF and OEF veterans', including active duty, National Guard, and reservists.

In VA's fiscal year 2009 budget justification, an increase in claims processing staff was identified as essential to reducing the pending claims inventory and improving timeliness. The fiscal year 2009 request would fund 10,998 full-time equivalent employees working on compensation and pension claims, and represents an increase of about 2,600 positions, or 32 percent over fiscal year 2007. In keeping with our prior recommendation, VA's budget justification provides information on actual and planned productivity, in terms of claims decided per full-time equivalent employee. While VA expects a temporary decline in productivity in fiscal year 2008 as new staff are trained and become more experienced, it expects productivity to increase in the longer term. VA is modifying its centralized training program to focus newly hired employees on processing burial and dependency claims. VA reports this will allow them to become productive more quickly, while enabling more experienced staff to focus on disability claims processing. However, incorporating the large number of new employees into the disability claims process will likely present human capital challenges for VA. For example, VA would have to adequately train them. For staff who decide claims, it is estimated that this could take 1 to 2 years. VA would also have to determine where these staff should be deployed.

Even as staffing levels increase, however, VA acknowledges that it still must take other actions to improve productivity.⁹ For example, VA added more locations where servicemembers can initiate the VA disability claims process up to 180 days prior to separating from the service. VA reports that these locations, known as Benefits Delivery at Discharge sites, now total 140. The goal of the program is to provide benefits within 60 days following discharge. In addition, VA also plans to pilot paperless Benefits Delivery at Discharge, where servicemembers' disability claim applications, service medical records, and other evidence would be captured electronically prior to discharge. VA expects this new process will reduce the time needed to gather evidence for deciding claims. GAO currently has work underway looking at the Benefits Delivery at Discharge program.

Another step to improve claims processing is a pilot program by VA and the Department of Defense (DoD) in which VA completes disability ratings for servicemembers who have been found unfit for duty due to disability by the military services. The goal of the pilot program is to deliver faster and more consistent disability

⁵Veterans Benefits Improvement Act of 2004, Pub. L. No.108-454; Veterans Benefits Act of 2003, Pub. L. No. 108-183; Veterans Claims Assistance Act of 2000, Pub. L. No. 106-475.

⁶See e.g., *Moody v. Principi*, 360 F.3d 1306 (Fed. Cir. 2004); *Szemraj v. Principi*, 357 F.3d 1370 (Fed. Cir. 2004); *Disabled American Veterans v. Secretary of Veterans Affairs*, 327 F.3d 1339 (Fed. Cir. 2003).

⁷For example, the Agent Orange Act 1991, Pub. L. No. 102-4, broadens the presumption of exposure to herbicides in Vietnam. See also, 38 C.F.R. § 3.309 (diseases subject to a presumptive service connection).

⁸National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, Div. A tit VI, § 641, amending 10 U.S.C. § 1414.

⁹See GAO, *Veterans' Benefits: More Transparency Needed to Improve Oversight of VBA's Compensation and Pension Staffing Levels*, GAO-05-47 (Washington, D.C.: Nov. 15, 2004).

evaluations and compensation to servicemembers and veterans. Because VA rates disabilities while the servicemember is still in the military service, disability benefits can be awarded soon after the servicemember is discharged. GAO is currently studying this pilot.

In addition to challenges with managing pending claims inventories and deciding claims in a timely manner, VA acknowledges that regional office decisional accuracy needs further improvement. VA reports that it improved the accuracy of decisions on rating-related compensation claims from 80 percent in fiscal year 2002 to 88 percent in fiscal year 2007. However, this figure remains short of its current strategic goal of 98 percent. In March 2007, VA stated it had established an aggressive quality assurance program to assess rating, authorization, and fiduciary program accuracy. Additionally, VA plans to begin routine quarterly monitoring of compensation and pension cases by diagnostic code and to expand quality review staff to complete additional reviews.

VA also continues to face questions about its ability to ensure that veterans receive consistent decisions across regional offices. We have identified the need for VA to systematically address this issue to achieve acceptable levels of variation.¹⁰ VA's Inspector General has studied one indicator of possible inconsistency, which is a wide variation in average payments per veteran from state to state. In May 2005, the Inspector General reported that variation in rating decisions was more likely to occur for some disabilities like PTSD than for others, where much of the information needed to make a determination is susceptible to interpretation and judgment. To improve decision consistency, VA conducted a pilot project to monitor consistency of rating-related claims decisions. VA also conducted a consistency review of Post Traumatic Stress Disorder claims. Finally, VA deployed 58 computerized exam templates for each type of compensation and pension exam to each Veterans Health Administration compensation and pension exam site to improve the quality of medical exams used to make rating decisions.

Opportunities for Improvement May Lie in More Fundamental Reform

While VA is taking actions to address its claims processing challenges, there are opportunities for more fundamental program reform such as reexamining program design and the structure and division of labor among field offices.

After more than a decade of research, we have determined that federal disability programs, including VA's disability program, are in urgent need of attention and transformation and placed modernizing federal disability programs on our high-risk list in January 2003.¹¹ Specifically, our research showed that the disability programs administered by VA and the Social Security Administration (SSA) lag behind the scientific advances and economic and social changes that have redefined the relationship between impairments and work. For instance, advances in medicine and technology have reduced the severity of some medical conditions and have allowed individuals to live with greater independence and function in work settings. Moreover, the nature of work has changed in recent decades as the national economy has moved away from manufacturing-based jobs to service- and knowledge-based employment. At the same time, impairments such as Traumatic Brain Injury have become more prevalent. Yet VA's and SSA's disability programs remain mired in concepts from the past—particularly the concept that impairment equates to an inability to work—and as such, we found that these programs are poorly positioned to provide meaningful and timely support for Americans with disabilities. We currently are assessing the challenges VA faces in providing vocational rehabilitation and employment services to current beneficiaries as well as the large number of servicemembers returning from the OIF and OEF conflicts in need of such services.

In prior work, we recommended that VA use its annual performance plan to delineate strategies for and progress in periodically updating labor market data used in its disability determination process.¹² We also recommended that VA study and report to Congress on the effects that a comprehensive consideration of medical treatment and assistive technologies would have on its disability programs' eligibility criteria and benefits package. This study would include estimates of the effects on the size, cost, and management of VA's disability programs and other relevant VA pro-

¹⁰GAO, Veterans' Benefits: Quality Assurance for Disability Claims and Appeals Processing Can Be Further Improved, GAO-02-806 (Washington, D.C.: Aug. 16, 2002); and Veterans Benefits: VA Needs Plan for Assessing Consistency of Decisions, GAO-05-99 (Washington, D.C.: Nov. 19, 2004).

¹¹GAO, High Risk Series: An Update, GAO-03-119 (Washington, D.C.: Jan. 2003).

¹²GAO, SSA and VA Disability Programs: Re-examination of Disability Criteria Needed to Help Ensure Program Integrity, GAO-02-597 (Washington D.C.: Aug. 9, 2002).

grams and would identify any legislative actions needed to initiate and fund such changes.

In its October 2007 report, the Veterans' Disability Benefits Commission (VDBC)—established by Congress in 2003 to study the appropriateness of VA disability benefits¹³—also pointed out that VA's eligibility criteria were outdated and recommended that the VA Rating Schedule be reviewed and updated. The commission further recommended the schedule be reviewed and updated on a frequent basis and that first priority be given to revising the mental health and neurological body systems to expeditiously address Post Traumatic Stress Disorder, other mental disorders, and Traumatic Brain Injury.

In its July 2007 report, the Dole-Shalala Commission also recommended updating VA's rating schedule. The commission reported that VA's rating schedule is outdated and does not include diagnostic criteria for injuries that are new or for which diagnostic criteria are changing rapidly, such as Traumatic Brain Injury. Further, the commission pointed out that VA's rating schedule fails to acknowledge the disabling impact of conditions such as PTSD, and the effect medical advances have on the prognosis for certain conditions such as serious burns and amputations.

VA is in the process of addressing some of our and the commission's concerns. For example, VA is modifying the rating schedule to provide detailed and updated criteria for evaluating Traumatic Brain Injury and the potential effect of medical advances on certain conditions. In January 2008, VA announced that it had contracted for a study of the appropriate level of compensation for any loss of earnings capacity caused by service-incurred or service aggravated conditions.

In addition to program design, VA's regional office claims processing structure may be disadvantageous to efficient operations. VBA and others who have studied claims processing have suggested that consolidating claims processing into fewer regional offices could help improve claims-processing efficiency and save overhead costs. We noted in December 2005 that VA had made piecemeal changes to its claims-processing field structure. For example, VA consolidated decisionmaking on certain claims—Benefits Delivery at Discharge claims, which are generally original claims for disability compensation—at two regional offices (Salt Lake City, Utah and Winston-Salem, North Carolina). VA also consolidated in-service dependency and indemnity compensation claims at the Philadelphia regional office. These claims are filed by survivors of servicemembers who die while in military service.¹⁴ VA consolidated these claims as part of its efforts to provide expedited service to survivors, including servicemembers who died in Operations Iraqi Freedom and Enduring Freedom. Despite these initiatives, VA has not changed its basic field structure for processing disability claims at 57 regional offices, which have large variations in performance. Unless more comprehensive and strategic changes are made to its field structure, VBA is likely to miss opportunities to substantially improve productivity, especially in the face of future workload increases. We have recommended that VA undertake a comprehensive review of its field structure for processing disability compensation and pension claims.¹⁵ Undertaking such a review is especially critical, since VA will need to determine how and where to deploy the 2,600 new staff that may be coming on board between fiscal years 2007 to 2009 to address its claims processing challenges.

In conclusion, reexamining claims-processing challenges and finding viable solutions are daunting tasks. While VA has taken a number of steps to improve its disability claims process, challenges persist. Opportunities may lie in more fundamental reform. A number of recent studies by commissions, GAO, and others have laid the groundwork and made many recommendations for addressing current workload challenges and redesigning the current program to better align it with modern concepts of disability and support services. However, as we move forward, it is imperative that VA adequately assess its options for improving its disability compensation program and their potential effects. It is also important that VA continue to look for other fundamental reforms that may be needed to improve its disability program for the longer term.

Mr. Chairman, this concludes my remarks. I would be happy to answer any questions that you or other members of the subcommittee may have.

¹³ National Defense Authorization Act for Fiscal Year 2004.

¹⁴ VBA also provides dependency and indemnity compensation to survivors of certain deceased disability compensation beneficiaries. 38 U.S.C. §§ 1541, 1542.

¹⁵ GAO, *Veterans' Benefits: Further Changes in VBA's Field Office Structure Could Help Improve Disability Claims Processing*. GAO-06-149 (Washington, D.C.: Dec. 9, 2005).

GAO Contact and Acknowledgments

For further information, please contact Daniel Bertoni at (202) 512-7215 or Bertoniid@gao.gov. Also contributing to this statement were Shelia Drake, Martin Scire, Kate van Gelder, and Rachael Valliere.

Related GAO Products

DoD and VA: Preliminary Observations on Efforts to Improve Healthcare and Disability Evaluations for Returning Servicemembers. GAO-07-1256T. Washington, D.C.: September 26, 2007.

Veterans' Disability Benefits: Processing of Claims Continues to Present Challenges. GAO-07-562T. Washington, D.C.: March 13, 2007.

Veterans' Disability Benefits: Long-Standing Claims Processing Problems Persist. GAO-07-512T. Washington, D.C.: March 7, 2007.

High Risk Series: An Update. GAO-07-310. Washington, D.C.: January 31, 2007.

Veterans' Disability Benefits: VA Can Improve Its Procedures for Obtaining Military Service Records. GAO-07-98. Washington, D.C.: December 12, 2006.

Veterans' Benefits: Further Changes in VBA's Field Office Structure Could Help Improve Disability Claims Processing. GAO-06-149. Washington, D.C.: December 9, 2005.

Veterans' Disability Benefits: Claims Processing Challenges and Opportunities for Improvements. GAO-06-283T. Washington, D.C.: December 7, 2005.

Veterans' Disability Benefits: Improved Transparency Needed to Facilitate Oversight of VBA's Compensation and Pension Staffing Levels. GAO-06-225T. Washington, D.C.: November 3, 2005.

VA Benefits: Other Programs May Provide Lessons for Improving Individual Unemployability Assessments. GAO-06-207T. Washington, D.C.: October 27, 2005.

Veterans' Disability Benefits: Claims Processing Problems Persist and Major Performance Improvements May Be Difficult. GAO-05-749T. Washington, DC.: May 26, 2005.

VA Disability Benefits: Board of Veterans' Appeals Has Made Improvements in Quality Assurance, but Challenges Remain for VA in Assuring Consistency. GAO-05-655T. Washington, D.C.: May 5, 2005.

Veterans Benefits: VA Needs Plan for Assessing Consistency of Decisions. GAO-05-99. Washington, D.C.: November 19, 2004.

Veterans' Benefits: More Transparency Needed to Improve Oversight of VBA's Compensation and Pension Staffing Levels. GAO-05-47. Washington, D.C.: November 15, 2004.

Veterans' Benefits: Improvements Needed in the Reporting and Use of Data on the Accuracy of Disability Claims Decisions. GAO-03-1045. Washington, D.C.: September 30, 2003.

Department of Veterans Affairs: Key Management Challenges in Health and Disability Programs. GAO-03-756T. Washington, D.C.: May 8, 2003.

Veterans Benefits Administration: Better Collection and Analysis of Attrition Data Needed to Enhance Workforce Planning. GAO-03-491. Washington, D.C.: April 28, 2003.

Veterans' Benefits: Claims Processing Timeliness Performance Measures Could Be Improved. GAO-03-282. Washington, D.C.: December 19, 2002.

Veterans' Benefits: Quality Assurance for Disability Claims and Appeals Processing Can Be Further Improved. GAO-02-806. Washington, D.C.: August 16, 2002.

Veterans' Benefits: VBA's Efforts to Implement the Veterans Claims Assistance Act Need Further Monitoring. GAO-02-412. Washington, D.C.: July 1, 2002.

Veterans' Benefits: Despite Recent Improvements, Meeting Claims Processing Goals Will Be Challenging. GAO-02-645T. Washington, D.C.: April 26, 2002.

Veterans Benefits Administration: Problems and Challenges Facing Disability Claims Processing. GAO/T-HEHS/AIMD-00-146. Washington, D.C.: May 18, 2000.

Prepared Statement of Richard Paul Cohen, Executive Director, National Organization of Veterans' Advocates, Inc.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present the views of the National Organization of Veterans' Advocates, Inc. ("NOVA") on the issues surrounding the VA's disability claims process at the Regional Office level, including what measures can be taken to improve its effectiveness in lessening the 600,000 plus claims backlog, and solutions for improving the VA claims process system in general.

NOVA is a not-for-profit § 501(c)(6) educational organization incorporated in 1993. Its primary purpose and mission is dedicated to train and assist attorneys and non-attorney practitioners who represent veterans, surviving spouses, and dependents before the Department of Veterans Affairs (“VA”), the Court of Appeals for Veterans Claims (“CAVC”), the United States Court of Appeals for the Federal Circuit (“Federal Circuit”), and on remand before the VA. NOVA has written many amicus briefs on behalf of claimants before the CAVC and the Federal Circuit. The CAVC recognized NOVA’s work on behalf of veterans when it awarded the Hart T. Mankin Distinguished Service Award to NOVA in 2000. The positions stated in this testimony have been approved by NOVA’s Board of Directors and represent the shared experiences of NOVA’s members as well as my own fifteen-year experience representing claimants at all stages of the veteran’s benefits system from the VA Regional Offices to the Board of Veterans Appeals to the CAVC as well as before the Federal Circuit.

OBSERVATIONS

Throughout 2007, top VA officials such as former Secretary James Nicholson and Daniel Cooper, VA’s Veterans Benefits Administration Director, informed Congress about the backlog and excessive delays veterans are facing when filing a claim for VA benefits. Unfortunately, it is NOVA’s conclusion that 2008 has brought little to no change in the following six major problem areas causing or contributing to the VA’s inability to process a veteran’s claim in a timely fashion. All of these problems require immediate attention and action in order for our Nation’s veterans to see any real improvement in a system upon which they rely for benefits and assistance.

I. Backlog

In 2006, the backlog of claims for VA benefits, has skyrocketed to over 654,000 claims. See, Report Veterans Disability Benefits Commission, October 2007, p. 305. At the same time, the VA received some 800,000 new claims in 2006, making it nearly impossible for VA staff to effectively address the 654,000 backlogged claims waiting to be processed and decided.

II. Processing Time

When a veteran submits a new claim for VA benefits, he or she must currently wait an average of 177 days—almost six months—before getting the first decision. This six-month processing time consists primarily of the VA obtaining evidence, usually with the veteran’s assistance. And, not surprisingly, when the VA does finally issue a decision, it is not always favorable. When a veteran appeals an adverse decision, the processing time for a claim on appeal is astronomical. On average, the time from receipt of the notice of disagreement, which begins the appeal, until the issuance of a Board of Veterans’ Appeals (“BVA”) decision is 971 days. Office of the Secretary, Department of Veterans Affairs, “Strategic Plan for Employees”, July 2007, P 14; Reports of the Chairman of the Board of Veterans’ Appeals, Fiscal Year 2006, p. 16. Simply stated, because of the problems identified herein, a veteran must wait *more than three years* (177 days for the initial processing of a new client plus 971 days for appeal to be ultimately adjudicated) to finally get a favorable decision from the BVA granting him or her VA benefits and compensation. Those veterans whose claims are not granted by the BVA must wait 2 more years for a decision by the CAVC.

Compounding the processing time even more is the well-intentioned Veterans Claims Assistance Act of 2000. The VCAA’s intended purpose was to better inform the veteran about the information and evidence needed to support his or her claim. However, the reality is that the veteran now receives a multi-page form letter, which results in a deluge of confusing correspondence between the VA and the veteran.

III. Insufficient Staffing

As of April 30, 2007, the VBA had 12,684 employees processing veteran’s claims. Department of Veterans Affairs, “Fact Sheet” July 2007, P. 6. In September 2007, former VA Secretary Nicholson reported that 1,100 new staff had been hired in an effort to reduce the 177 days it takes the VA to issue the first decision on a new claim. Even with these new hires, the staffing at local VA regional offices is woefully inadequate as the numbers make clear: some 13,784 VBA employees are being tasked with processing and deciding over 1.4 million new and backlogged claims.

IV. Insufficient Training

In 2006, the VA’s Office of Inspector General conducted a survey of Rating Veterans Service Representatives (“raters”) and Decision Review Officers (“DROs”). The results of the survey, revealed that within the last year they had received 10 hours

or less of formal classroom instruction on rating policies and procedures. Department of Veterans Affairs Office of Inspector General, "Review of State Variances in VA Disability Compensation Payments", May 19, 2005, p. 58. Given that the VA is the second largest government agency with 57 regional offices and over 12,000 staff throughout the country, 10 hours of training cannot possibly suffice to keep all of the VA's local offices and staff in step with all the policies and procedures directly affecting veterans' claims.

V. Inappropriate Production Standards

Raters and DROs are held to production standards of completing decisions in three to five cases per day which are tied to awards and bonuses, and which adversely affect the quality of their work and the accuracy of their decisions. Nearly half (47%) of those surveyed said it was difficult or very difficult to meet their daily production standards. Forty-nine percent stated that they had difficulty meeting their production standards without sacrificing quality. And 57% stated they have difficulty meeting their production standards if they ensure that they have sufficient evidence for each rating and thoroughly review the evidence. Department of Veterans Affairs Office of Inspector General, "Review of State Variances in VA Disability Compensation Payments", May 19, 2005, pp. 60, 61. These adjudicators are supposed to make decisions based on the evidence in the veteran's claims folder, which can be anywhere from a couple of hundred to several thousand pages of records. But, by forcing VA adjudicators to make three to five decisions **per day**, the decisionmaker is forced to make rush decisions, oftentimes without genuinely reviewing the veteran's entire claims file.

VI. Inaccurate and Inconsistent Decision Making

Calculations derived from the Reports of the Chairman of the Board of Veterans' Appeals reveal an accuracy rate in disability benefit decisions by the VA of less than 20%, rather than the 88% accuracy rate reported by the VA in 2006. See, Institute of Medicine "A 21st-century System for Evaluating Veterans for Disability Benefits" Pp. 180,181; Reports of the chairman of the board of Veterans' Appeals, Fiscal Year 2006, p. 19. <http://www.va.gov/Vetapp/ChairRpt/BVA2006AR.pdf>. Inaccurate rating decisions result in inappropriate denials and lower awards than are warranted, and also in more appeals.

Providing support for anecdotal complaints that veterans regularly have to appeal partially favorable Regional Office decisions (usually due to a lower rating being assigned than the veteran's disability warrants) the VA's Office of the Inspector General's 2006 survey, revealed that 52.4% of Regional Office raters believed it was somewhat likely or very likely that two or more different ratings (one resulting in more compensation for the veteran) for the same medical condition could be supported. Department of Veterans Affairs Office of Inspector General, "Review of State Variances in VA Disability Compensation Payments", May 19, 2005, p. 59. In addition, veterans' advocates are now reporting incidents of VA rating officers and examiners ignoring the diagnostic criteria contained in the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association. Giving more weight to their personal biases than the diagnostic criteria, VA raters and examiners are denying PTSD claims submitted by combat veterans, falsely concluding that the veteran's combat stressor was insufficient for a diagnosis of PTSD.

RECOMMENDATIONS

I. Staffing

Quite simply, all VA regional offices need more staff to process and decide the new and backlogged claims. NOVA recommends that increased funding be provided to the Veterans Benefits Administration, specifically targeted toward hiring more staff, raters and DROs. Only by increasing the number of VA employees who have the responsibility for processing claims can the speed of claims processing be increased without sacrificing the accuracy of the decisions.

II. Training

In addition to hiring more staff, the staff must be regularly and effectively trained. NOVA therefore recommends that increased funding be specifically directed toward providing semiannual training in VA law and medicine to VA raters, DRO's, Regional Office staff and to clinicians who conduct psychological evaluations and compensation and pension exams. This training should provide emphasis on the significance of the duty to assist and notify veterans, the VA's regulations regarding the benefit of the doubt, and how to rate difficult medical conditions such as psychological impairments, TBI, pain, impairments caused by Agent Orange exposure, and Gulf War Illness. It should be noted that the Veterans' Disability Benefits Commis-

sion recommended increasing VA staff and adequate education and training in order “to achieve a manageable claims backlog”. Veterans’ Disability Benefits Commission, “Honoring the Call to Duty: Veterans Disability Benefits in the 21st Century”, October 2007, pp. 394, 395, recommendations 9.1, 9.3, 9.5. Similarly, the VA’s Office of Inspector General recognized the need for ongoing training and reevaluation of human resources to “ensure that the VBA field organization is adequately staffed and equipped to meet mission requirements”. Department of Veterans Affairs Office of Inspector General, “Review of State Variances in VA Disability Compensation Payments”, May 19, 2005, xi, recommendation 6.

Finally, this training needs to include some meaningful way for VA adjudicators to review precedential opinions from the U.S. Court of Appeals for Veterans Claims and apply them where relevant. Given the current caseload of claims to decide, VA adjudicators cannot be expected, on their own, to keep up with the Court’s jurisprudence. There should be a system in place for key Court cases to be disseminated among VA adjudicators so they can start following and applying Veterans Court precedent in a timely and efficient manner. Consistent training sessions would help VA adjudicators better understand the implications and meaning behind important Veterans Court decisions, and help them implement the Court’s case law in their own rating decisions.

III. Concentrate on Accuracy Not Just Speed When Deciding VA Claims

Although every claimant wants a speedy decision, and the old saw reminds us that “justice delayed is justice denied”, an overly hasty and erroneous decision is not beneficial to the veteran or to the VA, which will have to deal with the eventual appeal. In the long run, the time spent to provide an accurate and just rating will most certainly reduce the VA’s backlog by eliminating “hamster wheel” repeated reviews of the same claim, which occurs when a veteran is forced to appeal a hastily made erroneous decision. By encouraging VA adjudicators to make quality decisions (as opposed to meeting a quota of decisions per day), they will take the time to review the veteran’s entire claims folder and apply relevant VA law, regulations and case law.

IV. Require the VA to Maintain Statistics on the Regional Office Denial Rate

Without statistics on the VARO’s denial rate it is impossible to determine how many veterans and other claimants abandon their claims rather than proceeding with an appeal. Denial rates broken down by type of claim would also provide an insight into the examiner’s and rater’s experiences in dealing with different claims.

V. Enact Legislation to Enhance the VCAA

Currently, the VA has interpreted the VCAA in such a manner as to deprive veterans and other claimants of meaningful and helpful claims specific information. Instead, the VA provides generic information which is not helpful because it fails to inform the veteran of what evidence is necessary to prove entitlement to benefits. The result is that is not until many years later, following multiple decisions and multiple remands, does the veteran finally understand the VA’s perception of the shortcomings in the evidentiary development of the claim. The propensity of the VA to withhold claims specific information contributes to “hamster wheel” litigation and to the VA’s increased caseload.

Prepared Statement of Ronald B. Abrams, Joint Executive Director, National Veterans Legal Services Program

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to submit this testimony on behalf of the National Veterans Legal Services Program (NVLSP). NVLSP is a nonprofit veterans service organization founded in 1980 that has been assisting veterans and their advocates for 27 years. We publish numerous advocacy materials, recruit and train volunteer attorneys, train service officers from such veterans service organizations as The American Legion and Military Order of the Purple Heart in veterans benefits law, and conduct quality reviews of the VA regional offices on behalf of The American Legion. NVLSP also represents veterans and their families on claims for veterans benefits before VA, the U.S. Court of Appeals for Veterans Claims (CAVC), and other federal courts. Since its founding, NVLSP has represented over 1,000 claimants before the Board of Veterans’ Appeals and the Court of Appeals for Veterans Claims (CAVC). NVLSP is one of the four veterans service organizations that comprise the Veterans Consortium Pro Bono Program, which recruits and trains volunteer lawyers to represent veterans who have appealed a Board of Veterans’ Ap-

peals decision to the CAVC without a representative. In addition to its activities with the Pro Bono Program, NVLSP has trained thousands of veterans service officers and lawyers in veterans benefits law, and has written educational publications that thousands of veterans advocates regularly use as practice tools to assist them in their representation of VA claimants.

According to the VA Monday Morning Workload reports, in early January 2006 there were 532,228 total claims pending adjudication at the VA regional offices (VAROs). In early January 2007 there were 603,104 total claims pending adjudication at the VA regional offices (ROs). In early January 2008 there were 647,478 total claims pending adjudication at the VA regional offices (ROs). These VA statistics reveal that there are now 115,250 more claims pending adjudication at the ROs in 2008 than there were in 2006. This is an increase of over 21 percent in just two years. If this trend continues the VA ROs will have over 947,000 backlogged claims in just four years. NVLSP believes that the current size of the backlog is obviously unacceptable and allowing that unacceptable number to grow by 200,000 cases in just four years would be insulting to veterans.

Why Is There Such a Large Backlog?

In the opinion of NVLSP, the major cause of the VA claims adjudication backlog is a VA work credit system that prevents the fair adjudication of many claims for VA benefits generating extra work for the VA and major problem for claimants. Also, the inadequate quality of many VA adjudications and the inadequate number of trained adjudicators contribute to the size of the backlog.

I. The Unfair VA Work Measurement System

The current VA work credit system prevents the fair adjudication of many claims for VA benefits. The current VA work credit system needs to be overhauled because it rewards VA managers and adjudicators who claim multiple and quick work credit without complying with the statutory duties to assist claimants obtain evidence that would substantiate their claims and notify claimants of what evidence would substantiate their claims.

No matter how much the average VA employee wants to help the client population, the VA decision-making culture, fueled by the VA work measurement system, penalizes many VA adjudicators for doing a good job. The VA has created a work measurement system for deciding critically important claims that is driven by weighty incentives to decide claims quickly. How the VA measures its work and evaluates the performance of its employees has had a major impact on the adjudication of claims for veterans benefits.

Each year, after a complicated process involving the executive branch and Congress, the VA is given its budget. The budget can be defined as the resources available to the Secretary of Veterans Affairs to be used to accomplish the mission of the VA. Managers at different levels within the VA are then given their allocation from the overall VA budget. This allocation is determined by the workload and performance of the various VA components. For example, the money budgeted to a particular VARO determines how many workers can be hired or fired, how equipment is maintained, and what new equipment can be purchased.

Claims received in VARO are described as "pending issues." These claims are assigned an "end product code," alternatively described by the VA as a unit of work. When final action is taken on a pending claim, or pending issue, the regional office (and eventually the VA) receives a credit.

End products are assigned values based on the average number of work hours it takes an employee or group of employees to complete all action necessary for that type of claim. Each end product code has a different value. For example, VA managers receive more credit for work completed on an original claim than they do for adjusting the income of a current pension beneficiary. No matter how much work the VARO does on an individual claim, however, it receives as credit only the value that is provided for the end product code assigned to that particular type of pending claim. Therefore, VA managers receive the same credit whether or not the claim is granted or denied or whether the particular claim takes the VARO one day or two years to decide.

VA manuals describe the end product system as a "management tool" and indicate that its measure should not be used to evaluate individual performance. As is the case with many management information systems, however, the measurement system tends to drive what and whom it measures, rather than the converse. VA managers are evaluated by how many end products they produce, how quickly they can take credit for end products, how many employees they need to produce these end products, and lastly, the quality of the work in the office they manage. Because it is in the best interest of the VA managers to complete as many cases as quickly

as they can, the interests of VA managers in many cases stands in opposition to the interests of claimants for VA benefits.

Responsibilities of VA managers that protect the fairness of the adjudicatory process—such as “control” of claims, supervisory review of unnecessarily delayed claims, thorough development of the evidence needed to decide a claim properly, recognition of all of the issues involved, provision of adequate notice, documentation that notice was given, and careful quality review—all adversely affect the productivity and timeliness statistics (that is, how many decisions on claims are made final within a particular period of time) for the VA manager. Consequently, proper attention by VA managers to their legal obligations very often adversely affects the statistics upon which their performance is rated.

II. The Impact of Judicial Review

The VA claims processing (or claims adjudication) system has been exposed by judicial review. To say there is a crisis in VA claims adjudication is an understatement. Statistics from the Board of Veterans' Appeals (BVA) and the U.S. Court of Appeals for Veterans Claims (CAVC) show that nationally, for FY 2007, over 56 percent of all appeals decided by the BVA were reversed or remanded and over 63 percent of CAVC decisions on the merits were reversed, or remanded. Some VAROs are worse than others. Over 60 percent of the appeals from the New York RO and over 62 percent of the appeals from the St. Petersburg, Florida RO were reversed or remanded by the BVA.

Based on the experience of NVLSP (over 10 years of quality reviews, in conjunction with The American Legion, of approximately 40 different VAROs combined with extensive NVLSP representation before the CAVC), most of the most egregious VA errors are a result of premature adjudications. For example, many errors identified by the Legion/NVLSP quality review teams reveal that VA adjudicators failed to even try to satisfy its statutory duty to assist the claimant by obtaining the evidence needed to substantiate the claim, and incorrectly accepted and prematurely denied claims based on inadequate evidence (especially inadequate VA medical examinations).

I want to emphasize that most premature VA adjudications are caused by ROs seeking work credit. If the claimant should appeal, the RO can earn another work credit for work to process the appeal. The VA manager gets to claim unearned work credits and to show an erroneously low time period to adjudicate these claims. That would help the manager earn a promotion and a bonus for such “productive” work.

I have been told by a variety of VARO officials that because of pressure to produce end products and reduce backlogs, they intentionally encourage the premature adjudication of claims. This statement is based on my experience as a VA employee, and based on my experience as a member of the Legion/NVLSP quality review team.

Fixing the VA work credit system is a topic that is near and dear to my heart. I have been involved in various aspects of veterans law for over 30 years. My experience tells me that unless the system is corrected most attempts to improve VA claims adjudication will not be successful because the driving force in VA adjudication will continue to be claiming quick work credit.

III. The Inadequate Quality of VA Adjudications Is A Major Influence on the Size of the Backlog

It is clear that the quality of VA adjudications is not satisfactory and is a major contributor to the size of the backlog. Because many claims are improperly denied, because many VA adjudicators are inadequately trained, because many VA regional offices are improperly managed, because many VA regional offices are inadequately staffed, and because VA Central Office management has not acted to fix these problems in any meaningful way, many veterans and other claimants for VA benefits have to file unnecessary appeals, wait several years for a BVA remand, and wait for the VA to obtain evidence that should have been requested during the original adjudication of the claim. These appeals clog the system and create unneeded work for the VA. Of course, it would have been better for the VARO to do the work correctly the first time.

NVLSP believes that the quality of VARO adjudications is much worse than what is reported by the VA. A relatively independent review of the quality of adjudications performed by the VAROs are the remand and reversal statistics produced by decisions issued by the Board of Veterans' Appeals (BVA or Board). BVA statistics provided by the *Veterans Appeals Control and Locator System (VACOLS)* for FY 07 reveal that Board decided over 40,000 appeals. The Board granted additional benefits in 21.12 percent of the appeals and remanded 35.36 percent of these appeals back to the VAROs. Therefore, 56.48 percent of the VARO decisions that were appealed and decided by the BVA were either reversed or remanded. This 56.48 per-

cent statistic could be considered an error rate. Even if we were to assume that the VARO did not err in 20 percent of these cases because the Board granted additional benefits or remanded due to new evidence added at the Board level, an error rate as high as 36 percent (56.48 minus 20) is not acceptable and is flatly inconsistent with the low error rate produced by the VA Star Reports (which claims that the VAROs maintain close to a 90 percent “accuracy rate”).

The news gets worse. The BVA, in its rush to make final decisions and to avoid remands quite often prematurely denies claims that should have been remanded. Of course, the error was originally committed by the VARO, not the BVA. In September 2007, my fellow Joint Executive Director, Bart Stichman, testified that “[f]or more than a decade, the Court’s [Court of Appeals for Veterans Claims (Court or CAVC)] annual report card of the BVA’s performance has been remarkably consistent. The 12 annual report cards issued over the last 12 years yields the following startling fact: of the 16,550 Board decisions that the Court individually assessed over that period (that is, from FY 1995 to FY 2006), the Court set aside a whopping 77.7% of them (that is, 12,866 individual Board decisions). In each of these 12,866 cases, the Court set aside the Board decision and either remanded the claim to the Board for further proceedings or ordered the Board to award the benefits it had previously denied. In the overwhelming majority of these 12,866 cases, the Court took this action because it concluded that the Board decision contained one or more specific legal errors that prejudiced the rights of the VA claimant to a proper decision. By any reasonable measure, the Court’s annual report card on the Board’s performance has consistently been an “F.”

How should a veteran seeking VA disability benefits feel? The Board of Veterans’ Appeals reverses or remands over 50 percent of all VARO adjudications and the CAVC sets aside over 77 percent of the Board decisions that deny benefits. These numbers do not inspire confidence in the quality of VA adjudications.

Overall, the results of the Legion/NVLSP quality reviews have been discomfoting. The American Legion/NVLSP team usually spends a week in a VARO reviewing the quality of recently adjudicated claims where The American Legion represented the veteran. The results of these quality reviews reveal that in many instances claims are improperly denied or benefits are not paid at the proper rate because the RO was more concerned about claiming work credit and reducing the VARO backlog than taking the time to develop and analyze the claim properly.

For example, many of the VAROs had problems with claims for service connection for mental conditions (especially Post Traumatic Stress Disorder) and problems evaluating the severity of mental disabilities. In too many instances, claims for total disability based on individual unemployability were improperly denied and in more than a few instances we determined that claims for increase in evaluation to 60% or 70% were hard to obtain because such a rating could require the VARO to consider entitlement to a total disability rating due to individual unemployability (TDIU) and the VARO adjudicator did not want to have to take the time to deal with a claim for TDIU. Also, we have discovered that too many VA examinations are inadequate because the VARO did not explain what facts the VA physician should accept as true in making his or her medical opinion. The team generally reviews between 25 to 40 cases and finds errors in about 20 to 30 percent of these cases. This is a much higher rate than the “accuracy rate” reported by VA on its Star Report.

Potential Solutions

The VA needs to acknowledge the complexity of its claims adjudication system and hire a reasonable number of adjudicators to work these claims. The grade levels of VA raters and Decision Review Officers should be raised and these federal employees should be held accountable for the quality of their work product. The Congress needs to provide the funding for the additional adjudicators, and the VA would have to be willing to submit to an independent quality review to validate the quality of the work. The additional adjudicators should help the VAROs from brokering cases (sending cases from one VARO with too much work to another VARO). In the opinion of NVLSP, brokered cases are less accurately adjudicated than most cases and cause continuing problems for the originating VARO.

The VA work measurement system has to be overhauled. HR 3047 which, in section 2 would change when VA regional offices (VAROs) can claim work credit, is a good bill that would accomplish this goal.

Finally, the adjudication culture at the VAROs needs to be changed. Many VA managers act like they are producing widgets rather than adjudicating claims filed

by real people. Their goal should not be just prompt adjudication; the goal should be a timely, accurate and fair adjudication.

Thank you for permitting NVLSP to testify on such an important issue.

**Prepared Statement of J. David Cox, R.N., National Secretary-Treasurer,
American Federation of Government Employees, AFL-CIO**

Dear Chairman and Members of the Subcommittee:

The American Federation of Government Employees, AFL-CIO, which represents more than 600,000 federal employees who serve the American people across the Nation and around the world, including roughly 160,000 employees in the Department of Veterans Affairs (VA), is honored to testify today regarding the Veterans Benefits Administration (VBA) claims processing system and the current claims backlog.

The current backlog and waiting times for pending claims are unprecedented and unacceptable. Our veterans served our country when they were needed. It is imperative that we serve them when they are in need.

AFGE is the sole employee representative of Veterans Service Representatives (VSRs), Rating Specialists (RVSRs), Decision Review Officers (DROs) and other VBA employees. A large number of these employees are veterans, and many are service connected themselves. (We hope that VBA will increase its hiring of preference eligibles to ensure that the valuable perspective of the veteran remains part of the claims process, but that is a subject for another hearing.) Therefore, AFGE is in a unique position to convey the sense of mounting pressure, frustration and demoralization at the frontlines in the face of this backlog.

AFGE is also in a unique position to identify approaches to improving the quality and timeliness of the process. The input of the VBA workforce is essential to any claims reform process because the skills of a VBA claims processor are unique. Unlike skills such as medical care and information technology that are largely transferable from one workplace to another, VBA claims processing is learned entirely on the job. Consequently, the employees who have been developing and rating cases for much of their career are extremely valuable sources of guidance.

Sadly, the VA does not recognize what these employees have to offer. In recent years, management has increasingly excluded AFGE from national level efforts to improve the claims process, VSR Certification testing and training. At the local level, our members report that they are regularly rebuffed by management when they attempt to make suggestions for process improvement. These days, management wants one thing, and only one thing from the VBA workforce: produce claims as fast as possible.

Employee representatives and veterans' service organizations (VSO) are the eyes and ears on the ground, and we engage in a regular dialogue about different reform approaches. Both are key stakeholders who should be included in VBA policy setting groups.

Recommendation: Congress should establish a Joint VSO-AFGE Advisory Committee to make recommendations on needed improvements to the claims process, and related issues of training, skills certification and production standards.

The unrelenting pressure "to make the numbers" starts at the top with VA Central Office (VACO) where individual station goals are set. The RO Director's performance is measured by the total number of claims produced, not the quality of completed work or quality of the training provided to the employees who perform the work. As a result, new employees lose critical on-the-job training because supervisors who are trying to meet their own production goals assign cases to them before they are fully trained. Similarly, managers frequently cut short training for experienced employees who rely on continuing education to become familiar with the steady stream of new laws, court cases, and benefits programs that directly impact claims determinations. It is also common for rating specialists who have recently been promoted from VSR positions to have their critical on-the-job training interrupted so they can perform VSR duties. All these training gaps contribute to the backlog.

Issuing new mandates without accountability leaves the VBA with just that: more mandates. VBA is not held accountable for the quality and consistency of training at each RO. VBA's national training program operates more as a guideline, rather than a requirement to follow a mandatory curriculum and training schedule. VBA now mandates training, and proudly points out that each RO is required to provide

employees with 80 hours of training per year. However, VBA never explained how it determined that 80 hours, not more, not less, was adequate.

Recommendation: The Joint VSO–AFGE Advisory Committee should oversee the VBA training process and make recommendations to Congress about ways to improve current training programs. Training and accuracy of claims determinations should be included in management performance measures.

Persistent problems with the VSR Skills Certification test also adversely impact VBA's ability to reduce the claims backlog. Pursuant to an agreement between VBA and AFGE, qualified GS–10 VSRs who pass a skills certification test can receive a noncompetitive promotion to a GS–11. Contrary to assurances from VBA and the terms of our agreement, the training is not always sufficiently aligned with the scope of the exam, and trainers are often confused about which training materials are relevant to the test. In addition, extremely low passage rates (that also raise questions about the test's validity) are demoralizing to competent VSRs with years of experience. At the same time, management refuses to provide employees with useful feedback on the questions they missed.

AFGE was not allowed to collaborate in the process of refining the test and working out test administration problems. We were also denied access to raw test data to help address low passage rates.

Recommendation: Congress should require VBA to release to AFGE complete demographics on skill certification test results. VSRs should be provided with adequate feedback on their test scores to allow them to strengthen their understanding of all relevant concepts.

Our members desperately want to reduce the backlog, and when a new proposal to accomplish that emerges, they feel a sense of renewed hope. Yet time and again, those proposals fall victim to the same forces: poor implementation, lack of accountability and inadequate training.

AFGE initially worked with VBA on the development of the Claims Process Improvement Initiative (CPI) Model, and reached an agreement on the recommendations of the CPI Task Force. Even though VBA has since made a number of revisions to the CPI model, such as centralizing the Public Contact Unit, employee representatives were excluded from recent Task Force meetings. When CPI was implemented in 2002, it was supposed to provide a uniform national model for all ROs. Instead, six years later, we have “57 varieties”, that is, 57 different ways of applying the CPI model to the claims process. The Program Director for the Compensation and Pension (C&P) Service is not being held accountable for consistent implementation of this model.

Similarly, VBA welcomes each new set of Government Accountability Office (GAO) recommendations, but fails to implement them. Again, accountability is the key.

Recommendation: AFGE supports the recommendation in the veterans' 2008 Independent Budget (IB) to hold the Compensation and Disability Program Director more accountable for the performance of RO directors, including the quality and consistency of training provided to claims processors.

VBA claims process reform adds new meaning to the familiar quote, “Those who don't know history are destined to repeat it.” Before Congress embarks on a search for a new approach to improving this process, we urge you to consider the reasons why previous attempts to reform the claims process have failed.

We see a renewed interest in using Artificial Intelligence (AI) to expedite the claims process. AI may have some utility in helping a veteran file a claim, but our members see much less utility in AI's ability to help a VSR or RVSR work a claim. Certainly in its current stage of development, AI is not advanced enough to replace the individual experience-based judgment of a VSR or Rating Specialist who is adept at “reading between the lines” of a claimant's record.

VBA also mandates production standards, but we fear they are based more on politics and bonuses rather than the requirements of the many complex, multiple claims being filed by veterans at the current time. Again, mandates without accountability or scientific basis will not bring about meaningful claims process reform. One member explains flawed production standards as follows: “Like an engine, when an employee is run too long at too high an RPM without fresh oil, it will inevitably begin to perform poorly and eventually quit.”

Currently, VBA managers, many of whom have not adjudicated a claim for many years (or never), define performance solely in terms of inventory and days pending completion of a decision. In addition, employees and their representatives are never invited to participate on teams that develop employee performance standards.

Production standards and staffing should be based on scientific methodology, not politics. VBA has never done a time-motion study of the claims process, to determine how many hours are required to process claims of different categories and complexity. This should be the first step in any reform process.

AFGE is aware of only one extremely limited attempt to conduct a study along these lines but it failed to produce any useful findings. Management placed a software program on a sampling of employees' computers in an undetermined number of ROs, with no explanation of how they selected the sample. The data was collected by a program appearing on the screen every few hours to ask what the employee was doing. The program did not differentiate between employees working on a single claim and multiple claims. Again, with input from VSOs and employee representatives, the findings of a more meaningful study can be used to establish and regularly update production standards and set appropriate staffing.

Recommendation: VBA should conduct a scientific time-motion study of the resources and skills required to do the current mix of increasingly complex claims.

We also caution the Subcommittee about further centralization of VBA functions. VBA regularly touts centralization as synonymous with management efficiencies. In addition to extensive centralization of VBA functions outside of Compensation and Pensions (C&P), VBA has centralized its 57 Call Centers down to 9 centers in operation today, and is planning to centralize the Fiduciary Program. Yet, VBA has never been held accountable for proving that centralization improved its operations. Centralization puts a greater distance between the veteran and the claims process. The taxpayer and the veteran deserve a careful assessment of the costs and benefits of centralization before we centralize more functions or continue centralized operations already in place.

Recommendation: The impact of centralization on VBA functions should be assessed and compared with alternative, more decentralized approaches to delivering services.

Our members have identified a number of specific fixes for expediting and improving the claims adjudication process. However, AFGE continues to have great difficulty in obtaining information from management, and as noted, is increasingly left out of key policy setting groups. Therefore, this list is somewhat limited.

Vetsnet: Problems Remain

Although VBA started to phase in the Vetsnet program to replace the Benefits Delivery Network (BDN) nearly 20 years ago, significant glitches remain. For example, there remains a redundancy in the process of inputting information, more specifically, employees have to have multiple applications open at the same time and enter duplicative information because these programs do not "talk to one another." It would be more efficient if the system automatically made the updates when employees enter new veteran information. VBA made a commitment to address this defect but has not done so to date.

Recommendation: AFGE supports the recommendation of the 2008 veterans' Independent Budget to complete the phase-in of Vetsnet. VBA should be required to consult with the Joint VSO-AFGE Advisory Committee on a regular basis to identify future problems that emerge as the transition from BDN to Vetsnet proceeds. VBA should develop an online "suggestion box" to which employees can submit reports of problems associated with Vetsnet.

"Benefits Delivery and Discharge" Authority

VBA already has the authority under current regulations to award benefits for one year payable immediately upon discharge from active duty. Known as Benefits Delivery at Discharge (BDD), this allows VBA to give seriously injured new veterans immediate compensation during their recovery through a 50% or 100% rating. Their claims are reevaluated a year later to see if their conditions have worsened or improved.

Recommendation: VBA should expand the use of Benefits Delivery and Discharge authority to expedite processing of appropriate claims.

Paperless Records: AFGE also supports the recommendation of the 2008 Independent Budget to further develop and enhance a paperless records system. VBA employees already have limited access to electronic medical records from VA medical centers, which enables them to conduct an effective online search for needed medical evidence. However, military records are still only available in hard copy. As VBA moves toward an electronic records system, we urge them to take steps to en-

sure that these files are readable and that the system has a strong online search capability so evidence can be efficiently located.

Recommendation: The Subcommittee should move toward a fully paperless records system, and should examine similar efforts already in place for VBA education claims for lessons learned.

Assembly lines and widgets: the wrong approach to veterans' disability claims

In the words of another member, CPI takes an assembly line approach to claim processing, i.e. CPI divides up the tasks, so that one employee installs the headlights, another the tires. Whereas in the past, employees did everything from taking the claim to issuing the final decision, now, once the employee "installs the headlights", he or she has no knowledge of or investment in the outcome of the claim. When a case is remanded from the Board of Veterans Appeals or the courts, a new employee has to learn the claim all over again. The same employee should handle a claim at all stages.

Another practice from the past that should be revived are regular (usually weekly) meetings among claims adjudication staff to review new cases, changes in the law and share best practices. This practice seems to have disappeared along with the case management approach that CPI replaced.

Recommendation: VBA and the Joint VSO–AFGE Advisory Committee should reexamine the case management model to determine whether some of its features should be brought back to the claims process, including regular case meetings in each RO and having the same employee handle cases from application to appeal.

We look forward to working with Chairman Hall and members of the Subcommittee to identifying approaches to improving the VBA claims process and ensuring that VBA considers regular input from employees, their representatives, and the veterans' community. Thank you.

**Prepared Statement of Gordon P. Erspamer, Senior Counsel,
Morrison and Foerster, Walnut Creek, CA**

. . . Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some civil or military official, some bureaucrat. Where discretion is absolute, man has always suffered. At times it has been his property that has been invaded; at times, his privacy; at times, his liberty of movement; at times, his freedom of thought; at times, his life. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions.

Justice William O. Douglas in *United States v. Wunderlich*, 342 U.S. 98, 101 (1951).

A. Personal Background:

1. I have been representing individual veterans on service-connected disability and death and disability compensation claims and appeals for over 25 years, all on a *pro bono* basis. I also acted as counsel for my mother and late father in the first case ever argued in the newly created Court of Veterans Appeals, since renamed the Court of Appeals for Veterans Claims ("CAVC"). See *Erspamer v. Derwinski*, 1 Vet. App. 3 (1990). In addition, I have represented veterans' organizations and veterans in two major constitutional actions against the DVA ("VA"), each of which Morrison & Foerster has also handled *pro bono*, including the following:
 - a. *National Association of Radiation Survivors, et al. v. Walters, Administrator of Veterans Affairs, et al.*, 589 F. Supp. 1302 (N.D. Cal. 1984); 473 U.S. 305 (1985); 111 F.R.D. 595 (N.D. Cal. 1986); 111 F.R.D. 543 (N.D. Cal. 1987); 782 F. Supp. 1392 (N.D. Cal. 1992); 994 F.2d 583 (1992); and
 - b. *Veterans for Common Sense, et al. v. James B. Peake, M.D., Secretary of the Department of Veterans Affairs, et al.*, USDC–N. Cal. Case No. 07–3758–SC (filed July 23, 2007). See www.veteransptsdclassaction.org (reproducing copies of complaint and other major pleadings and decisions).

B. Major Regional Office Problems:

1. **The Hollowness of the VA's Motto: "For Him That Hath Borne the Battle . . ."** The VA's motto is not only inscribed outside its headquarters

here in Washington, D.C., but it also is widely publicized elsewhere. The inconsistency between the VA's motto and the positions or actions it adopts in court in cases brought by veterans is steeped in irony. Instead of seeking to extol the contributions made by veterans and recognize veterans' rights, in my experience the opposite has been true. For example, the VA argues that disabled veterans do not possess an enforceable "entitlement" to any medical care, that all veterans' benefits are "mere gratuities," that the Secretary has total discretion whether or not to provide medical care, that veterans lack a 5th amendment property interest in the receipt of disability or death compensation, or that the VA is insulated from court challenges by sovereign immunity, the outdated doctrine that "The King Can Do No Wrong." Given its stated mission, it is telling that the VA actually labors to urge courts to minimize or restrict the scope of veterans' rights.

2. **Perpetuation of Myths:** A series of characterizations about the adjudication process have received wide circulation for many years. For example, Congress has frequently been told that the VA process is "non-adversarial," that lawyers are unnecessary, and that the VA's procedures are "informal." In my opinion, these characterizations have always been myths, but they are even more mythical in today's world. The Federal Circuit itself has recognized that the claims process has become adversarial. See *Bailey v. West*, 160 F.3d 1360, 1365 (Fed. Cir. 1998) ("[S]ince the [VJRA] . . . it appears that the system has changed from a nonadversarial, *ex parte*, paternalistic system for adjudicating claims, to ones in which veterans . . . must satisfy formal legal requirements, often without the benefits of legal counsel, before they are entitled to administrative and judicial review.") As to informality, all too often it has been an opportunity for the VA to take shortcuts without the veteran's knowledge or to "streamline," and by that I mean ignore, the procedural rights of veterans.
3. **Absence of Single Assignment of Claims:** One fundamental regional office problem is that the VA does not assign a person or persons to handle a particular veteran's claim from "cradle to grave." Instead, the Service Center Manager (formerly called "Adjudication Officer") of each office is listed on correspondence, and the actual decision-makers remain anonymous. Thus, the veteran never has a specific name to contact, and no VA employee builds experience or expertise on a claim. There also is no accountability and no incentive for the employees to develop and decide the case correctly.
4. **Antiquated Hard Copy System:** Congress should order the VA to scrap its antiquated hard copy claim file system and replace it with an up-to-date database where claim file information can be shared by users at both the VHA and VBA. The hard copy system leads to delays, lost or misplaced files and enables misconduct to occur without any remedy or detection. And Congress should force the VA to give a veteran web access to his claim file.
5. **Time/Delay, Abandonment of Claims:** Delay has become an endemic feature of the VA adjudication system for decades, raising the venerated principle of jurisprudence that "Justice delayed is justice denied," as reflected in the following table, prepared in July 2007:

Stage	Time	Source
1) Initial Decision	196 days*	(Department of Veterans Affairs FY 2006 Performance and Accountability Report (2006) at 213)
2) BVA Appeal	971 days	BVA Chairman's Report at 16
3) CAVC Appeal	1286 days: 120 days (notice of appeal) + 254 days (docketing, briefing) + 912 days (judicial consideration)	38 U.S.C. § 7266; Ct. Vet. App. R. 4(c), 10(a), 10(b), 11(a)(2), 31(a)(1), 31(a)(2), 31(a)(3); Testimony of Robert Chisholm ¹
4) Federal Circuit	317 days	Review of Federal Circuit docket sheets re veterans' appeals from CAVC ²
5) U.S. Supreme Court	386 days	Review of Supreme Court docket sheets for 2005 term ³

Stage	Time	Source
TOTAL:	3,156 days (8.65 years)	

*Accuracy is questionable.

¹Past-President of National Organization of Veterans Advocates (Robert V. Chisholm, Statement Before the House Subcommittee on Disability Assistance and Memorial Affairs of the House Committee on Veterans' Affairs (May 22, 2007)).

²Derived from hand review of all veteran appeals in Federal Circuit from October 1, 2005 to September 30, 2006 that resulted in decisions on the merits.

³Derived from hand review of all signed Supreme Court decisions issued in the 2005 Term.

The number of claims pending at regional offices in recent years has accelerated rapidly, and the huge backlog is now reaching crisis proportions, as shown on the graph attached as Exhibit A. Shockingly, there is no deadline for the VA to act on claims or to prepare documents needed for an appeal such as a "Statement of the Case"; ironically, the only deadlines apply to the veteran, who is often unrepresented. As a result, veterans frequently trip up at the regional office level, resulting in a summary denial of a claim or appeal as reflected in the high percentage of appeals to the BVA and CAVC that are summarily denied on jurisdictional defect grounds, including failure to comply with time deadlines or legal doctrines such as waiver and subsumption. The VA benefits from delays because some of the veterans die while their claim is pending, and survivors often do not pursue the claim further, and the VA does not award interest on any retroactive award, which is calculated at the historical rates, not current rates that reflect inflation.

The claim abandonment rate at the regional office level is also very high, perhaps as high as 99%. Thus, the appeal system is irrelevant for the vast majority of veterans because their claims never get that far. In my opinion, many of the abandoned claims likely have at least some merit, and many veterans give up out of frustration. The VA's timeliness measures are unreliable because it often manipulates the numbers, *e.g.*, by calculating from the wrong date or by artificially truncating a regional office decision into a number of parts to make the delay numbers look more palatable. For example, the timeliness of medical care is calculated as the time between a request for an appointment and the date the appointment date is given, not the date the appointment occurs, which may stretch months in the future. Congress needs to set minimum times for complete action at the regional office level in the absence of which a claim would be provisionally granted. And it also needs to take a hard look at the BVA and the CAVC, which are experiencing unprecedented delays that only will get worse with time. *See* Exh. B.

6. **Excessive Remands—The Recycling or “Hamster Wheel” Problem:** If the VA makes a mistake at the regional office level, however egregious, no consequences attach to it. Instead, the claim is “remanded” and the innocent party—the veteran—has to wait several years for the BVA or CAVC to order the VA to correct the mistake and start all over at the regional office. Thus, it is the veteran that suffers. The error rates reflected in the disposition of the appeals of VA regional offices are startlingly high, as reflected on the chart attached as Exhibit B.
7. **Incentive Compensation System:** The design of the VA's incentive compensation system is to give adjudicators a financial incentive to “game” the system at the veteran's expense. For example, shredding a medical examination report or another key piece of evidence can make a denial or remand decision easy to write. The incentive compensation system operates under a “piece work” basis, making it more important to find ways to accomplish a task quickly rather than correctly. Two BVA attorneys were indicted several years ago for doing exactly this in hundreds or potentially thousands of cases, and both plead guilty (Jill Rygwalski and Lawrence Gottfried). The VA must do more to detect and correct internal abuses that have plagued the agency for many years. I would recommend that incentive compensation for adjudicators and caregivers be primarily based on the results of veteran satisfaction surveys.
8. **Need for Veterans Civil Rights Legislation—a “Veterans Bill of Rights:”** The veteran is procedurally handicapped at the regional office level by statutory or regulatory restrictions on his or her civil and procedural rights. Unlike all other citizens, the veteran cannot retain a lawyer at his own expense, leaving him or her vulnerable to sharp practices, procedural missteps or abandonment. The veteran cannot subpoena any VA employees

to testify (e.g., the VA's own doctor who concluded he was disabled or the anonymous medical person on the adjudication side who says he is not), and the veteran cannot subpoena documents or other witnesses to testify at a hearing (in most cases). Our veterans deserve more than a watered-down version of mass justice. The regional office stage is crucial because that is where the record is developed and upon which the appeal depends. I also believe that it was a serious error for Congress to set up an Article I court to hear veterans appeals, the limited powers of which play a key role in circumscribing veterans' civil rights. It is time for Congress to restore the civil rights of veterans by passing a veterans' Bill of Rights. *See* Exh. C.

9. **Remedies for Denial of Healthcare:** One of the greatest weaknesses in the veterans' benefits system at the regional level is that no meaningful or timely remedies exist for a veteran who is denied health care—no form, no established procedure. Instead, the veteran's complaint is handled under an informal VHA "directive" that does not have the force of law. Thus, everything is left to fiat, and the veterans has no enforceable rights and no timely recourse. The delays inherent in the informal procedure also make it ineffective. This is contributing to the suicide epidemic amongst returning OIF/OEF veterans, amongst other frustrations that veterans experience.
10. **Inability of Veterans Court to Enforce its Decisions at the Regional Office Level/Need for Expansion of Powers of Veterans Court:** One of the most serious defects in the VA system is the CAVC's inability to force regional offices to obey the rule of law. As former Chief Judge Frank Nebeker of the CAVC pointed out in his "State of the Court" speeches, the CAVC's inability to force the regional offices to follow its decisions means that the regional offices can violate the CAVC's decisions with impunity. The CAVC also needs to be given the power to issue injunctions against the VA and to order relief under the Declaratory Judgments Act. In addition, the Court should be ordered to adopt a class action procedure whereby relief can be extended beyond the individual veteran to encompass similarly situated veterans. Finally, the lack of discovery at any stage of the adjudication process has to be addressed, as it hampers veterans' ability to develop facts to support a claim and/or to challenge adverse evidence, and prevents the veteran from discovering misconduct.
11. **The Unofficial Regulation Problem:** For many years the VA has adopted rules by way of "fast letters," directives or other unofficial means on important issues that in effect may dictate the result in an individual case or entire category of cases. Put differently, these unofficial rules prescribe substantive standards which properly should have been the subject of rule-making, and an opportunity for judicial review. This practice completely circumvents the judicial review process set up by Congress. Most recently, the VA has set up a special review procedure at the Central Office for "extraordinary awards" made by regional offices that involves extra layers of review and delay and which discourages adjudicators from making retroactive awards. History is rife with similar examples, such as the "second signature" requirement for PTSD grants (but not denials), the directive not to infer claims based upon individual unemployability, the "courtesy sign-off" system which defeated the whole purpose of having a three-member decision-making team, and a host of others.
12. **Absence of Guaranteed VA Budget and Chronic Underfunding:** The VA has been chronically underfunded for years. Pentagon Undersecretary for Personnel and Readiness David Chu's interview in the *Wall Street Journal* on Jan. 25, 2005 is very revealing as to what has been driving the VA budget constriction—a desire to spend more money on armaments and less money on personnel. The VA's chronic underfunding creates a compulsion to ration healthcare and disability payments, and contributes to lengthy delays as well as to the hiring of marginally qualified workers or medical professionals.
13. **Upgrade Quality of Personnel and Leadership:** The VA needs to upgrade the quality of its hiring. My understanding is that many VA rating specialists have only a high school education and lack any medical training—meaning that unqualified persons are deciding the fates of our veterans. This may help explain the high error rate and the great frustration felt by our veterans. At the same time, reports have continued to surface about the VA's use of unlicensed or unqualified medical personal to treat vet-

erans. The VA's management problems are immense and so deeply entrenched that they warrant the hiring of a capable crisis management or turnaround Executive to either head the agency or recommend how to address the huge problems that it faces. Sinecures or political appointments do no one any good.

C. Conclusion

One litmus test for the VA's performance that is within the experience of each of you is the frequency with which you receive complaints from your constituents. If the number of phone calls and e-mails I receive from veterans is any indication, the dissatisfaction levels are very high. I leave you with one final quote from *Marlow v. West*, and ask you to consider whether this is the type of experience you want to subject our veterans to:

Although the dispositive law is all too clear, we are constrained to comment on Mrs. Marlow's 12 year effort to get her veteran father's full benefits before he died. The record is replete with examples of VA's disingenuous refusal to acknowledge the specific nature of the claim for benefits under section 1114(o) and to deny what is manifestly obvious in the record and was clearly articulated in Mrs. Marlow's communications to VA. *See, e.g., R. at 38-42, 182-202.* VA ultimately corrected Mr. Mokal's ratings from the time of his discharge, but only after it was too late, as a matter of law, to pay him. *R. at 336-38.* This is a case that gives credence to those who don't believe that VA is committed to the spirit expressed in the words of General Omar Bradley, the Administrator of Veterans Affairs from 1945 to 1947: "We are dealing with veterans, not procedures; with their problems, not ours."

Marlow v. West, Decision No. 98-113 (CAVC 1999).

Exhibit A

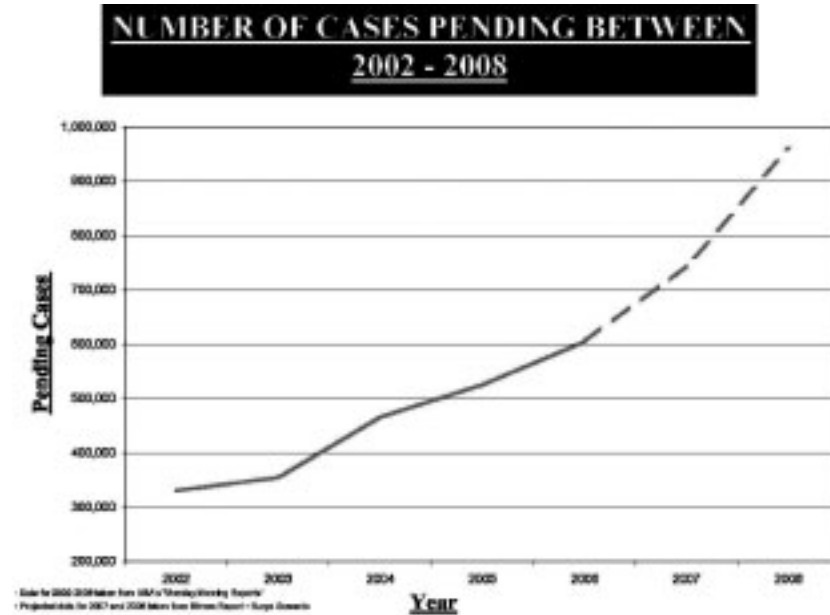


Exhibit B**VA SYSTEM BACKLOG**

Stage of Process	Number of Veterans Waiting	Average Claim Processing Time	VA Error Rate ^a
Initial Decision	600,000	196 days [†]	unknown
Appeal to BVA	40,000	971 days [†]	51.6%
Appeal to CAVC	6,000	1286 days	77.6%
Federal Circuit	[unknown]	317 days	25%
PROJECTED NEW CLAIMS FOR 2008:			214,648[‡]

^a Includes Errors
[†] According to VA
[‡] Defense Study Group Scenario

Exhibit C**THE VETERANS BILL OF RIGHTS**

Preamble: It is the intent of Congress to honor the service and personal sacrifices of veterans and their families by ensuring that they have fair and timely access to all the benefits to which they are entitled, including death and disability compensation, medical care, educational assistance, job training, housing and pensions ("VA Benefits"). To this end,

1. Congress recognizes that all veterans have and have always had a Fifth amendment property interest in the receipt of all VA Benefits.
2. Veterans shall have an unfettered access to retain attorneys at their own expense, and the Fee Prohibition in 38 U.S.C. § 5904(c)(1) shall be abolished.
3. Veterans should have full rights to judicial review in Article III courts, and the Court of Appeals for Veterans Claims should be abolished, with a transition plan for implementation.
4. Veterans shall have the right to subpoena documents or records from all federal agencies, and all federal agencies shall treat veterans' document or record requests expeditiously and shall produce all responsive documents within 60 days.
5. Veterans shall have the right to call any VA employees as witnesses at any regional office hearings related to veterans' benefits, including treating physicians or other medical personnel and anyone else who has made any determination in connection with a claim.
6. Congress shall take all necessary measures to insure that the VA delivers on its commitments to provide healthcare to veterans, and the VA's practice of denying care to veterans it classifies as having a low priority is disapproved.
7. The VA shall adopt remedies and procedures to timely address cases of alleged denial of or unreasonable delays in providing healthcare, including notice, an opportunity to call witnesses, and a hearing to any veteran contesting such denial, as well as an expedited procedure in cases of emergency.
8. The VA shall award interest at the federal rate on all retroactive awards of any form of death or disability compensation or pension.
9. Congress shall guarantee and appropriate all funds necessary to provide all veterans benefits in accordance with the VA's budgets.

**Prepared Statement of Adrian Atizado,
Assistant National Legislative Director, Disabled American Veterans**

Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to appear before you on behalf of the Disabled American Veterans (DAV), to address the Department of Veterans Affairs' (VA) disability claims backlog and claims processing system.

To improve administration of VA's benefits programs, the DAV recommends Congress provide the Veterans Benefits Administration (VBA) with enough staffing to support a long-term strategy for improvement in claims processing and reduction of the claims backlog. Through recommendations contained in VA's budget submission and the *Independent Budget* for fiscal year (FY) 2009, to include recent appropriations, the VA may soon have the appropriate staffing, if utilized in conjunction with the recommendations herein, to finally begin to gain control of the growing claims backlog. Therefore, this testimony primarily focuses on policy initiatives to manage the increase in new claims and reduce the out-of-control claims backlog. In total, if Congress accepts our recommendations, the VA will be better positioned to serve all disabled veterans and their families.

Claims Backlog

Mr. Chairman, the claims' backlog is unquestionably growing. Rather than making headway and overcoming the protracted delays in the disposition of its claims, VA continues to lose ground on its claims backlog. According to VA's weekly workload report, as of January 26, 2008, there were 816,211 pending compensation and pension (C&P) claims, which include appeals. Putting this number into perspective, at the end of 2004, 2005, 2006, and 2007, the total number of pending claims was 620,926; 680,432; 752,211; and 809,707 respectively. Therefore, in the three years from the end of 2004 to the end of 2007, the total number of pending C&P claims rose by 188,781 for an average of 62,929 additional pending claims per year. The VA's pending claims rose by 6,504 just from the end of 2007 to January 26, 2008—less than one month. At this rate, VA's caseload will pass one million claims in three years. With the wars in Iraq and Afghanistan still raging, together with the mass exodus from military service that usually occurs following cessation of combat operations, new and re-opened claims received by the VA are more likely to increase than decrease. A caseload topping one million claims will truly be a demoralizing moment for America—the time to act is now.

New claims per year continue to increase from one year to the next. For example, VBA received 771,115 new rating claims in FY 2004 and 838,141 new claims in FY 2007, equaling an average increase of 16,756 additional claims per year. During this same period, the VA received a total of 155,164 new beneficiaries that had never before been on VA rolls through the Benefits Delivery at Discharge (BDD) claims process. At this rate,¹ the average number of new BDD claims per year is 38,791 for a total of 232,746 new claims through the BDD process by the end of FY 2009. These figures do not include service members filing claims through either the military's physical disability evaluation systems, or those discharging via end-of-service contracts who then come to the VA on their own to file claims after discharge.

The significance of these new beneficiaries is that large portions of VA's workload increase via new claims each year are re-opened claims rather than claims from veterans who have never filed for VA benefits. Therefore, the increase in brand new beneficiaries into the system will inevitably increase further the number of re-opened claims, ultimately causing the total number of claims received by the VA each year to continue growing, contrary to VA's FY 2008 budget estimate. VA's 2009 budget submission reveals the VA added 277,000 beneficiaries to its C&P rolls in 2007, which further proves this point.

The complexity of the workload has also continued to grow. Veterans are claiming greater numbers of disabilities and the nature of disabilities such as Post Traumatic Stress Disorder (PTSD), complex combat injuries, diabetes and related conditions, and environmental diseases are becoming increasingly more complex. For example, the number of cases with eight or more disabilities increased 135 percent from 21,814 in 2000 to 51,260 in 2006.² Such complex cases will only further slow down VBA's claims process.

We have maintained the VA should invest more in training adjudicators and that it should hold them accountable for higher standards of accuracy. Nearly half of

¹39,885 claims in FY 2004; 37,832 in FY 2005; 40,074 in FY 2006; and 37,370 in FY 2007.

²Fiscal Year 2008 Budget Submission, Volume II, *National Cemetery Administration, Benefits Programs, and Departmental Administration*, Benefits Summary, Department of Veterans Affairs, Fig. 6A-2 (Retrieved Feb. 2, 2008, from <<http://www.va.gov/budget/summary/index.htm>>).

VBA adjudicators responding to survey questions from VA's Office of Inspector General admitted that many claims are decided without adequate record development. (The Board of Veterans' Appeals (Board) and the Court of Appeals for Veterans Claims' (Court's) remand rate clearly demonstrate this.) The Inspector General saw an incongruity between their objectives of making legally correct and factually substantiated decisions, with management objectives of maximizing output to meet production standards and reduce backlogs. Nearly half of those surveyed reported that it is generally, or very difficult, to meet production standards without compromising quality. Fifty-seven percent reported difficulty meeting production standards while attempting to ensure they have sufficient evidence for rating each case and thoroughly reviewing the evidence. Most attributed the VA's inability to make timely and high quality decisions to insufficient staff. In addition, they indicated that adjudicator training had not been a high priority in VBA.

We have consistently stated that quality is the key to timeliness. Timeliness follows from quality because omissions in record development, failure to afford due process, and erroneous decisions require duplicative work, which add to the load of an already overburdened system. Quality is achieved with adequate resources to perform comprehensive and ongoing training, to devote sufficient time to each case, and to impose and enforce quality standards through effective quality assurance methods and accountability mechanisms. The VA has simply not had the resources necessary to achieve the level of quality required to avoid unacceptable error rates, increased numbers of appeals, and the consequent overload that causes backlogs and delays in claims dispositions. Having said that, we realize the FY 2009 budget submission provides a significant increase in staffing for VBA.

However, additional resources are not the solitary answer to the claims backlog. One of the most essential resources is experienced and knowledgeable personnel devoted to training. More management devotion to training and quality requires a break from the status quo of production goals above all else. In a 2005 report from VA's Office of Inspector General, VBA employees were quoted as stating: "Although management wants to meet quality goals, they are much more concerned with quantity. An RVSR is much more likely to be disciplined for failure to meet production standards than for failing to meet quality standards;" and that "there is a lot of pressure to make your production standard. In fact, your performance standard centers around production and a lot of awards are based on it. Those who don't produce could miss out on individual bonuses, etc."³

In addition to basing awards on production, the DAV strongly believes that quality should be awarded at least on parity with productions. However, in order for this to occur, VBA must implement stronger accountability measures for quality assurance.

VA's quality assurance tool for compensation and pension claims is the Systematic Technical Accuracy Review (STAR) program. Under the STAR program, the VA reviews a sampling of decisions from regional offices and bases its national accuracy measures on the percentage with errors that affect entitlement, benefit amount, and effective date. Notwithstanding other elements of concern over this program, if STAR were being used effectively, we question why the VA did not detect the substantial variations in average annual compensation payments from state to state brought to light by the news media and thereafter investigated by the VA Office of Inspector General in 2005.

Inconsistency is a sign of arbitrariness in decisionmaking, uneven, or overall insufficient understanding of governing criteria or rules for decisions or rules that are vague or overly broad to allow them to be applied according to the prevailing mindset of a particular group of decision makers. Obviously, the VA must detect inconsistencies before the cause or causes can be determined and remedied.

Simply put, there is a gap in quality assurance for purposes of individual accountability for quality decision making. In the STAR program, a sample is drawn each month from a regional office workload divided between rating, authorization, and fiduciary end products. For example, a monthly sample of "rating" related cases generally requires a STAR review of "10" rating-related end products.⁴ Therefore, one can easily distinguish the significant importance placed on productivity over and above the priority placed on accuracy. Reviewing 10 rating-related cases per month for a large size regional office,⁵ an office that would easily employ more than three times that number of raters, is undeniable evidence of a total void in individual accountability. If an average size regional office produced only 1000 decisions per

³Department of Veterans Affairs Office of Inspector General, *Rep. No. 05-00765-137, Review of State Variances in VA Disability Compensation Payments* 61 (May 19, 2005).

⁴See M21-4, Ch. 3.

⁵See *I.d.* at 3.3

month, which we feel is quite conservative, the STAR program would only review a tenth of one percent of the total cases decided by that regional office. Those figures leave no room for trend analysis, much less personal accountability.

To complement its STAR program for allegedly measuring quality at the national level, the VA announced in the year 2000 a new initiative for quality review at the individual level. Acknowledging that management needed tools to monitor individual performance, the VA created the “Systematic Individual Performance Assessment” (SIPA) program. Under this program, the VA would review an annual sample of 100 decisions for each adjudicator to identify individual deficiencies, ensure maintenance of skills, promote accuracy and consistency of claims adjudication, and restore credibility to the system. The reviewers would perform related administrative functions, such as providing feedback on reviews, maintaining reports, and playing a role in employee development and ongoing training. Unfortunately, the VA abandoned this initiative during 2002, and proficiency is now apparently subjectively assessed by supervisors based on their day-to-day perceptions of employee performance. Without any actual systematic review of samples of an individual adjudicator’s decisions, deficiencies are more likely to go undetected and uncorrected. We understand that the culprit behind abandonment of SIPA was inadequate resources. Without any quality assurance review on the individual level, the VA is unlikely to impose effective accountability down to the individual adjudicator level, where it must go if optimum quality is expected.

We believe today’s VA workforce is conscientious and desires to make the best claims decisions possible, but it needs the time, training, and tools to do so, and the tools include a source of direct feedback from individualized quality reviews. Without such oversight, under qualified, poorly trained VBA employees repeat the same mistakes, which lead to repeated appeals on the same issue, and that result in the VA recycling the same cases over and over, further adding to the backlog.

There is no proverbial silver bullet to solving VA’s challenges. Various policy changes can and should be implemented that will *collectively* have a positive impact on reducing VA’s claims backlog while also improving services to VA’s clientele. The DAV believes the following policy changes will have such an impact.

Overdevelopment of Claims

Numerous developmental procedures in the VA claims’ process collectively add to the enormous backlog of cases. While many of these procedures are mandatory, they are often over utilized. This unnecessarily delays claims for months—when this occurs in, or leads to, the appeals process, claims are delayed for many years. There is no single answer to solving the claims backlog. Therefore, in addition to staffing increases, Congress and the VA must attack the problem using alternative methods, particularly when those alternative methods are parallel with the intent of the law, work to save departmental resources, and protect the rights of disabled veterans.

For example, rather than making timely decisions on C&P claims when evidence development may be complete, the VA routinely *continues* to develop claims. These actions lend validity to many veterans’ accusations that whenever the VA would rather not grant a claimed benefit, the VA intentionally overdevelops cases to obtain evidence against the claim. Despite these accusations, a lack of adequate training is just as likely the cause of such overdevelopment.

Such actions result in numerous appeals, followed by needless remands from the Board and/or the Court. In many of these cases, the evidence of record supports a favorable decision on the appellant’s behalf yet the appeal is remanded nonetheless. These unjustified remands usually do nothing but perpetuate the hamster-wheel reputation of veterans law. Numerous cases exemplify this scenario; a list can be provided upon request.

Essentially, the VA requests unnecessary medical opinions in cases where the claimant has already submitted one or more medical opinions that are adequate for rating purposes. VA claimants desiring to secure their own medical evidence, including a fully informed medical opinion, are entitled by law to do so. If a claimant does secure an adequate medical opinion, there is no need in practicality or in law for the VA to seek its own opinion. Congress enacted title 38, United States Code, section 5125 for the express purpose of eliminating the former 38 Code of Federal Regulations, section 3.157(b)(2) requirement that a private physician’s medical examination report be verified by an official VA examination report prior to an award of VA benefits. Section 5125 states:

For purposes of establishing any claim for benefits under chapter 11 or 15 of this title, a report of a medical examination administered by a private physician that is provided by a claimant in support of a claim for benefits under that chapter *may* be accepted without a requirement for confirmation by an examination by a physician employed by the Veterans Health Admin-

istration if the report is sufficiently complete to be adequate for the purpose of adjudicating such claim. [Emphasis added]

Therefore, Congress codified section 5125 to eliminate unnecessary delays in the adjudication of claims and to avoid costs associated with unnecessary medical examinations. Notwithstanding the elimination of title 38, Code of Federal Regulations, section 3.157, and the enactment of title 38 United States Code section 5125, the VA consistently refuses to render decisions in cases wherein the claimant secures a private medical examination and medical opinion until a VA medical examination and medical opinion are obtained. Such actions are an abuse of discretion, which delay decisions and prompt needless appeals. When claimants submit private medical evidence *that is adequate for rating purposes*, Congress should mandate the VA *must* decide the case based on such evidence rather than delaying the claim by arbitrarily and unnecessarily requesting additional medical examinations and opinions from the agency. Such enactment will preserve VA's manpower and budgetary resources; help reduce the claims backlog and prevent needless appeals; and most importantly, better serve disabled veterans and their families.

Standard for Determining Combat Veteran Status

Title 38, United States Code, section 1154(b) requires the VA to accept lay or other evidence as sufficient proof of service connection of a disease or injury if a veteran alleges that disease or injury occurred in or was aggravated during combat. While the VA recognizes the receipt of certain medals as proof of combat, only a fraction of those who participate in combat receive a qualifying medal. Further, military personnel records usually do not document actual combat experiences. As a result, veterans who suffer a disease or injury resulting from combat are forced to provide evidence that may not exist or wait a year or more while the VA conducts research to determine whether a veteran's unit engaged in combat.

Congress should amend title 38, United States Code, section 1154(b) to clarify military service as treatable service in which a member is considered to have engaged in combat for purposes of determining combat-veteran status. Such clarification would properly allow for utilization of nonofficial evidence as proof of in-service occurrence for service connection of combat-related diseases or injuries.

This type of legislation would remove a barrier to the fair adjudication of claims for disabilities incurred or aggravated by military service in combat zone. Under existing law, veterans who can establish that they "engaged in combat" are not required to produce official military records to support their claim for disabilities related to such service. This legislation would not alter the law's current requirement that a veteran confirm a disability through official diagnosis. Further, it would not alter the requirement that a veteran show a nexus between a claimed disability and military service. The only alteration from current law would be a relaxed standard of proof, consistent with Congress' original intent, required to establish a veteran as one who engaged in combat. This relaxed standard of proof would then only apply to those who serve in a combat zone.

Many veterans disabled by their service in Iraq and Afghanistan, and those who served in earlier conflicts are unable to benefit from liberalizing evidentiary requirements found in the current version of section 1154(b). This results because of difficulty, even impossibility, in proving personal participation in combat by official military documents.

Impositions put forth by VA General Counsel opinion 12-99 require veterans to establish by official military records or decorations that they "personally participated in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality." Oversight visits by Congressional staff to VA regional offices found claims denied under this policy because those who served in combat zones were not able to produce official military documentation of their personal participation in combat via engagement with the enemy. The only possible resolution to this problem without amending section 1154(b) is for the military to record the names and personal actions of every single soldier, sailor, airman, and Marine involved in every single event—large or small—that constitutes combat and/or engagement with the enemy on every single battlefield. Such recordkeeping is impossible.

Numerous veterans have been and continue to be harmed by this defect in the law. In numerous cases, extensive delays in claims processing occur while VA adjudicators attempt to obtain official military documents showing participation in combat: documents that may never be located.

The Senate noted in 1941, in the report on the original bill that the absence of an official record of care or treatment in many of such cases is explained by the conditions surrounding the service of combat veterans. Congress emphasized that the establishment of records for non-combat veterans was a simple matter compared to the combat veteran—either the veteran carried on despite his disability to avoid

having a record made lest he or she be separated from his or her organization or, as in many cases, the records themselves were lost. Likewise, many records are simply never generated.

Congress should clarify its intent by amending title 38, United States Code, section 1154(b), with respect to defining a veteran who engaged in combat for all purposes under title 38, as a veteran who during active service served in a combat zone for purposes of section 112 of the Internal Revenue Code of 1986 or a predecessor provision of law.

Other Factors Affecting the Backlog

In addition to the backlog of claims originating at the local regional office, the Board and the Court add substantially to the claims backlog by needlessly and frequently remanding numerous cases on appeal. In many of these appeals, the evidence of record fully supports a favorable decision on the appellant's behalf, yet the appeal is remanded nonetheless. These unjustified remands deprive the appellant, usually for many additional years, to benefits awardable based on facts already of record.

The greatest challenge facing the Court is identical to the VA—the backlog of cases. The Court has shown a reluctance to reverse errors committed by the Board. Rather than addressing an allegation of error raised by an appellant, the Court has a propensity to vacate and remand cases to the Board based on an allegation of error made by the VA's counsel for the first time on appeal, such as an inadequate statement of reasons or bases in a Board decision. Another example occurs when the VA argues, again for the first time on appeal, for remand by the Court because the VA failed in its duty to assist the claimant in developing the claim notwithstanding an express finding by the Board that all development is complete and where the appellant accepts, and does not challenge such finding by the Board. Such actions are particularly noteworthy because the VA has no legal authority to appeal a Board decision to the Court.⁶

Consequently, the Court will generally decline to review alleged errors raised by an appellant that actually serve as the basis of the appeal. Instead, the court remands the remaining alleged errors on the basis that an appellant is free to present those errors to the Board even though an appellant may have already done so, leading to the possibility of the Board repeating the same mistakes on remand that it had previously. Such remands leave errors properly raised to the Court unresolved; reopen the appeal to unnecessary development and further delay; overburden an already backlogged system; exemplify far too restrictive judicial restraint; and inevitably require an appellant to invest many more months and perhaps years of his or her life in order to receive a decision that the court should have rendered on initial appeal. As a result, an unnecessarily high number of cases are appealed to the Court for the second, third, or fourth time.

In addition to postponing decisions and prolonging the appeal process, the Court's reluctance to reverse Board decisions provides an incentive for the VA to avoid admitting error and settling appeals before they reach the Court. By merely ignoring arguments concerning legal errors rather than resolving them at the earliest stage in the process, the VA contributes to the backlog by allowing a greater number of cases to go before the Court. If the Court would reverse decisions more frequently, the VA would be discouraged from standing firm on decisions that are likely to be overturned or settled late in the process.

To remedy this unacceptable situation, Congress should amend title 38, United States Code section 7261 to require the Court on a *de novo* basis, to: (1) decide all relevant questions of law; (2) interpret constitutional, statutory, and regulatory provisions; and (3) determine the meaning or applicability of the terms of an action of the Secretary. The Court's jurisdiction should also be amended to require it to decide all assignments of error properly presented by an appellant.

Conclusion

We hope the Committee will review these recommendations and give them consideration for inclusion in your legislative plans.

Mr. Chairman, thank you for inviting DAV to testify before you today.

⁶ 38 U.S.C.A. § 7252(a) (West 2002) ("The Court of Appeals for Veterans Claim shall have exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. The Secretary may not seek review of any such decision.")

**Prepared Statement of Paul Sullivan, Executive Director,
Veterans for Common Sense**

I would like to thank Chairman John Hall and members of the subcommittee for inviting Veterans for Common Sense to offer testimony regarding regional office solutions to eliminate the enormous backlog of 650,000 claims at the Veterans Benefits Administration. VCS is a non-profit organization based in Washington, DC, founded in 2002, providing advocacy for service members and veterans.

At a recent VCS meeting with veterans, one Iraq war combat veteran asked us, "What would a smooth running VBA regional office look like?" We said it should be where veterans come first and where claims are decided accurately within 30 days.

VCS fully supports the superb recommendations already made by Harvard Professor Linda Bilmes, Morrison & Foerster's Gordon Erspamer, and the Veterans Disability Benefits Commission. In addition, we recognize the tremendous efforts by VBA rank-and-file staff, many of whom are veterans, for their work assisting veterans every day.

Backlog Causes

VCS believes there are five major reasons why VBA remains foundering in an ocean of incomplete claims, doubling from 325,000 claims in 2002 to 650,000 claims today. Veterans now wait more than six months for an answer from VBA. Most of the reasons are beyond the control of rank-and-file VBA employees working at regional offices:

1. **Staffing:** VBA lacks the money to hire enough staff to handle the increased volume or to adequately train existing staff to make accurate, complete and timely decisions.
2. **Process:** VBA's complex and adversarial rules, VBA's 26-page claim form, and VBA's lack of due process make deciding claims unreasonably complicated.
3. **Volume:** More claims—with an increase of 17 percent more issues per claim over the past six years—keep flooding into VBA, such as Vietnam War veterans seeking benefits for Agent Orange poisoning and PTSD, as well as other veterans seeking a financial safety net due to a weak economy.
4. **The Iraq and Afghanistan Wars:** The two wars generated 245,000 unanticipated VBA claims—again, with more issues per claim—with high rates of traumatic brain injury (TBI), post traumatic stress disorder (PTSD), and hearing loss.
5. **Poor Leadership:** VBA's political leadership lacked the vision to become proactive and resolve VBA's severe claims crisis.

When combined, these five factors created a perfect storm at VBA. Compounded by institutional inertia and draconian budget restrictions from the Office of Management and Budget and the White House, the result is a catastrophic failure where the backlog and the length of time to process claims continues to grow. Now hundreds of thousands of veterans go without disability payments and access to VA medical care because VBA remains rudderless, sinking, and far out to sea in a raging hurricane.

Future Challenges

Here are four significant additional challenges VBA faces:

1. The VBA capacity crisis is expected to worsen in the foreseeable future, as VA expects to process nearly one million new and re-opened claims next year.
2. VA regional offices received 245,000 unanticipated disability claims, yet 16 percent, or 39,000 veterans, are still waiting, on average six months, for a VA claim decision.
3. DoD already reports 68,000 non-fatal battlefield casualties from the two wars, and VA expects to treat 333,000 veteran patients during 2009, most of whom can be expected to file VBA disability claims, based on the activity of Gulf War veterans.
4. Veterans who served in the National Guard and Reserves are nearly three times as likely to have their claim denied than veterans from regular Active Duty (14% v. 5%). VCS believes this discrepancy warrants an investigation by VA, the Department of Justice, and Congress because last year the difference was only two times as likely.

Solutions

VBA should use two avenues to fix problems: an incremental approach and an overhaul approach. VBA must make immediate reforms while keeping its eyes fo-

cused on creating a robust system where VA can, in fact, produce prompt, complete, and accurate VA disability claim decisions with 30 days. In the long-term, VCS suggests using the recommendations provided by the Veterans Disability Benefits Commission as a blueprint for the start of a desperately needed overhaul of VA, especially VBA.

In the short term, in addition to recommendations made by Bilmes, Erspamer, and the VDBC, we ask Congress to change the law and thus provide VBA regional office employees the tools to put our veterans first:

1. **Automatically approve disability claims for TBI.** Congress should pass legislation to automatically approve disability benefits for deployed veterans who are diagnosed with TBI. Such a law would simplify and expedite claims processing at regional offices. According to the Defense and Veterans Brain Injury Center at Walter Reed Army Medical Center, up to 20 percent of Iraq and Afghanistan war veterans are at risk for TBI due to roadside bomb blasts. One VA physician estimates up to 30 percent, or between 320,000 and 500,000 TBI cases. However, the military does not document all bomb blasts, thus making it hard for VA to verify and to process TBI claims. This new law would establish that a deployment to the Iraq and Afghanistan war zones means VBA concedes there was a concussive blast incident strong enough to cause the TBI, unless there is evidence to the contrary. Coupled with this recommendation is a requirement for mandatory full funding for VA to provide proper TBI screening for all 1.6 million of our service members sent to war zones since September 11, 2001.
2. **Automatically approve disability claims for PTSD.** In July 2007, VCS asked Congress to pass legislation designed to automatically approve disability claims for veterans who are diagnosed with PTSD. VCS believes such a law would simplify and expedite claims processing at regional offices. Estimates range from 20 percent to 36 percent for Iraq and Afghanistan war veterans returning home with PTSD, or between 320,000 and 600,000 PTSD cases. In a July 2004 Army study, the military documented 93 percent of soldiers and 97 percent of Marines experienced “being shot at or receiving small arms fire,” indicating that nearly all soldiers are now involved in combat. Congress should investigate why VA diagnosed 56,246 veterans with PTSD, yet approved only 34,138 PTSD disability claims, or only 61 percent. Are the 22,000+ claims pending, denied, or under appeal? Do veterans receiving free VHA healthcare know about VBA? A major problem facing veterans and regional office staff is the military’s lack of records for all combat engagements. PTSD claims should be automatically approved with the understanding that deployment to Iraq and Afghanistan means VBA concedes there was at least one stressor sufficient enough to cause PTSD, unless there is evidence to the contrary.
3. **Expand Benefits Delivery at Discharge.** One of VBA’s biggest hurdles at regional offices is obtaining military service and medical records. With a complete forward deployment of VBA staff at military bases, including all National Guard and Reserve armory and demobilization sites, VBA would have immediate and full access to records before they are shipped off to storage, misplaced, or destroyed. Congress should change the law so that all service members can file claims while still in the military. Currently, this is not available at all military installations, and is noticeably absent for our Reserve and National Guard. Congress should require any VBA employee stationed at a military facility to be trained and authorized to assist with both military and VA healthcare and claims paperwork. Coupled with this suggestion is the need for DoD to comply with 38 U.S.C. section 5106 and provide military service records and military medical records to VA and to the veteran at discharge and for VHA to automatically enroll all new service members upon enlistment.
4. **Hold VBA Accountable.** In the end, VCS believes there must be accountability at VBA. At present, VCS is aware of only a very small number of VBA employees who have faced adverse consequences for incomplete, incorrect, negligent, or criminal activities involving veterans’ claims. VCS asks Congress to request statistics from VBA that show the number of VBA employees who faced personnel actions (counseling, reprimands, demotion, transfer, or termination) as a result of a poor performance evaluation associated with developing or approving claims—and this should include all VBA staff, from rating specialists to supervisors to Executives.

VCS believes accountability for VBA must rest with the highest official at VBA, the Under Secretary for Benefits, Daniel Cooper. After six years, he provided only small incremental changes rather than both incremental change and a massive overhaul. Congress must hold the entire Administration—VBA, VA, OMB, and the

White House—accountable for this systemic failure to assist our disabled veterans, lest this problem continue indefinitely even if a new Under Secretary were confirmed.

Here is a chronology showing the Under Secretary was fully aware of VBA's crisis before he became Under Secretary, yet he failed to deliver for our veterans:

- In early 2001, then-Secretary Anthony Principi recognized challenges at VBA, and he created the "Claims Processing Task Force," naming Cooper to lead it, even though he had no experience with VA. He was a retired Navy Vice Admiral who served on the Board of Directors for Exelon, a nuclear power company, and USAA, an insurance and banking company.
- In October 2001, Cooper issued his Task Force report, which made dozens of thoughtful incremental recommendations, including holding VBA employees accountable. In November 2001, the full Committee held a hearing to discuss the work of the Task Force. After 9/11 and after the invasion of Afghanistan, Cooper told the full Committee, "In my opinion, today, there are enough resources in VBA to do the job that has to be done" (page 16).
- In December 2001, with more troops pouring into Afghanistan and with plans on the table to invade Iraq, Cooper provided additional written answers to the full Committee's questions about staffing resources. Cooper wrote, "At the hearing, I specifically stated that new resources (i.e., FTE) should not be provided" (page 166). Given that there were hundreds of thousands of claims from half of our Gulf War conflict veterans, why did he not plan for nor act on the needs of a new generation of war veterans when he became Under Secretary in 2002?

Conclusion

A failure to address VBA's claims catastrophe has needlessly increased suffering among our veterans and their families. According to published government and news reports, the number of broken homes, unemployed veterans, drug and alcohol abuse, suicides, and homelessness all rose—problems expected to worsen without immediate action to resolve VBA's claims crisis. VCS believes VA, VBA, and Congressional leaders should work closely with VBA employees and advocates to find solutions. VCS respectfully requests our ethics complaint against the Under Secretary for Benefits sent to DoJ on September 4, 2007, be entered into the hearing record.

Prepared Statement of Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission, American Legion

Mr. Chairman and Members of the Subcommittee:

Thank you for giving The American Legion the opportunity to present its views on the Department of Veterans Affairs (VA) backlog and VA's claims processing system.

Claims Backlog & Staffing

In Fiscal Year (FY) 2007, more than 2.8 million veterans received disability compensation benefits. Providing quality decisions in a timely manner has been, and will continue to be, one of the VA's most difficult challenges. A majority of the claims processed by the Veterans Benefits Administration's (VBA) 57 regional offices involve multiple issues that are legally and medically complex and time consuming to adjudicate.

As of February 2, 2008, there were 653,595 claims pending in VBA, 400,386 of which are rating cases. There has been a steady increase in VA's pending claim backlog since the end of FY 2004 when there were 321,458 rating cases pending. At the end of FY 2007, there were more than 391,000 rating cases pending in the VBA system, up approximately 14,000 from FY 2006. Of these, more than 100,000 (25.7 percent) were pending for more than 180 days. Including non-rating claims pending, the total compensation and pension claims backlog was more than 627,000, with 26.5 percent of these claims pending more than 180 days. There were also more than 164,000 appeals pending at VA regional offices, with more than 142,000 requiring some type of further adjudicative action. At the end of FY 2007, the average number of days to complete a claim from date of receipt (182.5 days) was up 5.4 days from FY 2006.

Inadequate staffing levels, inadequate continuing education, and pressure to make quick decisions, resulting in an overall decrease in quality of work, has been a consistent complaint among regional office employees interviewed by The American Legion staff during regional office quality checks. It is an extreme disservice to vet-

erans, not to mention unrealistic, to expect VA to continue to process an ever increasing workload, while maintaining quality and timeliness, with the current staff levels. The current wartime situation provides an excellent opportunity for VA to actively seek out returning veterans from Operations Enduring Freedom and Iraqi Freedom, especially those with service-connected disabilities, for employment opportunities within VBA. Despite the recent hiring initiatives, regional offices will clearly need more personnel given current and projected future workload demands.

However, VBA must be required to provide better justification for the resources VBA says are needed to carry out its mission and, in particular, how VBA intends to improve the level of adjudicator training, job competency, and quality assurance. Each of these topics will be discussed in greater detail below.

Production vs. Quality

Since 1996, The American Legion, in conjunction with the National Veterans Legal Services Program (NVLSP), has conducted quality review site visits at more than 40 regional offices for the purpose of assessing overall operation. This Quality Review Team visits a regional office for a week and conducts informal interviews with both VA and veterans service organization (VSO) staff. The Quality Review Team then reviews a random sample of approximately 30–40 recently adjudicated American Legion-represented claims. The Team finds errors in approximately 20–30 percent of cases reviewed.

The most common errors include the following:

- Inadequate claim development leading to premature adjudication of claim;
- Failure to consider reasonably inferred claims based on evidence of record;
- Rating based on inadequate VA examination; and/or
- Under evaluation of disability (especially mental conditions).

These errors are a direct reflection of VA's emphasis of quantity over quality of work. This seems to validate The American Legion's concerns that emphasis on production continues to be a driving force in most VA regional offices, often taking priority over such things as training and quality assurance. Clearly, this frequently results in premature adjudications, improper denials of benefits and inconsistent decisions.

Training

Proper mandatory training is a key factor in the quality of VA regional office rating decisions. The Board of Veterans' Appeals (BVA) combined remand and reversal rate (56 percent) of regional office decisions for FY 2007 is a direct reflection of the lack of importance placed on training by the VA regional offices. Our quality review site visits have revealed that, at many regional offices, there have been too few experienced supervisors that could provide trainee adjudicators proper mentoring and quality assurance. In addition, at many stations, ongoing training for the new hires, as well as the more experienced staff, would be postponed or suspended, so as to focus maximum effort on production.

Despite the assurances of the Under Secretary for Benefits that training of personnel is a top priority within VBA, the inconsistency in VBA's training approach and in its implementation needs to be thoroughly reviewed and addressed by upper management within the VBA. In the experience of The American Legion, the lack of proper training and oversight adversely impacts all areas of VBA. Each of VBA's 57 regional offices appear to have different approaches to training and also differ in the importance placed on training. According to a May 2005 report from the VA Office of the Inspector General (VAOIG), based on a survey of rating veterans service representatives (RVSRs) and decision review offices (DROs), the respondents expressed positive opinions regarding the quality of their training, but the overall response indicated that training did not receive high priority.

The information obtained in the VAOIG's survey is consistent with what The American Legion has found in talking to service center staff during our quality review site visits. Some stations have regular formalized or structured training programs, while others have training programs that are best described as more informal and sporadic. Some stations have well established and structured training for new employees, but ongoing training for experienced staff is very limited.

The VAOIG also recommended that a scientific study be conducted to further examine the variances in disability payments. VA subsequently contracted the Institute for Defense Analyses (IDA) to conduct the study. IDA released its report in 2007. IDA noted that although VBA provides centralized training modules for training purposes, many regional offices supplement this training with material developed locally. IDA also noted that many rating specialists interviewed stated that they received "on-the-job" training from senior raters and identified these individ-

uals as the biggest influence on their rating styles. IDA suggested that a “stronger mechanism” would reduce the potential for persistent differences among regional offices in ratings and ensure that raters VA-wide are receiving the same training. IDA further recommended that raters be given standardized test cases, reflecting the most likely areas of variation, as part of an ongoing training process.

We are appreciative of the importance the Under Secretary for Benefits has placed on training of VBA personnel. We are also aware of the centralized training program that has been implemented; however, a national training standard/requirement, in addition to the centralized training conducted by Compensation and Pension (C&P) Service, for regional office personnel is also needed. Consistent and standardized training at each regional office must take place for all personnel—experienced and new hires alike. The American Legion believes it is crucial that such a program be implemented and closely monitored for compliance by the Under Secretary for Benefits. Management in stations, not in compliance with such training requirements, must be held accountable; otherwise, any national or centralized training effort will not be successful.

Additionally, The American Legion believes it is essential to proper training that information (reasons for remand or reversal) from BVA decisions, DRO decisions and errors noted in National STAR and other internal quality reviews be tracked and examined for patterns. This information should then be used in mandatory formal training to ensure that common errors and other discrepancies occurring in regional office rating decisions are not repeated. This information should also be used for remedial training purposes when patterns of errors are identified for specific individuals. Although such data is currently being collected and disseminated to the regional offices, it appears that consistent utilization of this data in regular formalized and specific training is lacking.

The American Legion must stress that unless regional offices (both managers and individual adjudicators) learn from their mistakes and take corrective action, the VA will continue to have a high rate of improperly adjudicated claims, which result in a consistently high appeals rate and subsequent high BVA remand/reversal rate.

Performance Standards

Performance standards of adjudicators and rating specialists are centered on productivity as measured by work credits, known as “End Products.” Both veterans service representatives (VSR) and RVSRs have minimum national productivity requirements that must be met each day. Some stations also set their own standards, based on their claims backlog and other station specific requirements that are over and above the national requirement. Despite the fact that VBA’s policy of “production first” has resulted in many more veterans getting faster action on their claims, the downside has been that tens of thousands of cases are prematurely and arbitrarily denied. Approximately 65 percent of VA raters and DROs surveyed by the VAOIG, in conjunction with its May 2005 report, admitted that they did not have enough time to provide timely and quality decisions. In fact, 57 percent indicated that they had difficulty meeting production standards if they took time to adequately develop claims and thoroughly review the evidence before making a decision. These findings are consistent with what our Quality Review Team has reported from interviews with regional office service center staff.

Unfortunately, the End Product work measurement system essentially pits the interests of the claimant against the needs of VA managers. The conflict is created because the regional offices have a vested interest in adjudicating as many claims as possible in the shortest amount of time. Awards and bonuses are often centered on production rather than outcomes. This creates a built-in incentive to take shortcuts so that the End Product can be taken. The system, in effect, rewards regional offices for the gross amount of work they report, not whether the work is done accurately or correctly, often resulting in many claims being prematurely adjudicated. These problems are caused by inadequate development, failure to routinely identify all relevant issues and claims and/or ratings based on inadequate examinations. Even the VAOIG acknowledged that because the VA often does not take the time to obtain all relevant evidence and information, there is a good chance that these claims are not properly adjudicated.

Such errors, however, are often overshadowed by the desire of VA managers to claim quick End Product credit. The result has been a traditionally high remand rate by BVA and the Court of Appeals for Veterans Claims (CAVC). The American Legion believes that VBA management is reluctant to establish a rigorous quality assurance program to avoid exposing the longstanding history of the manipulation of workload data and policies that contribute to poor quality decisionmaking and the high volume of appeals. VBA’s quality-related problems and the fact that little or no action is being taken to prevent or discourage the taking of premature End Prod-

ucts have been longstanding issues for The American Legion. The current work measurement systems, and corresponding performance standards, are used to promote bureaucratic interests of regional office management and VBA rather than protecting and advancing the rights of veterans. The End Product work measurement system, as managed by the VA, does not encourage regional office managers to ensure that adjudicators do the “right thing” for veterans the first time. For example, denying a claim three or four times in the course of a year before granting the benefit sought allows for a total of FIVE End Product work credits to be counted for this one case, rather than promptly granting the benefit and taking only one work credit.

In the view of The American Legion, the need for a substantial change in VBA’s work measurement system is long overdue. A more accurate work measurement system would help to ensure better service to veterans. Ultimately, this would require the establishment of a work measurement system that does not allow work credit to be taken until the decision in the claim becomes final, meaning that no further action is permitted by statute whether because the claimant has failed to initiate a timely appeal or because the BVA rendered a final decision. We are pleased that legislation (H.R. 3047) introduced in 2007 would mandate such overdue changes to VA’s work credit system. We are hopeful that, if enacted, this legislation, which would change the underlying incentive by rewarding quality of work rather than quantity, will increase the number of accurate decisions as well as claimant satisfaction and, in doing so, reduce the overall number of appeals.

Proficiency/Competency

C&P Service conducted an open book (pilot) job skill certification test for VSRs several years ago in which the pass rate was extremely low (approximately 23 percent). Even more alarming than the low-test scores was the fact that those who took the test had several years of experience in the position and were considered to be proficient.

C&P Service subsequently finalized its VSR proficiency test and conducted tests in May and August 2006. Employees participating in the testing underwent 20 hours of training prior to taking the test. Although the pass rate (about 42 percent) for these tests was much higher than the pilot test, it is still very low and can hardly be considered acceptable. C&P Service did not conduct any tests in FY 2007.

The American Legion applauds the new testing program as a step in the right direction, but we still have concerns. Although successful completion of the test will be required for promotion or assignment to a rating board, it is not mandatory as a condition of employment in that position and is completely optional. C&P Service is in the process of developing a test for RVSRs and DROs, but a timeline for completion or implementation has not yet been determined. Unfortunately, like the VSR test, the test for RVSRs and DROs will not be mandatory as a condition of employment.

The ultimate goal of proficiency or competency testing should be to ensure that an individual in any given position is competent, proficient, and otherwise qualified to perform the duties required of that position. This goal will not be achieved if testing is not mandatory, or is not provided for all levels or for all positions, and remedial training or other corrective action is not required for those who do not successfully pass the test. Although this concept may not be embraced by some, the ultimate goal is to have qualified and competent staff who will provide the best service possible for veterans and their families.

Immediate (Non-legislative) Remedies to reduce Claims Backlog

Greater emphasis should be placed on conducting triage to identify and expedite claims that are substantially complete (very little or no development needs to be completed in order to rate the claim) at the time they are submitted. Then compensation & pension exams should be ordered as soon as possible in cases where the only development that is needed in order to rate the claim is an exam. Although there are mandatory notification requirements under the VCAA, VA can streamline its waiver process in those cases where the claim is substantially complete and veterans do not have any additional evidence to submit. This would allow VA to proceed with the adjudication process in a timely manner without having to wait for the expiration of the time period for a veteran to submit additional evidence or otherwise respond to the VCAA letter.

The aforementioned process should also be applied in claims with multiple issues in order to provide claimants with access to VA healthcare and compensation, while VA continues to work those issues that are more complex or require significant development. Issues that are substantially complete and essentially “ready to rate” at time of submission should be so identified and expedited in order to avoid delay that

would result if adjudication was put off until all issues were ready to rate. Issues that are more complex or require significant development should be deferred for rating upon completion of required development.

VA often receives claims that contain evidence sufficient to establish service connection and also sufficient medical evidence to properly rate the current severity of the condition under the applicable diagnostic code. In most, if not all of these cases, VA, as matter of routine, schedules an exam even though it has sufficient evidence to not only establish service connection, but also sufficient evidence to properly rate the condition under the applicable rating criteria.

Perfect examples of this are claims of entitlement to service connection for type II diabetes based on the Vietnam Agent Orange (herbicide) presumption. If a veteran diagnosed with type II diabetes meets the Vietnam service requirements, exposure to herbicides is conceded and entitlement to service connection is automatically established, if the condition developed to a degree of 10 percent or more disabling during the applicable presumptive period and rebuttal of service connection, in accordance with 38 C.F.R. §3.307, was not accomplished. In type II diabetes cases, the treatment notes (either private or VA) more often than not contain sufficient medical information to properly rate the current severity of the condition under the VA Schedule for Rating Disabilities, negating the necessity of a VA examination. Unfortunately, the routine scheduling of (unnecessary) examinations in cases such as this where there is sufficient evidence of record to establish service connection and to properly rate the condition can result in one to three month delays in adjudicating the claim. The American Legion, therefore, recommends establishing specially trained triage teams to identify such claims.

VA could also explore another option that involves cases where there is sufficient evidence to establish service connection, but an exam is needed to accurately rate the current severity of the condition. In these cases, VA could grant service connection, establish a baseline evaluation based on the medical evidence of record, and then go back later and conduct an exam to establish current severity of the condition. Such a process would quickly establish service connection and, as a result, VA healthcare eligibility, and generally provide the claimant with payments in a timelier manner.

Brokered Claims

In an effort to help balance its claims backlog across regional offices, VBA established a “brokering” program where it transfers claims from the regional office of jurisdiction to another regional office to be adjudicated. The idea behind brokering cases is to provide assistance to regional offices with large backlogs by having another regional office rate a specified number of its claims each month. Regional office employees and VSOs located at regional offices that broker work to other offices have consistently voiced concern about the quality of the brokered work, to our Quality Review Team during site visits. There seems to be a common consensus among VA and VSO employees, interviewed by the Team, that regional offices working brokered claims do not have a vested interest in the brokered claim as it is not under their permanent jurisdiction nor will they have to deal with subsequent appeals. The frequency of errors found in brokered cases reviewed during The American Legion quality review site visits supports this concern.

Unfortunately, although VBA does not have a mechanism in place to monitor the quality of brokered work, VBA management continues to tout this program as an effective case management tool. Although this program may be a necessary short-term solution for regional offices unable to effectively manage current workloads, it does not address the staffing and other resource deficiencies that resulted in the need for work to be brokered in the first place. VBA management should not continue to rely on brokering as permanent solution to addressing its claims backlog, but should focus on ensuring that its regional offices have adequate staffing, training, and other resources in order to properly manage their own workloads and eliminate the need for brokering all together.

Conclusion

The best way to help veteran claimants is to fix the entire VA claims adjudication system. Piecemeal solutions do not work and should be avoided. The VA work measurement system should be changed so that VA regional offices are rewarded for good work and suffer a penalty when consistent bad decisions are made. Managers, rating specialists and BVA law judges and attorneys should be rewarded for prompt careful work and they should also be penalized when they make bad decisions. American veterans seeking VA disability benefits deserve better treatment than what they are currently getting from VA.

Thank you again, Mr. Chairman, for allowing The American Legion to present comments on these important matters. As always, The American Legion welcomes the opportunity to work closely with you and your colleagues to reach solutions to the problems discussed here today that are in the best interest of America's veterans and their families.

—————

**Prepared Statement of Gerald T. Manar, Deputy Director,
National Veterans Service, Veterans of Foreign Wars of the United States**

CHAIRMAN HALL, RANKING MEMBER LAMBORN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for this opportunity to present the views of the 2.4 million veterans and auxiliaries of Veterans of Foreign Wars of the United States on the VA claims processing system.

An increasingly complex world

During my 30 year career with the Department of Veterans Affairs I was fortunate to meet, and in some cases, work with many of the highest leaders in what is now the Veterans Benefits Administration (VBA). During one such meeting several of these Executives spent a few minutes reminiscing about the days when they were young claims examiners in the 1950's and '60's. They laughed about a disability pension program so simple that they were able to memorize the monthly benefit rates paid based on the breakdown of income received by veterans. Under that program it was only necessary to compute income within a band, or a range, of income. Income within that band was paid a single rate.

That simple program was replaced by what is now called section 306 Pension; that, in turn, was replaced in 1979 by the "Improved Pension" Program. The Improved Pension Program requires detailed reporting by claimants, verified through matching programs with Social Security and the Internal Revenue Service. The pension benefit is adjusted up or down for every single dollar of countable income. It is a program so precise that discovery of an extra \$10 of income will lessen the pension by that amount while payment of an extra \$10 for medical expenses may increase it.

There are many positive and negative aspects to the Improved Pension Program. However, it is undisputable that it is not easy to understand and is certainly not "simple" to administer.

In truth, I am not aware of any program administered by VA that is simpler or easier to administer today than it was 30 years ago.

When I started working for the VA in 1974 there were three education programs: Chapter 34, the GI Bill, Chapter 31, vocational rehabilitation, and Chapter 35, for certain dependents and survivors of veterans who either died from or were totally disabled by service connected disabilities. Today, in addition to Chapters 31 and 35, there are separate programs for active duty and Guard and Reserve members. Better for veterans? Yes. Simpler and easier to administer? No.

Congress created the Court of Veterans Appeals, now the Court of Appeals for Veterans Claims (CAVC), in 1988 to provide veterans and other claimants an independent review of VA decisions concerning their entitlement to benefits. In the 20 years since its creation, the Court has issued thousands of opinions affirming the decisions of the Board of Veterans Appeals (BVA). During the same period, however, the CAVC has issued many other decisions which clarified, corrected or redefined VA's interpretation of the law governing compensation, pension and education benefits. These decisions, in turn, forced VA to rework its policies and procedures to conform to these new interpretations of the law. In some instances, VA has had to rework thousands of cases to ensure compliance with court decisions.

Few can dispute that veterans and other claimants have benefited from the improved understanding of the legal requirements surrounding the development and decisionmaking process within VA. However, no one anticipated the impact court decisions have had in making the work more complex. And, as we have seen, increased complexity extends the time it takes to resolve claims and increases the opportunity for error. Better for veterans? Yes. Simple and easy to administer? No.

It is not just changes to the law and judicial review that have delayed VA decisionmaking. Until the last few years, staffing at VA experienced a decade's long roller coaster ride that trended ever downward. As an Adjudication Officer in Los Angeles from 1986 to 1996, I can report to you that we suffered through long periods of hiring freezes and delayed budgets. Our annual attrition rate during that period averaged 15 percent and to be forced to wait a year or more before being able to

hire anyone was disastrous to the orderly maintenance of a workforce capable of processing of claims. Further, when we were able to hire, we were rarely permitted to recruit to fill all our needs.

We soldiered on through those staffing draughts, always trying new ways to motivate and encourage our employees to produce more. Although we had our successes, long periods of overtime that tend to exhaust employees, reduced flexibility due to staffing losses and an inability to timely fill critical vacancies resulted in gradually increasing backlogs. Sadly, it also led to an increase in errors: mistakes that cost veterans and the government alike.

VA leadership experimented with different claims processing models and configurations of work activities. While always well intentioned, these experiments generally failed either because they didn't translate well from private industry or through poor execution. Each failed business model caused VBA to fall further and further behind.

I mention all these things because they are not ancient history. There has been no break in the last 10 years where the VA was problem free and operating on all cylinders. The problems of the past continue to echo down to the present. While the infusion of much needed staffing over the last few years is welcome, it takes years to properly bring those new employees to accomplish quality work at journeyman levels of production.

Axioms—self evident truths

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

There is no magic bullet. Any single plan to make the claims processing system simple and easy will make things only marginally simpler and easier on the VA bureaucracy and will occur at the expense of the rights and benefits of at least some veterans, dependents and survivors. Any such plan is simply unacceptable.

Perhaps it is time to recognize that the world has changed. There has been a silent paradigm shift over the last 30 years. If for no other reason than judicial review, the Veterans Claims Assistance Act and the budgetary environment which exists today, it may be time to acknowledge that VA cannot be staffed at such levels as will allow it to produce quality decisions in the same timeframe that earlier generations of dedicated government workers achieved.

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

It pains me to say this, but whether you agree with either view of history, the initial point remains: the world in which VA operates has changed and it may no longer be realistic to expect accurate benefit decisions in a short period of time.

If we concede for the sake of argument that the first three observations are accurate, there are still things that can be done to improve production, reduce backlogs (although perhaps not at the rate we would like to see) and ensure claims are completed with quality.

During my career with the VA I made a conscious decision to avoid membership in any veteran's service organization. I felt that I needed to be totally objective and free from even the appearance of a conflict of interest. However, I was well aware of the good things service officers were able to accomplish for veterans and their families. That is why I did not hesitate to extend my service to veterans by joining with the VFW.

One of the things that has bothered me since coming to work for the VFW is that the general public, when it thinks of veterans service organizations at all, thinks of us as always having our hand out, always asking more and more for veterans. It is the perception that we are ungrateful beggars that bothers me the most.

We stand here speaking for our nearly 2 million veteran members. More than that, we, and the others at this table, speak for all veterans who don't have a working knowledge of the laws found in the U.S. Code or the rules set out in the Code of Federal Regulations. We are both advocates and lobbyists; we are proud to speak for all those men and women who, through the years, offered up themselves, sometimes at great risk of injury or death, so that you and I have the freedom to speak our minds in this public forum.

We ask for nothing but that which these men and women deserve to help make them whole from the physical and mental injuries they suffered during their military service.

We come today not with our hands out but with real tangible ideas for improving timeliness of processing claims without harming veterans in the process. Some of

the suggestions offered below were first put forward to the Veterans Disability Benefits Commission in April 2007. Others arise from the experiences of those who serve veterans, both in and out of government. These suggestions alone will not have a major impact on the backlog. However, if presenting them spurs additional ideas, then perhaps they will all, cumulatively, make the improvements necessary to achieve quality decisions within a reasonable time.

Starving regional offices

One of VBA's current policies is to replace lost staffing in regional offices according to their ability to process claims. Specifically, the more productive an office is, the more staff they receive. While this policy may encourage management at an underperforming office in the short run, over time it magnifies the deficiencies at the underperforming office, resulting in disproportionate backlogs and extended delays for the veterans served by that office.

This policy has existed for at least the last five years. While VBA attempts to compensate by shifting, or "brokering", work to other offices, this does not solve the problems at the underperforming offices. Further, while brokering cases is an excellent temporary measure to deal with workload fluctuations, it has become routine for some offices. Continuous brokering of work takes on the trappings of a game called "Whack-a-Mole" at the county fair: as soon as you push down workload at one location, it rises dramatically in another.

In our view, the policy of starving certain offices is counterproductive, both for employees and the veterans they serve. If VBA is unable to provide those offices with the leadership, resources and training to make them productive, then it needs to develop the corporate, institutional and political courage to change the mission of those offices to something other than claims processing.

Rotation of Veteran Service Representatives

The current claims processing system requires the periodic rotation of Veteran Service Representative (VSR's) from team to team. While this facilitates personal development and ensures that a cadre of employees exist who have experience in all aspects of claims processing, it means that teams lose their most knowledgeable members at the very moment they become the most effective and productive. If the current claims processing model is the most efficient, and I am not convinced that it is, then VBA management needs to reexamine this policy and determine how it can be better adjusted to ensure that the needs of veterans, employees and the organization are best met.

We urge the VA to reexamine the way it staffs its' Triage Team. It is our belief that this part of the organization would benefit most from having a stable workforce made up of clerks (similar to the correspondence and development clerks employed by VA in the past) rather than the higher paid and more versatile VSR. Utilization of more clerks at this level would reduce at least one rotation of VSR's.

Focus on quality; get it right the first time

We believe that 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 expert 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.

However, 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 pain, or limitation of extension or flexion by certain amounts, or instability in the joint.

Again, this is not rocket science. Software can 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. However, 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 website. Any curious veteran could enter the website, answer a series of simple questions and receive detailed information on what is needed to obtain the benefit.

Veterans Claims Assistance Act

It has been said that a journey of a thousand miles begins with a single step. In a like fashion, the journey from filing an initial claim to receipt of a final decision by the VA begins with the determination by VA as to whether a “substantially complete claim” has been submitted by a claimant. Once VA receives a substantially complete claim it is required by law to begin a rigorous ritual of notification and action which are designed to help claimants obtain either sufficient evidence to allow VA to grant their claim or all pertinent evidence which will allow VA to deny the benefits sought.

Background

The rules governing VA’s duty to assist were spelled out by Congress in the Veterans Claims Assistance Act of 2000 (VCAA). This law overturned a Court of Appeals for Veterans Claims ruling in *Morton v. West*, 12 Vet. App. 477 (1999) which held that individuals had to submit a “well grounded” claim before VA was required to help them obtain evidence necessary to prove their claim. In application, a well grounded claim proved to be harder to achieve than previously required by VA.

With the VCAA, Congress substantially lowered the evidentiary standard claimants had to meet before VA was required to help them gather evidence. The Veterans of Foreign Wars (VFW) believes that the VCAA was necessary to restore the status quo ante. In doing this, Congress spelled out in great detail the actions VA must take to help claimants with their claims.

Following passage of the VCAA, VA diligently (some would say bureaucratically) attempted to comply with both the substance and spirit of the legislation. In doing so, VA crafted and refined procedures and correspondence designed to comply with the law. Legal challenges required significant changes and one required VA to send letters to hundreds of thousands of individuals who had claims pending before VA.

These legislative and judicial efforts to ensure that VA does everything possible for claimants to help them develop claims, while well intentioned, has led to a process that is legalistic, fragmented and more intended to make cases appeal proof than it is to adequately inform claimants of the information they need to move forward with their claims. Review of a single VCAA letter will leave even lawyers shaking their heads in an attempt to understand what it is VA needs to complete processing of a claim.

On the surface, the legal requirements seem simple enough: tell the claimant what evidence is contained in her file; tell her what evidence is needed to complete the claim; tell her that VA will help her obtain certain evidence if she provides the names and addresses of facilities and doctors who provided treatment related to the claim; and tell her that VA will obtain service medical records, pertinent VA health records and any necessary records held by the Federal government.

What makes this difficult is that individuals often want service connection or higher evaluations for more than one condition. At a time when the average new claim contains 8 or 9 conditions, and some as many as 20 or more, spelling out a simple and clear explanation as to how claimants can obtain an earlier decision from VA is difficult.

We believe that this effort, if done properly, will go a long way to taking the confusion out of the VCAA notice letters. Such clarity will help claimants provide all the evidence needed by VA to decide their claims.

We would suggest, however, that those who have brought us the current stable of lengthy and confusing development letters are likely to be the same people who revise them. Consequently, we believe that VA should extensively use focus groups to ensure that the new letters are understandable and readable to the average person while complying with the law.

We believe that additional things can be done to allow knowledgeable claimants to move more quickly through the duty to assist morass:

Waiver of the VCAA notice and 60 day waiting period

Currently, VA is required to send a VCAA notice to everyone who has submitted a “reasonably complete” claim. There are times, however, when knowledgeable claimants, or claimants represented by competent advocates, submit everything necessary for VA to adjudicate their claim. Under current law and practice, however, VA is required to not only review the claim for completeness but also undertake development as required by law. The VA does this even if the claimant specifically states, in writing, that the claim is complete, that there is no additional evidence available and requests a waiver of VCAA development. This creates additional and unneeded work on VA regional office personnel and delays the adjudication of the claim by at least 60 days.

What we propose is that Congress amend the duty to assist provisions of the law to allow a knowledgeable waiver of duty to assist development. What we envision is a form which requires positive or negative answers to specific questions which, in the end, demonstrates that the claimant knows what the law requires VA to do, what evidence is needed by VA and consciously waives the VCAA notice and 60 day waiting period.

For example, the waiver form could include questions like:

- Have you been treated since service for any of your claimed disabilities? (yes/no)
- If you were treated since service, have you submitted all private medical evidence that shows treatment for your claimed disabilities? (yes/no)
- Have you furnished VA with the names, addresses and dates of treatment, if any, of all records held by the Federal government (not just VA)? (yes/no)
- Do you understand that by requesting this waiver VA will make no further efforts to identify or develop treatment records not currently held by VA? (yes/no)
- Do you understand that by requesting this waiver VA will make no further efforts to identify or develop records not currently held by the Federal government? (yes/no)
- Do you understand that while you may submit additional evidence while your claim is being processed, your waiver relieves VA of the legal requirement to help you obtain evidence that you tell it about? (yes/no)

While VA would still have to develop those claims where the form was not utilized or not correctly completed, it would still be able to move a significant number of claims to the next level, reducing their workload and hastening the completion of some of its work.

VA would still be responsible for developing government held records and obtaining required physical examinations. However, the elimination of the 60 day waiting period should prove extremely helpful.

Require VA to encourage ready to rate cases

Many VA regional office service center managers encourage veteran service organizations to bring them “ready to rate” cases. While this practice works well in some offices, it is rarely utilized in others. This practice encourages service officers to bring complete and ready to rate claims to a designated person who ensures that routine development is bypassed and claim adjudication is expedited.

We believe that this practice should be encouraged since it reduces the workload on VA staff and ensures that the backlog is not unnecessarily increased. We recommend the creation of a nation-wide initiative which formalizes this practice.

To ensure that this practice actually works, VA should require that regional office personnel, managers and veteran service officers are adequately trained to recognize a properly developed claim and understand that receipt of such a claim triggers actions which ensure prompt adjudication.

We believe that VA should give no preferential treatment to any case which, upon review, is found not to be ready to rate. This is necessary to ensure that partially developed cases receive no preferential treatment, thereby slowing completion of claims already in process.

However, one of the purposes of this program is to educate veteran service officers as to the evidence needed to produce a ready to rate case. We suggest that VA could do this by offering service officers an opportunity to complete development in a case found not ready to rate by telling them exactly what evidence is missing and giving them 10 working days to produce it.

The case could be considered ready to rate if the service officer is able to provide the necessary evidence. Failure to timely complete the claim would simply mean that the case would receive no preference and be worked under current procedures.

Informal claims

An informal claim is any communication from a claimant indicating intent to apply for one or more benefits from VA. (38 C.F.R. 3.155) If no formal claim has been received, VA writes the claimant and describes what is necessary to submit a substantially complete claim. The claimant has one year from the date of the VA letter to submit a completed application (e.g., VA Form 21-526). However, VA establishes no control and takes no further action. If the requested information is received within the year, the date of receipt of the informal claim becomes the date of claim. If the information sought is received after the one year period expires, the date of claim is the date of receipt of the additional material.

However, if a formal claim for benefits was previously received by VA, than an informal claim is considered simply a claim for benefits. (38 CFR 3.155(c); 3.160) In this case, VA establishes a computer control and begins the development required by the VCAA.

This rule discourages knowledgeable claimants and advocates from submitting complete or ready to rate claims to VA. Any delay in submitting a claim to reopen or a claim for an increase could negatively effect the date of claim which is the date from which benefits, if granted, are payable.

What we propose is that Congress change the law to allow the submission of an informal claim for the purpose of establishing an effective date. Under such a law, knowledgeable claimants and advocates could submit an informal claim at any time. VA would be required to acknowledge receipt of the claim and the claimant would be told what is necessary to perfect the claim. In this situation, the claimant would have a year in which to either submit evidence necessary to perfect his/her claim or request the assistance of VA to develop the claim. In the later situation, VA's duty to assist would be triggered and it would begin development required by the VCAA.

However, this change allows knowledgeable claimants and advocates to relieve VA of the burden of developing every claim. To the extent that the claimant or advocate is successful in obtaining evidence, it lessens the workload on VA and hastens the claim through VA once it is received by VA.

This suggestion, if adopted, will not necessarily lessen the amount of time it takes for an individual or advocate to develop the claim and the VA to reach a decision. However, it encourages certain claimants and advocates to undertake development prior to submitting a claim and to the extent that it reduces the workload on VA personnel it will allow all claims to move more swiftly through the process.

Artificial Intelligence

In our view there is computer programming and "artificial intelligence". Nearly everything touted as "artificial intelligence" is really just computer programmers giving answers to a very large number of yes/no questions. There is, however, ample opportunity to use computers to decide certain evaluations based on established findings. Evaluations for service connected visual impairment or hearing loss, largely based on loss of visual acuity, fields of vision or decibel loss, could be easily assigned by computers. We encourage VA to utilize properly programmed computers to apply regulations to discrete data to arrive at concrete evaluations. This will allow rating specialists more time to work on decisions requiring judgment and experience.

All Electronic Record

Currently the VA has several thousand all electronic claims files primarily located in the Winston-Salem regional office. These cases are largely Benefits Delivery at Discharge cases. It is our understanding that VA continues to process a number of these cases.

These electronic claims files offer VA a unique opportunity to create a separate office to handle all electronic claims. We suggest creation of a completely separate office, rather than the continued integration of electronic claims processing into the everyday flow of work, because it provides VA with the opportunity to experiment and create an environment unencumbered by paper files. Imagine if you will, two Rating VSR's located in separate sections of a building reviewing the claims file and making decisions on different elements of a claim simultaneously. The efficiencies that such a system creates could be significant.

VA rightfully believes that scanning its millions of existing files would be cost prohibitive. We agree. However, VA receives thousands of requests each year for copies of claims files. Right now, each file is *photocopied* and sent to the claimant. What

we propose is that each office be equipped with scanners so that, instead of *photocopying* the file, it is *scanned*. The claimant still receives a paper copy of the file. At the same time, VA also has an electronic record. We suggest that this electronic file can be transferred to the office handling all electronic files. VA can experiment with the most appropriate work procedures at this office and, when it has grown sufficiently, a second office can be created.

Eventually, most claims will be electronic and VA can then begin converting RO's into public contact offices.

These suggestions, ideas and recommendations will not, in and of themselves, solve the backlog, timeliness and quality issues impacting VA today. However, if adoption of these and similar proposals each result in some 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.

We appreciate the opportunity to present our views to you today and we welcome any questions you may have.

**Prepared Statement of John Roberts, National Service Director,
Wounded Warrior Project**

Mr. Chairman, Ranking Member Lamborn, distinguished Members of the Committee, thank you for the opportunity to testify before you today regarding the use of technology in the Department of Veterans Affairs claims process. My name is John Roberts, and I am the National Service Director for the Wounded Warrior Project (WWP), a non-profit, non-partisan organization dedicated to assisting the men and women of the United States Armed Forces who have been injured during the current conflicts around the world. As a result of our direct, daily contact with these wounded warriors, we have a unique perspective on their needs and the obstacles they face as they attempt to transition and reintegrate into their communities.

In addition to my experience with WWP, I am a service-connected veteran, a former veterans service officer, and was most recently a supervisor with the Houston VA Regional Office where I reviewed claims and became familiar with a number of significant deficiencies within the system.

In the words of one of our Founding Fathers and Patriot, George Washington "The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional as to how they perceive the veterans of earlier wars were treated and appreciated by their Nation".

Clearly with a backlog of over 600,000 claims currently pending within the VA claims system, the perception of veterans of all generations is that we are not meeting that goal.

As I mentioned in my previous testimony, the current model of the VBA claims processing system has a total of six separate teams and often, but not always, includes another team that is dedicated to processing only the OIF/OEF cases. The six separate teams handle the incoming evidence, maintain the outdated file cabinet system, develop all claims for service connected disability, conduct interviews, assign ratings, generate notification letters, and maintain all pending appeals submitted by the claimants.

Files must be hand carried to each of the teams, and any member of these teams has access to the records at any given time. Obviously, this is time consuming, and if any documents are lost or misplaced, the burden then falls to the veteran to replace the missing evidence or claims.

In order to increase efficiency and get compensation and benefits into the hands of our Nations veterans, WWP recommends the following steps:

1. **Capitalize on advanced technology to replace the antiquated paper system currently being utilized.** The Veterans Health Administration (VHA) has already moved to an electronic system, yet VBA is still dependent on a paper based system which results in the loss of vital medical evidence, folders and files. However, this process is likely to take time to implement and other measures must be implemented simultaneously.
2. **The VA must use its current authority to award "pre-stabilization ratings" to those who are injured.** Under Title 38 the VA can already give a pre-stabilization rating while a final rating is developed. This step would get cash in the hands of our veterans quickly without having to first complete the entire ratings process. Unfortunately, this is a severely underutilized authority, resulting in delays of months or even years in compensation for injured veterans.

3. ***The VA must have a fully functional ratings board at the major Military Treatment Facilities.*** As the National Service Director for WWP, I travel the country visiting the military facilities that care for and treat the newest generation of combat wounded. On one visit to Camp Lejeune, I witnessed a one stop shopping system. VBA had in place a supervisor, Rating Veterans Service Representatives (RVSR) to rate the claims and Veterans Service Representatives to develop and finalize disability claims. To this end, VBA and the Department of Defense are currently working on a pilot program at Walter Reed enabling VBA to perform the task of rating the disabilities received during active duty for the servicemen pending medical board proceedings. This step will help to resolve the issue of claims files being sent across the country for processing and reduce waiting times and lost files and, if successful, should be replicated across the country as soon as possible.
4. ***Comply with the recommendation of the Veterans Disability Benefits Commission (VDBC) to incorporate medical expertise into the ratings process.*** By necessity, VA disability compensation claims are being rated by individuals who lack medical experience. As a result, if more explanation is needed on a particular exam, a further delay is created when the file is required to be sent back to the examiner for clarification. To remedy this situation, WWP agrees with the VDBC recommendation that "VA raters should have ready access to qualified healthcare experts who can provide advice on medical and psychological issues that arise during the rating process (e.g., interpreting evidence or assessing the need for additional examinations or VA diagnostic tests)."
5. ***Allow the Regional Offices consistent access to files across the country.*** Currently, VBA allows only limited electronic access to VHA medical records in areas outside their jurisdiction. What this means that if a veteran received treatment in New York and now resides in California, the past method was to send a hard copy paper request to the VA Medical Center and wait for a response. Although there have been improvements by allowing limited personnel to have nationwide access, this is a situation that could be easily resolved by allowing more VBA personnel to have this access. The concept of one VA should not be limited to specific personnel.
6. ***Keep files within one ratings team.*** WWP is not advocating for the removal of the current CPI processing system. However, we are in favor of allowing Regional Offices the flexibility to adjust the current system in order to utilize the strengths of their employees to better serve the veterans waiting on a decision to their claim.
7. ***Collect statistics on partially finalized ratings as well as those files that are complete.*** Currently, RO's are "graded," if you will, on the number of claims that are complete. Because cases can be extraordinarily complex, they take significant time to develop. However, parts of that file can be reviewed quickly. For example a claim that includes Post Traumatic Stress Disorder, a brain injury and an amputation is very complex, but the amputation itself can be rated quickly. If partial ratings were more widely awarded while the complete file is developed, again, the result would be compensation in the hands of our injured veterans.

Finally, as we discuss and implement any changes to the system, it is important to remember that each of the 600,000 pending claims represents a veteran, a dependant or survivor and not just a file containing documents and medical evidence. Although changing the current system will be difficult and time consuming, it is imperative that this happen to ensure that past generations and future generations of veterans receive the highest quality of service this country can offer. The current system is not sufficient to carry the VA into the future and now is the time for bold initiatives that will serve for generations to come.

Again, thank you for the opportunity to testify today, and I look forward to answering any questions you may have.

**Prepared Statement of Michael Walcott,
Deputy Under Secretary for Benefits, Veterans Benefits Administration,
U.S. Department of Veterans Affairs**

Mr. Chairman and members of the Subcommittee:

Thank you for providing me the opportunity to appear before you today to discuss the Veterans Benefits Administration's (VBA) claims inventory and claims processing system. I am pleased to be accompanied by Ms. Diana Rubens, VBA's Associate Deputy Under Secretary for Field Operations and Mr. Brad Mayes, VBA's Director of Compensation and Pension Service.

Today, my testimony will focus on two efforts we currently have in progress to improve claims processing: our aggressive hiring initiative and an independent study of the claims process conducted by IBM Global Business Services.

Inventory

Before I begin discussing our efforts to improve claims processing, I would like to talk about our inventory and productivity. As of January 31, 2008, VBA's pending inventory was 397,077. There are numerous factors that contribute to that number, the two primary ones being the increase in the number of claims filed and the increased complexity of those claims. The number of veterans filing initial disability compensation claims and claims for increased benefits has increased every year since FY 2000. In FY07, we received a total of 838,141 rating-related claims, compared to 578,773 in FY 2000, an increase of forty-five percent. This high level of claims activity is expected to continue over the next few years due to claims from Operation Iraqi Freedom and Operation Enduring Freedom veterans; the addition of type II diabetes as an Agent Orange presumptive disability; more beneficiaries on the rolls with resulting additional claims for increased benefits; and improved and expanded outreach to active-duty servicemembers, guard and reserve personnel, survivors, and veterans of earlier conflicts.

VBA has maintained the inventory at the 400,000 level for the last year due, in large part, to the productivity of our employees. In fact, VBA is 21 percent more productive now compared to two years ago. If you look at the current fiscal year alone, production is already up almost 13 percent compared to FY07. In FY08, we expect to make decisions on over 878,000 claims and in FY09, we expect that number to increase to over 942,000 claims. Our increased productivity will have a significant positive impact on our inventory.

The term "backlog" is frequently used when discussing VBA inventory, but it is not universally understood. Oftentimes you will hear that VBA has a "backlog" of approximately 400,000 claims. As stated earlier, 397,077 is the current number of disability claims that are pending determination. This inventory includes all claims, whether pending a few days or a few months. "Backlog" is actually the current inventory minus the normal running inventory if we are meeting our timeliness goals. For example, in FY 2008, we expect to receive 854,000 claims, or 71,000 claims per month. Achievement of our strategic target of 145 processing days would result in a consistent running inventory of approximately 339,000 claims at any given time. That means with an inventory of 400,000, 61,000 claims should be considered "backlog."

VBA is continually seeking new ways to decrease the pending inventory of disability claims and shorten the time veterans must wait for decisions on their claims. Key to our success will be our ongoing longer term effort to enhance and upgrade our claims processing systems through integration of today's technology. In the near term, we have two initiatives that I would like to highlight here today.

Hiring Initiative and Training

In FY 2007, we implemented an aggressive nationwide hiring initiative to provide more timely decisions. More than 1,800 new employees have been added since January 2007. VBA's hiring plan will add an unprecedented total of 3,100 additional employees by the end of this fiscal year. We are also conducting ongoing recruitment to replace staffing losses due to normal attrition.

To enhance rapid integration into the claims production process, we modified our new employee training program to focus initial training on specific claims processing functions. This will allow new employees to become productive earlier in their training program and, at the same time, allow our more experienced employees to focus on the more complex and time-consuming claims. By more effectively utilizing both newly hired employees and experienced claims processors, we expect to reduce the pending claims inventory and improve claims processing timeliness in FY 2008.

Independent Study of the Claims Process

Adding more decisionmakers is only one part of VBA's strategy to further improve claims processing. Throughout the last few years, VBA has implemented a variety of initiatives aimed at better managing the disability claims workload and improving benefits processing. Some of the initiatives include implementation of a consistent organizational structure across regional offices, establishment of an aggressive quality assurance program, centralization and standardization of training, and consolidation of specialized processing operations. VBA continues to develop new initiatives and strategies aimed at addressing the challenges posed by the number of claims received, the greater number of disabilities veterans now claim, the increasing complexity of the disabilities claimed, and the changes in law and processes.

Because of the increasing and changing workload and workforce and VBA's desire to ensure the most effective methods of organizing work and maximizing resources are in place, we sought help from the private sector. In September 2007, VBA contracted with IBM Global Business Services to analyze our current business processes and provide recommendations to further improve our operational efficiency and consistency.

From October 2007 through January 2008, IBM conducted a detailed review of the business processes involved with adjudicating a claim, beginning with application receipt and ending with notification to the claimant. To date, IBM has provided VBA with a gap analysis, which identifies the gaps between VBA's current process and IBM's envisioned process. The gap analysis also includes short-term and long-term recommendations to help VBA improve its processes. Overall, IBM's recommendations validate areas for efficiency gains already identified internally.

Both the short-term and long-term recommendations made by IBM focus on the phases of the claims process and specific activities under VBA's control. The short-term recommendations are incremental enhancements VBA can make to the existing business processes to realize benefits in efficiency and productivity in the near term. Because our current claims process is heavily reliant on paper and the movement of paper claims folders, the greatest efficiencies will be gained as a result of IBM's longer term recommendations to move to an electronic, paperless environment.

Recommendations

Managing workflow, monitoring performance, and tracking the number of claims processed are critical to maintaining processing efficiencies. The average number of medical disabilities or conditions claimed on original applications is increasing. To further enhance our ability to monitor performance, the study team recommends the creation of a performance measurement system focused on tracking the number of medical disabilities or issues claimed. IBM believes that this issue-based performance measurement system, in conjunction with the existing claim-based performance measurement system, will result in a more accurate and detailed measure of productivity and workload. Under the current claim-based performance measurement system, a regional office is given the same credit for completing a claim with one issue as a claim with forty issues. The study team believes that measuring work output by both number of claims and number of issues at an organizational level is a more accurate assessment of a regional office's productivity. In addition, an issue-based performance measurement at an individual level will provide more specificity in the activities of staff and result in increased accountability overall.

VBA agrees with the idea of adding an issue-based performance measurement system to our current reporting structure. This system will provide us with a better understanding of our workload and productivity. However, VBA must ensure that our claims processors stay veteran-focused. Consequently, we must continue to pay benefits on specific issues as soon as possible, but remain cognizant that a claim is not complete until all issues have been resolved.

When analyzing our claims process, the study team noted that a bottleneck occurs during the time VBA waits for a response to our Veterans Claims Assistance Act (VCAA) letter. Upon receipt of a claim for benefits, claims processors must carefully analyze all issues claimed and determine what evidence is necessary to substantiate the claim. Under VCAA, claims processors must also provide a letter to the claimant detailing the evidence required and which party (VA or the claimant) is responsible for obtaining the evidence. Under statute (38 U.S.C. 5103), claimants have one year from the date of the VCAA notification to submit any requested evidence. However, VA may make a decision on the claim prior to the one-year expiration. Current VBA procedures allow 60 days for a claimant to respond to a request for evidence before VBA makes a decision.

To help streamline this evidence-gathering process, IBM recommends we simplify the VCAA letter and also reduce the evidence-gathering time period from 60 days

to 30 days. The current VCAA letters are lengthy and contain complex legal language that many claimants find difficult to understand. Additionally, the VCAA letters include a waiver that allows the claimants to certify that they have no additional evidence and waive the 60-day evidence-gathering time period. IBM believes that if the letter were simpler to understand, the likelihood of a veteran responding to the VCAA letter with either additional evidence or waiver of the 60 day period would increase.

VBA agrees that a simplified VCAA letter will reduce confusion and misunderstanding by the veteran. In fact, VBA is currently working closely with the VA's Office General Counsel to revise and simplify the letter. However, we must ensure that any new language also meets legal requirements. We anticipate these revisions will be completed by August 2008. VBA has also considered a reduced time period for evidence gathering and agree that it would have measurable results in improving claims processing timeliness.

To achieve large-scale improvements in efficiency and productivity, however, VBA must make a fundamental shift in how we process compensation and pension claims. All of the study's long-term recommendations focus on information technology enhancements that will allow VBA to move into a paperless environment. Where work can be managed electronically and automation can reduce manual activities freeing up resources for more value-added decisionmaking. Eliminating manual processes is also necessary to greatly improve VBA's timeliness. IBM believes that one of the critical first steps for VBA to transition is to enhance the current Veterans Online Application (VONAPP).

Because VONAPP is not integrated with our IT systems, claims processors must manually enter data provided in the online applications into our claims processing systems. Additionally, VBA does not currently have the capability or the authority to use e-signature and e-authentication. With these two features, claimants would no longer have to submit a "wet" signature in addition to their online application before benefits can be paid. Once e-signature and e-authentication elements are in place, VBA can create direct data feeds into our IT applications, thereby streamlining the data entry process.

Enhancing VONAPP is a critical step in moving to a paperless environment. VBA is currently coordinating with VA's Office of Information and Technology to resolve all data privacy and security concerns. In addition, we are working through VA's Office of General Counsel to resolve any regulatory issues regarding the need for a "wet" signature. Following approval and verification of security, implementation is expected to begin in FY 2009.

Another key element in a paperless environment is electronic workflow management, which would reduce our reliance on the physical movement of a claims folder to trigger the next step in the claims process. Work would automatically flow between claims processors as each activity is completed. Management would be able to allocate resources electronically based on individuals' workloads and available hours. Additionally, claims processing work would no longer be limited to a specific regional office. Work could be transferred instantaneously to any one of our regional offices, allowing for improved balance of our workload and increased utilization of resources nationwide.

Electronic workload management will only be successful if completed in conjunction with an electronic content management system (ECM). The disability claims process is very paper-based and requires a vast amount of space to store all of the associated documentation. In the study team's envisioned paperless environment, ECM is integrated with business applications via an Electronic Folder (eFolder). The ECM system would pull relevant data from the corporate database to populate the eFolder. The biggest challenge and expense for VBA to convert to electronic content management is the scanning of paper records.

VBA has initiated two pilot efforts to test our ability to shift to a paperless environment and to test the utility of imaging technology. The Virtual VA application is being used for both pilot programs. Through the pilot programs, we continue to refine our business processes and identify necessary enhancements that will allow us to expand the use of imaging technology. We are also leveraging the lessons learned and the imaging accomplishments in our Insurance, Education, and Loan Guaranty programs.

As VBA transitions to paperless processing, claimants' access to information will expand. The study team recommends the creation of a secure web portal so that claimants can access claim information and request transactions online. Currently, claimants may check the status of their claim by calling the toll-free number, by visiting a regional office, or through their veterans service organization.

The study team believes that creation of a secure web portal will reduce telephone call volume, improve claim processing transparency, and increase claimant knowl-

edge of the claims process. In addition to claim status, the team recommended the secure web portal contain functionality to allow online claim submission with e-signature, updates to contact information, review of prior and current benefits, online help, and frequently asked questions.

VBA has a secure web portal called the Veterans Information Portal (VIP). The primary external users of VIP are lenders and appraisers who are assisting veterans in the Loan Guaranty Program. Through VIP, external users can access web-enabled computer applications. Currently, there are no disability compensation business applications available to external users through VIP, but efforts are underway as the President's Commission on Care for America's Returning Wounded Warriors also recommended that VA and DoD develop an interactive web portal.

Conclusion

We believe that the independent study by IBM validates our current course of action to improve claims processing timeliness, particularly with regard to information technology. Despite ongoing challenges, VBA continues to develop new strategies to improve claims processing and reduce the time veterans must wait for decisions.

Mr. Chairman, this concludes my testimony. I will be happy to respond to any questions that you or other members of the Subcommittee have.

Statement of Linda J. Bilmes, Professor, Kennedy School of Government, Harvard University, Cambridge, MA

Thank you for inviting me to testify before this Committee today. I am Professor Linda Bilmes, lecturer in public policy, at the Kennedy School of Government at Harvard University. This year I have given testimony regarding veterans issues on three previous occasions: on October 24, 2007 (before the House Committee on the Budget); on May 23, 2007, before the House Veterans Affairs Committee Claims Roundtable; and on March 13th, 2007 before this Subcommittee. I would like to enter copies of all three of these previous statements into the record.

Today I will discuss some of my recent research and resulting recommendations on how to improve the disability claim process. The purpose of these recommendations is to: (a) reduce the backlog of pending disability claims; (b) process new claims more quickly; and (c) to reduce the rate of error and inconsistency among claims.

I will very quickly review the context of this discussion, which I am sure is familiar to members of this subcommittee. First, the Veterans Benefits Administration (VBA) currently has a backlog of 400,000 pending claims and another 200,000 claims that are somewhere in the adjudication process. This backlog has nearly doubled since 2001. Second, VBA expects to receive an additional 800,000 to 1,000,000 new claims during the next year. To date, 230,000 veterans from the Iraq and Afghanistan conflicts have filed claims, but the majority of claims for that conflict have yet to be submitted. My own projections, based on estimates from the first Gulf War, predict that a total of 791,000 veterans from the Iraq/Afghan wars will eventually seek disability benefits. However, many veterans' organizations have suggested that my estimates are too conservative, considering the length of deployment and the number of 2nd and 3rd deployments into this theatre. It may well be that the number of eventual claims is far higher.

Third, the VBA currently requires an average of 6 months to process a claim. Fourth, for a variety of reasons that I will address in a minute, there is a high level of variation in outcomes in different regions. This undoubtedly contributes to the fact that veterans appeal some 12–14% of decisions. These claims then take an average of 2 years to resolve, and consume a disproportionate amount of staff time and attention from the VBA during the protracted period.

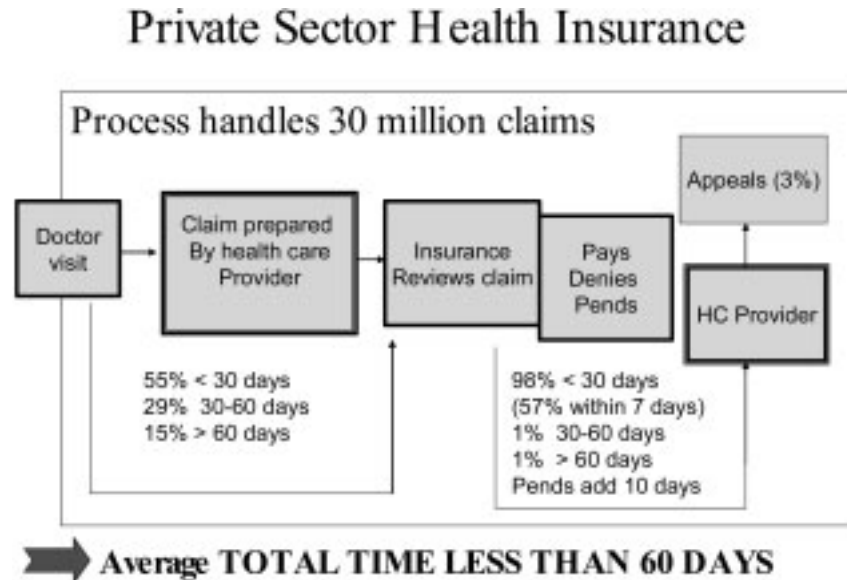
The solutions that have generally been put forward until now fall into what I call the "typically governmental" trap of throwing more people, money and overall resources at the issue without doing the restructuring work that is needed to fix the root of the problem. VBA may need more resources—but not simply to "do the wrong thing" faster; but rather to change direction and to "do the thing right". This will require VBA to simplify its process, to change the way initial claims are developed, and to shift presumption more in favor of the veteran.

One way to analyze this is to compare the *process* for handling medical claims used by the medical insurance industry to the *process* used in the VBA. The medical insurance industry handles 30 million claims per year, and pays 98% of them within 60 days. The process is very simple. After the patient receives a medical service from the provider, the provider prepares and submits a claim to the insurance com-

pany, usually within 30 days. The insurer then pays, denies or pends the claim, in 57% of cases within 7 days, and in 98% of cases within 30 days. Therefore the overwhelming majority of medical providers are reimbursed within 69 days. When the insurer “pends” a questionable claim, the process takes an additional 10 days, during which the insurer typically contacts the provider by e-mail or telephone. In 3% of denied cases the provider or the patient appeals the decision. Most appeals are resolved within 30 days. Many medical insurers also perform a random audit of a small number of claims.

A diagram of the basic process flow is shown as Chart 1.

Chart 1—Private Sector Health Insurance Claims Process



There are several characteristics of the private medical insurance claim process that enable it to be highly efficient. First, the claim is prepared by a healthcare provider—not the patient. Hospitals and physician practices employ staff who have experience in preparing such claims. The “claim” typically consists of a short form (2–3 pages), attached to diagnostic reports. Therefore the vast majority of claims that are submitted for payment to the insurance company are “clean claims”. This is, of course, a major point of difference from the VBA system, where veterans prepare their own claims to a large extent, and may obtain advice from state and local governments, VSOs, VBA officials, websites family or friends. The result is that a high proportion of the initial claims submitted by veterans are not “clean”, so a great deal of the delay is caused by the need to get the form filled out properly, with the required documentation. This is particularly complicated when the veteran has received treatment from multiple providers (for example, been treated at Landstuhl, Walter Reed, and VA medical clinics).

Second, it is important to note that most states *require by law* that the medical insurance industry pay the providers within 30–60 days of receiving the claim—with financial penalties for non-compliance. In the VBA, there is no “penalty” for delays.

Third, the claims process described above is generally for a single patient transaction, such as a doctor visit, hospital procedure or diagnostic test. So from the perspective of the healthcare provider, the consequences of overpaying are limited. The insurer can tradeoff between the possibility of overpaying for an x-ray (or reimbursing the doctor for an x-ray that was not really necessary) vs. the alternative—a protracted wrangle over a small claim. It is not in the financial interest of medical insurers to contest any but the largest, most obviously flawed claims.

By contrast the VBA process is dealing not with short one-off transactions but with making a decision on service-connectivity that may affect the lifetime of benefits for a veteran. Thus it is instructive to examine how the private medical insurers handle claims for long-term chronic care, nursing home care, long-term rehabilita-

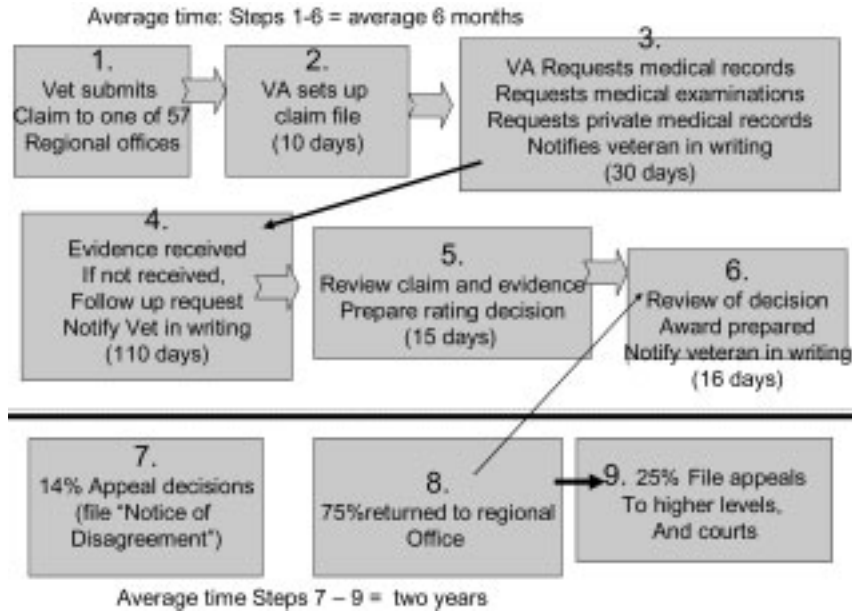
tion and other claims which require outlays over a long stretch of time. Surprisingly, the system for deciding such claims is similar to the one used for small ticket items. Some insurance companies will require a higher standard of evidence for long-term care (such as the opinion of 2 specialists), but the actual process is the same.

Accordingly, the medical insurance industry uses the same philosophical approach to claims processing that the IRS uses for taxes: it handles most transactions with minimal processing, and investigates (audits) a small subset of the total, focusing on large or unusual claims. The expectation is that the majority of claims received are *approximately* correct, because making them perfect would cause unacceptable delays in reimbursing medical providers.

The VBA system is based on a different philosophy, which is to require the veteran to produce detailed medical documentation for every disabling condition he or she claims. Many VBA employees work hard to assist the veteran in putting together the package—but the underlying idea is still that the veteran needs to compile a dossier to prove that his medical problems stem from his military service. The process is more akin to a student applying to college, who is required to assemble a whole package of materials before his application is even considered.

The VBA process is also structured to be cumbersome and inefficient. (See Chart 2). It involves applying to one of 57 regional offices, where a number of different staff members handle the claim, in terms of reviewing it, requesting additional documentation, checking that documentation, sending out formal notifications to the veteran of the status of his application, consolidating and evaluating the evidence from many different sources, and ultimately making a decision whether a veteran's health problems are service-connected or not, and assigning a percentage rating.

Chart 2—VBA Claims Process

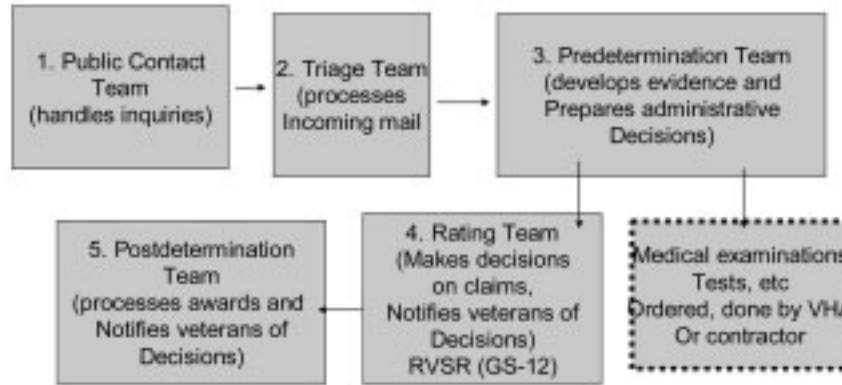


It is not surprising, given that thousands of veterans with no experience in filing claims are doing the initial claims, and the complexity of the 26-page form, that most claims require a substantial work-up at the regional office. Most of the elapsed time in the 6-month process is spent trying to prepare a "clean" claim that the VBA can adjudicate.

VBA has developed a large and bureaucratic structure for handling these claims. (See Chart 3)

Chart 3—VBA Structure for Claims Approval

VBA structure



13,000 employees, about 50% in Step 4

It is also not surprising, given this process, that the regional offices produce highly varying, inconsistent results. The recent National Institute of Medicine study found significant variance in processing time, compensation, and appeal rates. (See Chart 4) A number of GAO reports have reached the same conclusion.

Chart 4—NIM Study Inconsistencies Identified (sample)

Days to process claim	99 (Salt Lake City)	277 (Honolulu)
Percent of veterans receiving compensation	6.9%	19.2%
Average compensation	\$7,000 (Illinois)	\$12,000 (New Mexico)
Percent Individually unemployable	Maryland 3.3%	New Mexico 20.1%
Number of claims appealed	22%	65% (highest region)

Proposals for Reform

The question is: considering that veterans returning from Iraq and Afghanistan have already served at least 15 months in the field, with 35% of them having served two or more tours of duty, would it not make more sense to simply accept their word that any medical problems detected at discharge are a result of their service? Additionally, since 90% of disability compensation claims are ultimately approved by VBA (following this protracted process), at least in part, would it not make sense to follow the private sector model and to automatically approve a standard minimum benefit within 30 days?

However, to implement this kind of common sense approach would require certain changes in the structure of the claims process. First, every veteran must have an exit medical examination at (or prior to) discharge. Any medical problems (physical or mental) identified at that examination should then be automatically assumed to be service-related. The system from that point should mirror the private system. The VBA needs to work with VHA to create a one-step online system for the medical provider to record findings from this clinical evaluation, and personnel need to be provided and trained to enter this information into the centralized system.

Veterans returning from a war zone should then be automatically entitled to receive a base level of benefits corresponding to the clinical evidence. Current benefits scales should be revised and simplified to provide for four common sense categories:

not disabled; mild, moderate and severe disability. The healthcare provider who evaluates the veteran should make this initial assessment.

All returning veterans should be presumed to have acquired the medical conditions during military service. This should be provided within 30 days.

This system should be designed to provide basic benefits for a period of two years only. Within that time, veterans with serious injuries should be fast tracked to a full evaluation of benefits. All other veterans should have a choice of whether their cases need to be re-examined or not. If veterans disability rating is adjusted downward during a subsequent evaluation; their monthly stipend should be lowered accordingly, but they should not be liable to repay their excess benefit. However if the benefit is found to be too low, they should be eligible for retroactive pay. In addition, the VBA should audit a sample of cases in order to deter fraud.

Clearly there are many implications of restructuring the claims system along these lines, including a partial retraining and redeployment of claims analysts, and a possible reorganization of the regional offices. But I believe that moving in this direction would dramatically simplify the process, lower the rate of inconsistency, and most importantly enable returning veterans to be compensated for disabilities quickly and without much bureaucracy.

**Statement of Master Sergeant Kurt Priessman,
USAF (Ret.), Vernon, TX**

Discussion and recommendations from Veterans and Widows on the subject discussed by the VAC Subcommittee in expediting claims:

Veterans need help now before we all die, not after continued promises of implementation of electronic medical records using extremely difficult interfaces, artificial intelligence with query language too few are able to utilize, and often delayed progress stretching into not months but years. The Department of Veterans Affairs has done nothing to correct this problem, and continues to promulgate anti-Veteran rules to delay, stall, and deny while it fights Court cases, which rather than reduce claims has exacerbated the backlog. The Courts gave the Department wide latitude to stay Haas, which it has thoroughly abused. **Congress must take bold action NOW to mandate ways to catch up.**

Congress can help to substantially reduce this backlog by mandating the following:

Claim Triage Process

A civilian fellow with Veterans Affairs (VA) experience recently testified before your subcommittee, and concluded that simple claims should not be part of the complex process that is time consuming and creates delays in presumptive approval that at most require a brief evaluation and decision.

Triage should be performed on all claims. Any presumptive disease claims should go to a team that only does presumptive disorders. This requires the verification of "three data points" only, with emphasis on giving the "Congressional mandated" benefit of the doubt concerning presumption, service connection, and precedence to establish compensation rates.

Examples: Stage four presumptive cancers are automatically 100% by VA rating rules. The Veteran is either going to die or is going to seek treatment for the cancers. Cancer treatment alone is enough to disable someone from working.

In some disorders such as presumed diabetes, it is not the level of created disability but the level of treatment that is required to determine the disability rating. Only the verification of data is required with no C&P. In this case, the validation of four data points and the level of treatment are required. Obvious secondary conditions from the records could be included if there is a straightforward connection to the primary disability. C&Ps to determine levels of disability and other more complicated residuals can then be accomplished and compensated based on the results. **Getting the Veteran and his family the needed financial support in a timely manner should be the most important aspect. This also entitles the Veteran to many benefits from their respective States that is continually being delayed.**

This process also would allow those claims that are contentious to get the full attention, fact-finding, and "speed of resolution" they deserve, also contributing to the reduction in the backlog of claims.

Congress must not allow the Department of Veterans Affairs special legal privileges. Congress must hold the Department to the same legal standards non-governmental entities and citizens are. The Department ignores evidence

presented by Veterans as unverified, impugns the veracity of honorable Veterans, calls every case unique by denying case precedence, and refuses to assist Veterans in accordance with law.

If the Court of Circuit Appeals honors a Veteran's statement in support of a claim that he loaded herbicides in Udorn, or similarly a declassified report or other evidence confirms use, and the claim is awarded, then the Department must approve all claims for Udorn for similar circumstances. Each case is not unique. It makes no sense to have two Veterans serving side by side to have dissimilar results with one claim approved and the other denied for the same disorder within the adjudication and BVA justice system. *Congress provided administrative adjudication powers to a department of the Executive Branch, not authority to act with judicial prejudice.* The triage process looks at similar periods of service, military occupations, duty stations, diseases, Court decisions and then rules in favor of the Veteran. The data fields necessary to search like citations and decisions already exist.

Example: Esophageal cancers are very prevalent in Vietnam Veterans with herbicide exposures, yet the Department "of Veterans Affairs denies esophageal cancers as a presumptive disorder, and then is overruled by BVA and CAVC. These claims take years.

Once the BVA or CAVC has approved the claim for one, then all such like claims should be approved. Through use of "artificial intelligence," the Department can create rule-based criteria for all esophageal cancers. The rules then approve claims for widows and Veterans based on legal precedence and not necessarily subjective nexus with herbicides, particularly when data outside the DVA and IOM indicates this should be presumptive to tactical herbicides. We do not need to prosecute the same case 100,000 times rather than define approval criteria and approve the same 100,000 cases.

Congress must mandate that cases with decisions overturned by the BVA and the Court of Appeals for Veterans Claims (CAVC) set legal precedence and the Department of Veterans Affairs must decide favorably in like cases.

Congress must mandate that spouses and families of Veterans who die prior to adjudication of their claims are legally and legitimately no different from the deceased Veteran and the Veteran's claim is "in perpetuity" until settled. There is no other system in the world that treats the legal rights of the claimant's descendants as different from the claimant. At the DVA if the Veteran dies before his claim is approved, the claim is then dead as well. This is a direct conflict of interest and leads to a bias not to perform in a timely manner. The widow then must reenter the claim again and submit for DIC, a process that creates catastrophic financial hardship of potentially many years for what should be a simple validation of beneficiary information and the immediate prioritization to "the head of the line" for deciding the claim.

These suggestions should result in the reduction of massive numbers of claims, associated costs, and delays of six to eighteen months or longer which cause financial hardship on the Veteran and his family or widow for presumptive disorders and like-claims. The Department of Veterans Affairs should approve these claims through a brief evaluation and decision process. Additionally, there is little risk of abuse as these changes are in accordance with law as established by Congress, and the Courts.

To further reduce claims backlog Congress should amend the law for Veterans who served in the toxic chemical swill on the Korean DMZ. Congress identified the period from 1967 to 1971 for civilian contractors that worked "on or near the Korean DMZ" with presumptive disorders while the DoD and DVA only recognize a short period of time for spraying, which nullifies and discounts the laws of chemistry and the half-life of dioxins. This span is nearly four times that of the span for Veterans. We find this total disparity between Civilian versus Veterans an injustice and an unjustifiable issue. The DVA must stop denying those claims, and accept them as compensable.

A group of 14 engineers that served along the Korean DMZ petitioned Congress and indicated they sprayed this toxic swill from 1967 to 1971 on the DMZ and at Camp Casey. Many of these engineers have the same presumptive disorders already established for herbicide association and in some cases, there are two automatic presumptive cancer disorders leaving the DMZ with a diagnosis of pustular acne, a hallmark of dioxin exposures. Yet, the VA still denies claims based upon the denial of the laws of chemistry and the very narrow inclusive dates of which Congress itself is in disagreement with regarding civilian contractors.

Many Korean DMZ and herbicide sprayings claims from documented locations should be presumptive and not held and denied for nefarious reasons and then appealed just creating more and more backlog. It is imperative that Congress remembers that our own government causes most of the mortality and morbidity issues.

Congress must mandate the same inclusive dates that it has established for civilians and the inclusive dates our Veterans and declassified DoD documents indicate herbicide spraying occurred. The DVA must reverse and approve denied claims based only on erroneous DoD inclusive dates.

Congress must mandate immediate release and inclusion of locations documented and released to the public rather than permitting the Departments, who are in possession of them, not to acknowledge them and update the list maintained by the DVA.

Next, there is the Blue Water Navy exposure issue. Congress must get involved in this issue before all these seamen are dead and the DVA denies their widows DIC payments.

Congress leaves the Veterans and their expert witnesses no forum from which to present their own scientific and medical evidence. **Congress must make this decision and not abdicate its authority to the DOD, DVA, or IOM, who cannot deny conflicts of interest and insertion of biases into final reports.** Many Veterans would welcome the opportunity to debate the IOM and DVA in the halls of Congress utilizing some common sense and scientific data but Congress has not afforded Veterans that opportunity. **Congress must include in legislation the formation of a Veteran/Citizen's Committee that reports these conflicts of interest and recommends resolution in favor of Veterans to the Congress for issues previously presented only by the DVA and the contracted IOM, both of whom have numerous conflicts of interest, as does the DOD.**

If the Congress implements all of these recommendations, there would not be delays of years to reduce the backlog of claims. These risk associated with the validity of these recommendations is negligible. Congress and the Nation can be certain that Veterans are asking only for earned benefits and promises kept.

Many scientists as well as Veterans believe that the way dioxins work in the body's cells, any cancer or immune system dysfunction is an expected outcome. The data is there in many studies including, the opinion of a sitting member of Congress, a medical doctor, who under oath, has concluded before the BVA that esophageal cancers are associated.

Our personal beliefs, based on scientific data and biological plausibility is that all cancers, endocrine and immune system disturbances in homeostasis are associated with herbicides. A quantitative risk analysis based on the top four-dioxin studies results in the SMR delta for all cancers and specific cancers as very slight. Additionally, the Ranch Hand Study, the government's gold standard used in denial, now admits it missed a twofold increase in all cancers after spending \$140 million dollars, which was ignored by the Air Force chairperson.

We have estimated a reduction of at least 200,000 claims within 6 months by using "artificial intelligence" from BV NCA VC databases and the recommend changes noted herein. Congress provided the Department of Veterans Affairs funding already that doubled the number of employees in the *Veterans Court* and the result has been a 50% reduction in claims output, obviously a poor investment.

The time for Congressional action is NOW. We respectfully request you include these suggestions in new legislation, or at worst in the Department of Veterans Affairs 2009 Budget Request.

Thank you in advance,

Kurt Priessman, MSgt, USAF (Ret), B.A., M.B.A.

The Bottom Line <http://tmai18.spaces.live.com>

U-Tapao RTNAB, 71-72

Korat RTAFB, 72-73

Kadena AB, Okinawa, Japan 73-76

Kunsan AB, Korea 77-78

Clark AB, 78

Taegu AB, 78-80

Author: Herbicides Use in (The Relationship to the ROE and Use in and)

Proud Father of SSgt Michael G. Priessman, USAF

Kuwait 93-94

Bahrain 95-96

Korea 03-04

Kyrgyzstan 04-05

Kadena 04-06

Baghdad 06

(1) Grassroots Veterans, widows, and Veterans organizations now question the Congressional wisdom of placing veteran judicial functions under the direct control of our Executive Branch of Government. There is a groundswell of veterans that believe individuals in the government should be held criminally liable for their decisions and efforts to hide the truth. The impact of class action suits to overturn the Feres Doctrine and potential Rico Act suits will deluge the Courts of Appeals of the Federal Circuit if action is not taken.

(2) The Executive Branch judiciary function has taken liberty to freely weight evidence and scientific facts in its own behalf. The Executive Branch in the performance of judiciary functions pronounces before the claimants case is brought what is and what is not valid, accepts invalid Executive Branch controlled studies with flawed results from which to base administrative and judicial decisions. Veterans believe these studies are invalid based on federal departmental and agency influence and directions not to associate mortality and morbidity damages to Veterans and their offspring for government causations. Veterans also believe that the continuing mortality and morbidity rates are caused by the Departments of Defense and Veterans Affairs, both part of the Executive Branch.

(3) Our beliefs are based on the common sense notion that it is nonsensical to provide the Executive Branch a process where judicial decisions permit the same branch of government to adjudicate and rule in its own favor when they are the defendants. With the usage of the Feres Doctrine and the processes described, there can be no doubt in the proliferation of collusion rather than the prosecution of the government for collusion.

Wounded Vets Face Broken System
CQ WEEKLY—COVER STORY
 April 30, 2007—Page 1256

By Patrick Yoest and Rebecca Adams, CQ Staff

The downtown Washington offices of Disabled American Veterans hummed with activity on a recent weekday as four staff counselors helped ex-servicemembers navigate the bureaucracy of the Department of Veterans Affairs.

James Mack, a stern-looking veteran of the first Gulf War, welcomed recent returnees from the conflicts in Iraq and Afghanistan by handing them copies of VA Form 21-526—a two-sided, 13-page application for benefits—then tearing out the first four pages of fine-print instructions.

“For folks who just want to know what they’re entitled to, that’s a little bit too much information,” said Mack, who patiently guided some veterans through questions about service-related injuries and the care they received, and signed others up for a biweekly class on veterans’ benefits that he teaches Monday nights. It is fully subscribed until July.

Elsewhere in the office, workers tracked the progress of hundreds of appeals filed by veterans in response to VA denials, stepping around piles of inch-thick files detailing the particulars of each case that threatened to inundate their cubicles. Phones constantly rang with big and small requests. One frantic ex-servicemember could not find the room in VA headquarters where he was supposed to participate in a teleconference about his appeal. By the time Mack sorted out the matter and provided directions, the hearing had been postponed. Mack then spent an hour rescheduling the hearing and briefing the veteran on what to expect.



FILING CLAIMS: Adam Kave, 23, who was discharged from the Air Force after serving in Iraq, Kuwait and Uzbekistan, recently sought help from the Disabled American Veterans to file a claim for VA compensation for a personality disorder.
(CQ PHOTOS / SCOTT J. FERRELL)

Disabled veterans of the Iraq War already have braved insurgent attacks and the threat of improvised explosive devices. But few are prepared for the nerve-racking experience of dealing with the VA system. The government is trying to hack away at a backlog of more than 405,500 disability claims while marshaling more injured soldiers through its bureaucracy. It now takes an average of 177 days for a disabled soldier to get a VA claim processed—nearly double the 89.5-day wait civilians face in a private health-insurance system widely acknowledged to be underperforming. And with recent revelations about neglect of care at the Army's flagship Walter Reed Medical Center, the political pressure is mounting for the government to improve its performance.

But there aren't many signs that the crush is dissipating at critical junctures like the Disabled American Veterans office and similar facilities run by nearly a dozen veterans' service groups. Academic experts and veterans' advocates say the VA is facing unprecedented stresses due to the conflicts in Iraq and Afghanistan and is ill-equipped to handle an influx of returning soldiers that would come from any troop withdrawal in Iraq.

Beyond the paperwork hassles and delays, there are serious gaps in medical care, especially for treating Traumatic Brain Injuries and psychological problems that have arisen from extended deployments and stressful ground warfare, according to health professionals and veterans' groups.

"We have not paid careful enough attention, or devoted sufficient resources, to planning for how to take care of these men and women who have served the nation," said Linda Bilmes, a lecturer in public policy at Harvard University's John F. Kennedy School of Government who has studied the long-term costs of caring for veterans.

Congress, rattled by the problems at Walter Reed and public concern over returning servicemembers, is pledging to spend considerably more on veterans' programs. The House's 2008 budget resolution would increase the budget for VA healthcare and claims processing by \$6.6 billion over 2007 levels. Congress in February included \$3.6 billion for veterans' programs in a budget package to fund much of the government for the remainder of the fiscal year. A supplemental spending bill cleared April 26 would give the department \$1.8 billion more.

But experts such as Bilmes warn that the extra money will do little good unless Congress and the VA fix deep-rooted problems in the way the government processes

disability claims, screens veterans for health problems and handles appeals for denied benefits. These problems will loom over Congress for the rest of the session as the House and Senate debate the direction of the war and how to provide for what a bipartisan majority have come to call “wounded warriors.”

“All of the things we’re seeing—the problems at Walter Reed, people getting lost in the process—can all relate back to the fact that the VA and the Department of Defense did not plan for a long war and the impacts of that,” said Democratic Senator Patty Murray of Washington, a member of the chamber’s Veterans’ Affairs Committee and the Appropriations subcommittee that oversees the VA. “If I was sitting in the VA, I’d be in the president’s face all the time, saying we have to deal with these huge issues and I want resources to educate people.”

The Bush administration says it is addressing the most serious concerns. An interagency task force headed by VA Secretary Jim Nicholson released recommendations April 24 that include adding case managers to help guide troops and their families through the system and improving the process for handing off medical records when an active-duty soldier is discharged and enters the VA’s network.

“The federal government must be responsive and efficient in delivering our benefits and services to these heroes,” Nicholson said in announcing the recommendations. “They should not have to fight bureaucratic red tape for benefits earned by their courageous service.”

Some of the problems are due to the unique nature of the Iraq and Afghanistan conflicts. Better battlefield care has allowed more servicemembers to survive roadside bombs, suicide attacks, rocket-propelled grenades and other incidents that probably would have killed soldiers in past conflicts. But many are returning home with complicated, sometimes catastrophic wounds that require much more elaborate treatment and rehabilitation.

The government has not prepared itself for such demands. Harvard’s Bilmes notes that while the VA has steadfastly maintained that it can cope, the agency ran out of money to provide health care for the past two years and had to submit emergency budget requests to Congress for \$2 billion in fiscal 2006 and \$1 billion in 2005. A Government Accountability Office analysis of the shortfalls concluded that the VA was basing its cost projections on 2002 data that was generated before the war in Iraq began.

Flawed Claims Process

The concern about the VA goes beyond just how it calculates costs to how efficiently it provides veterans with their benefits. Experts are particularly worried about the claims process that returning soldiers must confront to qualify for disability payments—a system that has been widely criticized for delays and excessive bureaucracy.

Servicemembers file claims in one of 57 regional offices belonging to the Veterans Benefits Administration, a branch of the VA that assesses service-related injuries on a sliding scale from 0 percent to 100 percent in 10 percent increments. Veterans must submit to medical evaluations for each condition they are claiming. If a claim is rejected, the veteran can appeal to a VA board that renders a decision or sends the case back to the regional office.

Government audits have uncovered fundamental flaws in the process. The GAO last March reported that even though medical problems that veterans report are becoming more complex—including those based on environmental risks, infectious diseases and brain injuries—the VA’s criteria for disability decisions continue to be based on estimates made in 1945 about how service-connected impairments could affect the average individual’s ability to perform manual labor.



LENDING A HAND: Mack of the Disabled American Veterans, with paperwork from hundreds of appeals of denied claims, helps returning veterans from Iraq and Afghanistan navigate the VA's bureaucracy.

(CQ PHOTOS/SCOTT J. FERRELL)

The GAO also found that the Veterans Benefits Administration has to wait a year or longer to obtain military records to verify some claims of Post Traumatic Stress Disorder. Auditors suggested that the VA try using an electronic library of medical records instead of submitting requests to the Army and Joint Services Records Research Center. The VA responded that it would study the matter.

Piecemeal efforts to streamline claims processing in the regional offices have left big disparities in service, with significant delays in some cities. The advocacy group Amvets found that 63 percent of claims filed at the VA's Washington, D.C., office took six months or longer to resolve. By contrast, 7 percent or fewer claims filed in offices in Providence, R.I., Fargo, N.D. and Boise, Idaho, took that long.

The VA's reliance on medical checkups to verify claims is adding to the bureaucratic headaches by lengthening waiting times at VA medical centers around the country and delaying some patients from getting access to specialists. "People are just clamoring to get VA medical treatment in order to be able to get into the VA disability benefits ladder," Bilmes said.

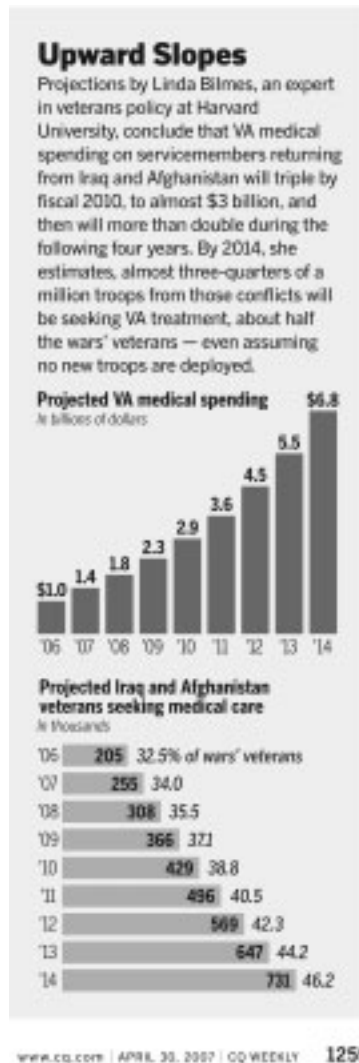
She expects the situation to worsen, projecting that the VA will receive roughly 400,000 new claims from servicemembers returning from Iraq and Afghanistan over the next two years. Many will be submitted after the veterans exhaust the two free years of medical care the VA provides upon discharge. "The main stress is yet to come," Bilmes said. "There will be a huge increase in the number of claims."

The claims process also does not treat every returning servicemember equally. Active-duty soldiers have a better chance of getting claims evaluated promptly and approved than reservists and members of the National Guard. That is because active-duty soldiers often have the option of having their condition reviewed earlier by the VA before they are discharged from service. Reservists and guardsmen typically cannot get a ruling because they are discharged much faster. The result is that some ex-servicemembers start collecting their disability payments later.

"They typically don't remain in place long enough for us to go ahead and make the arrangements for the necessary medical exams and the other steps needed . . . to give them the same types of service we give the active-duty members," said Ron Aument, the VA's deputy undersecretary for benefits.

Data the VA released in February confirmed that active-duty servicemembers are nearly twice as likely as reservists to have claims approved.

“The result is devastating and scandalous,” said Paul Sullivan, Executive Director of Veterans for Common Sense and a former project manager at the Veterans Benefits Administration. “The VA should immediately and aggressively investigate this problem and then correct it.”



Congress tried to address claim denials last year by including language in a VA authorization bill allowing claimants to retain attorneys to represent them at some stages of the appeals process. But VA officials and veterans' groups have said the addition of attorneys has made the claims process more adversarial, encouraging claimants to file more, and more complicated, appeals. Veterans' groups predict additional delays as the system gets increasingly clogged.

“You have an entire system that's been designed around the notion of being a non-adversarial process,” Aument said. “You are now bringing attorneys into the process whose very training is to be a zealous advocate and actually conduct themselves in many cases in an adversarial manner on behalf of their clients.”

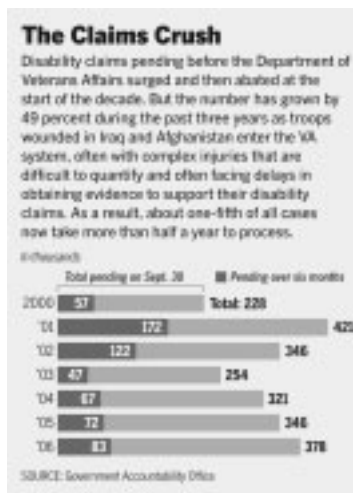
Nicholson, in announcing improvements April 24, attributed some of the backlog in the system to the VA's improved outreach to the veterans' community, which made some ex-servicemembers aware of benefits and, in turn, encouraged more claims.

"We're challenged really because we're . . . a victim, maybe is the best way to say it, of our own success," Nicholson said. "The result of that is that while we are working diligently, the time it's taking is too long."

The VA and Congress propose solving many of the problems by hiring more claims processors. The agency, in its fiscal 2008 budget request, requested 450 processors to help cut through red tape. Congress will probably authorize money in this year's supplemental spending measure, and again in 2008 spending bills. VA officials say the additional staff will help the agency reach a goal of shortening the time it takes veterans to get a ruling on initial claims to 125 days, although Aument said that this may not be realized until fiscal 2009 at earliest.

However, some veterans' groups predict that extra staff at claims centers could increase waiting times even more. That is because it takes two to three years for senior staff to train claims processors. Meanwhile, some longtime processors are expected to retire, with the net effect being a shortage of experienced personnel available to process the veterans' paperwork.

"They're going to have to pull some of their best people off to train" the new hires, said Dennis Cullinan, Legislative Director of the Veterans of Foreign Wars. "Things are going to get worse for a while rather than better."



1252 CQ WEEKLY | APRIL 30, 2007 | www.cq.com

Shifting the Burden

Some in Congress, such as House Veterans' Affairs Chairman Bob Filner of California, have embraced a new approach proposed by Bilmes in which the government would assume that all claims are valid, then audit a fraction at some later date. That would effectively shift the burden of proving a claim was valid from the veteran to the government.

"I do favor the principle of shifting the burden," Filner said in an interview, adding that the VA "had enough time to deal with this, and they have refused."

VA officials have stated publicly that they are concerned that the extra auditing of claims will sap the agency's resources. The department this spring announced its opposition to a bill by Indiana Democratic Rep. Joe Donnelly, a member of the Veterans' Affairs panel, that would essentially implement the system Bilmes proposes, citing projections that the change would cost an extra \$173 billion over 10 years.

Groups such as Disabled American Veterans, which for decades have guided returning servicemembers through the claims process, also believe the change would unwisely divert VA funding for the sake of shaking up the present system. Carl Blake, Legislative Director of the Paralyzed Veterans of America, even suggests that blanket approval of all claims would encourage fraud and abuse.

“We believe if Congress lowers this threshold . . . the results would be an overwhelming number of claims filed for compensation,” Blake said.

But opinion within the VA could be shifting on the issue. While Aument testified against Donnelly’s legislation and said in an interview that such a proposal probably would cause “serious unintended consequences,” VA Secretary Nicholson has made statements to the contrary. In an interview April 24, he said he is considering the possibility of creating a pilot program modeled on Bilmes’ proposal, and has discussed the matter with the White House Office of Management and Budget.

Bilmes said that during a recent meeting with her, Nicholson “definitely was intrigued at the concept of changing the presumption.”

But even if the VA gets behind such a change, the prospect of offering blanket approval of claims would face tough scrutiny in the Senate.

“There are serious procedural questions, but far more importantly, the cost implications suggest this has little chance of enactment,” said a Senate Democratic aide.

Another change proposed by Bilmes would streamline the VA’s 10-point disability rating system and create four classifications: none, low, medium and high. Bilmes believes the change would cut down on the number of appeals in the system.

Some lawmakers, such as New York Democratic Rep. John Hall, who also serves on the House Veterans’ Affairs Committee, would provide financial assistance to veterans whose claims were languishing by providing a \$500 monthly benefit to those whose appeals were not taken up within 180 days.

But such proposals face stiff opposition in the Senate, where lawmakers from both parties are worried about the extra costs and inclined to wait for the recommendations of a congressionally mandated 13-member commission convened to study the VA’s disability benefits programs.

Senator Larry E. Craig of Idaho, the ranking Republican on the Senate Veterans’ Affairs Committee, says he hopes the commission “will provide the foundation for the types of fundamental changes that may be needed to ensure lasting improvement to the disability compensation system” and possibly lead to a bipartisan reform package. “The system as currently structured cannot provide veterans with timely, accurate and consistent decisions on their claims,” Craig said.

Gaps in Medical Care

In contrast to the troubled claims process, the VA’s medical system has received widespread praise from politicians and veterans’ groups for the way it treats more than 5 million veterans annually. The network’s well-regarded rehabilitation services have become vital for many of the recent returnees from Iraq, who suffer from head trauma, spinal injuries, amputations, blindness or deafness.

But experts contend that the system is ill-equipped to cope with increased case-loads because the VA has regularly underestimated the cost of care, workloads and the length of waiting lists. Harvard’s Bilmes noted that the VA’s fiscal 2006 request for emergency funding included \$677 million to cover an unexpected 2 percent increase in the number of patients, another \$600 million to correct inaccurate estimates of long-term care costs and \$400 million more for an unexpected 1.2 percent increase in per-patient costs.

Some professional organizations and veterans’ groups are particularly concerned about the VA’s ability to treat mental health and brain disorders—including traumatic brain injuries and behavioral problems such as post traumatic stress disorder, depression and substance abuse—that are fast becoming the war’s signature medical issues.

Frances M. Murphy, the VA’s deputy undersecretary for health policy coordination, stoked fears last year when she told a presidential commission on mental health that some VA clinics do not provide mental health or substance abuse care, and that in other locations, “waiting lists render that care virtually inaccessible.” The remarks triggered a huge flap in which Murray and other congressional Democrats questioned whether Nicholson was giving returning veterans the services they need.



MORE OVERSIGHT: Murray says Democrats will dictate change if the VA doesn't act promptly.
(GETTY IMAGES/CHIP SOMODEVILLA)

The American Psychological Association reported in February that the armed forces and veterans' systems both suffer a shortage of qualified specialists, noting that the VA employs 1,839 psychologists to serve some 24.3 million veterans. Veterans' groups contend that the shortage has meant some returning servicemembers—especially National Guard members and reservists—are subjected to perfunctory screenings lasting only several minutes that are geared toward treating easily apparent physical disabilities.

"Funding for the VA was based more on hope than projectable data," said Paul Rieckhoff, Executive Director of the advocacy group Iraq and Afghanistan Veterans of America. "They hoped people wouldn't have casualties, wouldn't have brain injuries. The reality is those things happened. There was an absurd lack of planning."

The VA has disputed the psychological association's study, saying the findings were flawed because the group did not contact the department for information about VA programs, staffing data and other information.

However, veterans' groups and experts contend that staffing shortages within the military medical establishment hinder the ability to diagnose mental health problems in the field, before servicemembers return home. The American Psychological Association says the number of active-duty psychologists has been slipping in recent years because of heavy caseloads, job stress and declining morale. And only 10 to 20 percent have been trained to counsel soldiers suffering from post-traumatic stress disorder.

Harvard's Bilmes says the cumulative effect of these gaps in care is that veterans are at higher risk of unemployment, homelessness, family violence, crime, alcoholism and drug abuse—problems that will impose societal and financial burdens on states and localities.

VA officials say they are addressing shortcomings in their system by beginning to screen discharged servicemembers for traumatic brain injuries as soon as they are admitted into the veterans system. The department also will hire 100 new patient advocates to travel to medical facilities and help wounded servicemembers and their families cut through bureaucratic red tape and obtain information about disability compensation and options for rehabilitation. And the department is asking Congress for money to expand a network of 21 "polytrauma" centers across the country so that veterans who live in outlying areas can have better access to facilities that can simultaneously treat injuries to more than one body part.

The task force recommendations that Nicholson issued April 24 call for making VA and military medical records systems interoperable sometime between mid-2008 and January 2009.

"VA has worked hard to improve the transition process for our deserving servicemen and women. Yet we are not satisfied that we have achieved all that is possible," VA Undersecretary for Benefits Daniel Cooper told a joint hearing of the Senate Armed Services and Veterans' Affairs Committees April 12.

Helping 'Wounded Warriors'

While Congress has always supported the principle of improving veterans' health-care, the disclosure of problems at Walter Reed Army Medical Center has inspired more detailed proposals that address kinks in the system.

After the Walter Reed disclosure, the House in late March overwhelmingly passed a plan to improve the coordination of VA and military health services by adding caseworkers and counselors to the military's medical system. The plan also required the Pentagon and VA to better coordinate the transfer of servicemembers between

the two bureaucracies. The changes would cost at least \$300 million over the next five years, according to the Congressional Budget Office.

There is no identical companion legislation in the Senate yet. An effort by Democrats Barack Obama of Illinois and Claire McCaskill of Missouri to add caseworkers and mental health counselors to military hospitals and provide money for the military to develop a system allowing soldiers to submit medical paperwork over the Internet was defeated by Republicans during a debate on a war spending bill in late March. The Bush administration says it prefers that Congress wait until a presidentially appointed commission studying problems in the military's medical system issues a report, due by July 31. The commission is headed by former Republican Senator Bob Dole and Donna Shalala, former Secretary of Health and Human Services in the Clinton administration.

House members and senators also are trying to confront the problems by earmarking more money in spending bills. The 2007 supplemental spending bill, for example, designated \$100 million for mental health services, another \$30 million for a new polytrauma center and \$20 million to improve services at "Vet Centers"—a network of more than 200 storefront centers the VA operates around the country where veterans and their families can receive counseling.

Beyond such narrow remedies, VA officials and medical researchers are trying to gain a better understanding of the new types of injuries veterans are bringing home. With as many as one in five soldiers projected to suffer mild Traumatic Brain Injuries, researchers at the W.G. Hefner Medical Center in North Carolina are collaborating with scientists at the Massachusetts Institute of Technology to establish how the force of an explosion affects brain cells and their ability to communicate with one another. The answers could yield clues about whether veterans with brain injuries are more susceptible to the effects of alcohol or certain medicines, and help VA screeners differentiate between physical brain injuries and stress-related disorders.

Murray, a leading Democratic voice on veterans' issues, gives the administration some credit for recognizing the scope of the problems and taking constructive steps. But she says the VA needs to be a much more vocal advocate for veterans' needs, especially in the area of healthcare.

She predicts that unless there is more initiative, the Democratic Congress will impose more oversight when it draws up fiscal 2008 spending bills and takes up a defense authorization bill later this year.

