S. HRG. 110–466

# HEARING ON REVIEW OF VETERANS' DISABILITY COMPENSATION: REPORT OF THE VETERANS' DISABILITY BENEFITS COMMISSION

## HEARING

BEFORE THE

## COMMITTEE ON VETERANS' AFFAIRS
## UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JANUARY 24, 2008

Printed for the use of the Committee on Veterans' Affairs

Available via the World Wide Web: http://www.access.gpo.gov/congress/senate

U.S. GOVERNMENT PRINTING OFFICE

41–913 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
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# C O N T E N T S

JANUARY 24, 2008

## SENATORS



## WITNESSES

# HEARING ON REVIEW OF VETERANS' DISABILITY COMPENSATION: REPORT OF THE VETERANS' DISABILITY BENEFITS COMMISSION

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**THURSDAY, JANUARY 24, 2008.**

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
*Washington, DC.*

The committee met, pursuant to notice, at 9:30 a.m., in Room 562 Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

Present: Senators Akaka, Murray, Tester, Burr, and Craig.

## OPENING STATEMENT OF HON. DANIEL K. AKAKA, CHAIRMAN, U.S. SENATOR FROM HAWAII

Chairman AKAKA. This hearing will come to order. Aloha, and welcome to today's hearing: the first in a series of hearings I intend to hold to review veterans' disability compensation.

Today our focus will be on the recommendations of the Veterans' Disability Benefits Commission.

I am grateful that we are joined by General James Terry Scott, Chairman of that Commission. I was pleased to speak before the Commission more than two years ago and feel that we have come full circle with General Scott's appearance today.

General Scott, I publicly thank you and your fellow commissioners for all of your dedicated work on the Commission, and I especially thank you for your continued work such as appearing here today, following the end of the Commission's formal activity.

I would like to take this opportunity to offer my condolences on the passing of Commissioner "Butch" Joeckel, a decorated Marine and combat veteran who died in October of last year, shortly after the Commission completed its work.

The review of veterans' disability compensation that we embark on today falls into three separate issue areas. First, the question of what should be compensated generally—which encompasses quality of life issues, the current Rating Schedule and the development of presumptions, among a host of issues.

Second, how can the current adjudication system be improved to yield more timely and accurate decisions, and how will efforts on this front be impacted by the efforts to deal with the questions under the first category.

And third, how can Congress and the Executive Branch promote greater coordination and consistency between the VA and DOD disability processes.

These are complex and far-reaching questions and I do not believe they can be dealt with quickly. Congress must undertake a thoughtful and deliberate review and analysis of the many matters at issue and then work to develop legislation that will result in appropriate reform of the disability compensation system.

The Veterans' Disability Benefits Commission's report is a significant part of a road map that will enable the Committee to better understand and address these three separate issue areas. I hope that at the end of today's hearing, we will better understand the work that went into the report, the input that was received, and the Commission's recommendations.

I thank the representatives of veterans' organizations for their presence here today. It is my hope that they will share their organizations' response to the Commission's recommendations so that we might better understand the potential impact of implementing any of the Commission's recommendations.

In the interest of time, I'll stop here and turn to our Committee's Ranking Member and welcome him back into the second session and look forward to working together to help our veterans. I call for his opening remarks.

Senator Burr.

**STATEMENT OF HON. RICHARD BURR, RANKING MEMBER, U.S. SENATOR FROM NORTH CAROLINA**

Senator BURR. Thank you, Mr. Chairman, and Happy New Year to you and to all of the Members.

General Scott, welcome, and welcome to our other witnesses.

I appreciate all of them being here today. The disability system for our injured servicemembers is a vital component for us to look at.

General Scott, your Commission provided many valuable suggestions that will help guide our efforts to meet the needs of today's wounded warriors. As we discuss those recommendations we should keep in mind the men and the woman going through the disability system today.

I've had the opportunity to meet with many young men and women who suffered devastating injuries while in Iraq and Afghanistan.

Almost as remarkable as their courage and their can-do attitudes are their prospects about the future. These wounded warriors rightfully expect that serious injuries should not prevent them from leading productive and fulfilling lives. In fact, many want nothing less than to return to their units. And with modern medicine and technology, many, I'm proud to say, are doing so.

But, for those who are not able to continue serving, they deserve a disability system that meets the needs and expectations of this new generation of veterans. They should be provided—in a quick, effective, and hassle-free manner—with the benefits and services they need to help them return to full and productive lives.

As we will discuss today, the Disability Commission has identified a number of changes that must be made to the system for that

to be accomplished. The Commission recommended realigning the process so DOD will be responsible for determining fitness for duty and VA for assigning the disability ratings.

The Commission also stressed the need to immediately begin updating the Disability Rating Schedule and to compensate veterans for any loss of quality of life caused by their service-related disabilities.

In addition, the Commission emphasized that the goal of disability benefits should be rehabilitation and reintegration into civilian life, but found that this goal is not being met. As one means of addressing the deficiencies, the Commission suggested the use of incentives to encourage veterans to complete rehabilitation programs, and I'm proud to tell you that this Committee has that type of change under discussion.

As you may recall, another distinguished Commission, chaired by Senator Dole and Secretary Shalala, made very similar recommendations last year. Remarkably, the same types of reforms were also recommended in 1956 by a Commission led by General Omar Bradley.

As the Bradley Commission found, "our philosophy of veterans' benefits must . . . be modernized and the whole structure of traditional veterans' programs brought up to date." Despite the fact that the disability system was already outdated more than five decades ago, there's been no fundamental reform and veterans from Operation Iraqi Freedom and Operation Enduring Freedom are now experiencing the consequences of our inaction.

Let's not forget the news reports last year about seriously injured servicemembers at Walter Reed going through a lengthy, hard-to-understand, bureaucratic process to try to get disability benefits. This left many injured servicemembers and their families frustrated, confused and disappointed.

Having received that wake-up call about the failings of the current system, we cannot continue to ignore the need for modernization. We need to create a system for today's veterans and not leave them with a system that was outdated before they were even born.

To start us on this path, I have been working on a bill that would help to create a modern, less confusing, more equitable system for today's warriors. The intent of this bill would be to get DOD out of the business of assigning disability ratings, to require the entire outdated Rating Schedule be replaced with a modern schedule, and to compensate veterans for loss of quality of life—exactly what your Commission recommended.

Also, this bill would authorize new transition payments for injured servicemembers who are found unfit for duty. If we help cover family living expenses as an injured veteran adjusts to civilian life, the veteran may be better able to focus on rehabilitation, training, and reintegration into the work force.

My goal would be to create a modern system that does not distinguish between combat and non-combat injuries and would be open to veterans of any generation. I know many of you share these goals and some of you have concerns that the VA might be flooded with claims if we allow all veterans into the new system. I understand those concerns and I share those concerns. But, if modernizing the system is the right thing to do, and I believe it is, this

should not stop us from moving forward. Instead, Mr. Chairman, I hope we can work together to find the best way to modernize this system for all veterans.

So, I hope today we are at the start of a serious dialogue about how we can help VA deal with the possible large influx of claims if this modern system becomes reality.

As a final note, I want to acknowledge that modernizing the disability system will not be easy and may require a large up-front cost. But, this is an obligation we cannot put off for another 50 years. We have young men and women returning from war with devastating injuries that most of us could not fathom enduring, let alone at such a young age.

It is a failure of the highest magnitude if we don't provide these heroes, who have sacrificed so much for their country, with the benefits and services they need and deserve to return to a full, active, and productive life.

Mr. Chairman, I hope we all remember the call to action we received last year when problems with the current system were publicly exposed at Walter Reed. I want to work with you and our colleagues, and I want to work with the veterans groups across the country, to answer the call and to finally bring about fundamental changes that have been needed for such a long time.

I look forward to the testimony of our witnesses and I yield the floor.

I thank the Chair.

Chairman AKAKA. Thank you very much, Senator Burr.

Senator Murray, your opening statement, please.

**STATEMENT OF HON. PATTY MURRAY,**
**U.S. SENATOR FROM WASHINGTON**

Senator MURRAY. Thank you very much, Senator Akaka, Senator Burr. I thank you both for holding this really important hearing on the recommendations of the Veterans' Disability Benefits Commission.

General Scott, welcome back to the Committee. Let me personally tell you how much I appreciate all the time that you have spent on this critical issue and acknowledge how much of your own energy you've dedicated to this cause. We all really appreciate it.

Also, I want to thank all of the VSOs and welcome them. As well, they are going to be sharing their thoughts later on the recommendations made by the Veterans' Disability Benefits Commission. We thank all of you as well.

I join all of you in saying Happy New Year. It promises to be a very busy 2008 for this Committee. We have a lot of very important issues on the front burner, and, clearly, the reform of the VA disability system is going to be one of the hottest.

Over the course of the last year, this Committee and this Congress really devoted a great deal of time and effort to addressing the critical issues that impact the health and well-being of our Nation's veterans. I think it's important, as we start this year, that we remind ourselves of last year's tremendous accomplishments.

For the first time last year, the cost of caring for veterans was factored as a cost of war. $1.8 billion in veterans funding was included in the supplemental war spending bill and funding was di-

rected to veterans health care benefits, construction, and maintenance of our VA facilities.

We also passed our fiscal year 2008 VA spending bill that increased funding by $3.7 billion more than what the President requested. That is the largest increase in VA funding in our history.

Mr. Chairman, you also worked hard to pass the Joshua Omvig Suicide Prevention Bill and I think that was a tremendous accomplishment. It is an issue we have to continue to focus on in this Committee.

We also worked very hard in a bipartisan manner through many committees to pass the Wounded Warriors Act as part of a defense authorization bill, which will, I hope, improve the coordination and care for our servicemembers as they transition from DOD into the VA.

So, we did a lot last year, Mr. Chairman. But, despite those accomplishments, there is a lot more to do. Near the top of that list is the much needed reform of the VA's disability benefit system. I hope today's hearing will allow us to see some of the issues clearly and give us an opportunity to dig deep into some very important, very complex issues that surround the VA disability system and its shortcomings.

As anyone who has seen the Commission's final report can tell you, the Veterans' Disability Benefits Commission has done an exhaustive review of the current VA disability system. They took nearly three years—heard testimony, conducted numerous site visits, and met with hundreds of veterans. They also contracted with two well-known organizations to ensure that their recommendations were supported by solid data and evidence.

In total, the Commission made 113 recommendations. Many of those recommendations do align with the recommendations that were made by the Dole-Shalala Commission. However, they differ over the treatment of combat and non-combat injuries, support for family members of injured veterans, and the need for an executive oversight group to ensure that the Commission's recommendations are implemented quickly and effectively.

As the Chairman mentioned, today's hearing is only the first in a series that this Committee will hold to better understand the issues inherent in reforming the veterans disability system.

Mr. Chairman, I am pleased that we are beginning with this issue and are going to focus on it throughout this session. I look forward to the witnesses today.

Mr. Chairman, I do have two other committees meeting at the same time today including the Budget, which, obviously, we need to do quickly this year. So, I will not be able to stay for much of this hearing, but I will be reviewing all the testimony. I look forward to working with you as we move forward to make sure we take care of the Nation's veterans, and I appreciate your work on this.

Chairman AKAKA. Thank you very much, Senator Murray. I want to thank you for your work with the Committee. I add my welcome to the Committee Members as well and look forward to a good year working together.

Senator Tester, your opening statement, please.

**STATEMENT OF HON. JON TESTER,**
**U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman, Ranking Member Burr.

General Scott, welcome back to the Committee. I appreciate your service—both in the Army and the Veterans' Disability Benefits Commission.

This is a huge problem. There aren't many subjects that make the veterans in the State of Montana more upset than the way VA handles benefit claims. The process is too long, too confusing, too confrontational.

It was described to me a week ago today as being similar to Chinese mathematics—very difficult to understand, is the way I interpreted that.

We should be worried about fraud because we are talking about taxpayer dollars, but it really is not an excuse for how too many veterans seem to get treated by the VA when it comes to navigating through the benefits maze.

I have held literally dozens of town hall meetings with veterans—exclusively for veterans in Montana—since I got elected, and in every one of them I hear comments like, "when you file a benefit claim you just have to expect you're going to get denied the first time." Or, "there's an adversarial relationship between the VA and the veteran." Or, "the VA is trying to outlive me." And the list goes on and on and on. These are actual comments that are made to me and they're made to me at every meeting I've held—dozens of them.

There are folks who have been injured in service to this country. Their lives have been permanently altered—pretty severely in some cases—because of their service. The very least we can do is do the best job we possibly can in respecting them and being responsive to their concerns. In particular, I think we need to see two things come out of these hearings.

First of all, we've got to get a better handle on the way VA hands out ratings. I understand for the last three years the VA Inspector General and the GAO have all been raising red flags about the disparity in disability ratings throughout the VA. I know this specifically because Montanans are given a lower disability rating for medical health claims on average than any other state in the country. There is no good reason for that except that the rating system is still a bit too arbitrary and we need to do better.

Second, we have to make the benefits process a lot more transparent. To give you just one example, we need to know why it is that disability claims filed by National Guardsmen are more likely to be denied than those claims filed by active duty—a 14 percent rejection rate compared to 5 percent.

We have made some progress in getting more money to the VA to hire more claims personnel. That's a good thing. That should start to reduce some of the backlog, but we have got to get honest. It is almost as if no one told the VA back in 2004–2005 that there were two wars going on. And I think they were completely unprepared for the surge of new veterans, and I still think we need to continue to work on that because it is unacceptable to me. Too

many veterans have waited too long in getting the benefits they've earned.

We have some good recommendations from General Scott and we appreciate that. We'll hear more suggestions from the folks on the second panel and I want to hear those so we can go to work.

Unfortunately, I have a hearing I have to go to, too; so, I will not be able to stay around. I apologize for that because this is a critically important issue for me and 104,000 Montanans that are veterans living in my state.

But, I can tell you, there are big problems here. And we need to go to work and get it done. I can't do it alone. This Committee cannot do it alone. It is going to be with you guys' help and us working together that we can solve this problem. And it can be solved. There has just got to be a will to do it, and I think there is a will in this Committee to do it.

Thank you, Mr. Chairman.

Senator Akaka. Thank you very much, Senator Tester.

Senator Craig, your opening statement, please.

**STATEMENT OF HON. LARRY E. CRAIG,**
**U.S. SENATOR FROM IDAHO**

Senator CRAIG. First of all, Mr. Chairman, Members of the Committee and staff, Happy New Year. I'm glad to be back and that you're moving very, very quickly on an important issue—especially to you, Mr. Chairman and our Ranking Member, Senator Burr—I want to thank you for holding this hearing to examine the recommendations of the Veterans' Disability Benefits Commission.

I certainly hope that this hearing lays the groundwork for Congress, the veterans service organizations, and the administration to update and reform the disability compensation system.

Mr. Chairman, April of last year the Veterans' Affairs Committee held a joint hearing with the Armed Services Committee to determine how best to address and reform the disability compensation system, both within DOD and VA, to streamline the process into an easily understood and fair system.

This is a very important issue and it's important that this Committee take the steps necessary to begin the process of reform. I believe that this Committee has done its due diligence in reviewing the different Commission recommendations. I wish to thank General Scott, who is with us today, and the rest of the Commission for their work.

That being said, I hope that this Commission, along with the work done by the Dole-Shalala Commission, will finally spur Congress and the administration to act on the much needed reforms that have been identified. We all know this is not a new issue. While I have been on this Committee a good number of years, it is an issue that keeps coming up, and it is evident for the last 50 years that there has been a significant problem.

I have to also ask that if we, the Committee, do not take action—based on all of the evidence that's now out there and the work that's been done—Mr. Chairman, will it be another 50 years before we are spurred to do something in the kind of meaningful reform that makes it work? And when I talk 50-year segments, of course, I am talking about the Omar Bradley reviews and the recommend-

ations that were made—that many who look at this reflect from and forward—as we look at these kind of issues.

So, this is something that is critically important. Overlapping functions, the kind of reform necessary that should be, in a much overused word, "seamless" between DOD and VA is something that I think we have to seriously take a look at.

I am glad we start the new year, Mr. Chairman, with this issue. And I hope this Committee stays on it in the new year—long enough to produce a quality piece of legislation that begins to take two very, very big bureaucracies and force them to reform themselves into the modern world—and reflect what ought to be reflected on behalf of our men and women who have served us well in the armed services and are now entitled to programs and services from the Veterans Administration.

Thank you.

Chairman AKAKA. Thank you very much, Senator Craig.

I now welcome Lieutenant General Terry Scott, Chairman of the Veterans' Disability Benefits Commission. Under General Scott's leadership, the Veterans' Disability Benefits Commission recently completed an extensive two-year review of the benefits and services provided to our disabled veterans by the Departments of Defense and Veterans Affairs.

As I noted earlier, the formal activity of the Commission is complete. I thank you again, General Scott, for your continuing work on behalf of the Commission.

General Scott, we're anxious to hear your statement so will you please begin.

**STATEMENT OF LIEUTENANT GENERAL JAMES TERRY SCOTT, CHAIRMAN, VETERANS' DISABILITY BENEFITS COMMISSION**

General SCOTT. Chairman Akaka, Ranking Member Burr and members of the Committee, it's a real honor to be here with you today to discuss the findings and conclusions of the Veterans' Disability Benefits Commission.

I offer my written statement for the record and, as was mentioned, the Commission was created by Public Law 108–136 to study the benefits and services that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

We were asked to make recommendations concerning three things: the appropriateness of such benefits, the appropriateness of the level of such benefits, and the appropriate standards for determining whether a disability or death of a veteran should be compensated.

As was mentioned, for almost two and one-half years, the Commission conducted extensive and comprehensive examination of all the issues relating to veterans' disability benefits. We made every effort to ensure that our analysis was based on evidence and it was data driven.

We engaged two well-known organizations: the Institute of Medicine (IOM) of the National Academies; and the CNA Corporation, formally known as the Center for Naval Analysis.

We examined many issues with some emphasis on the impact of disability on quality of life, the VA Rating Schedule, Post Trau-

matic Stress Disorder, individual unemployability, presumptions, transition from servicemember to veteran, concurrent receipt of retired pay and disability benefits, the need for compatible electronic information systems and, as has been mentioned several times, claims processing.

I will address our key conclusions and recommendations on each of these topics. Enclosed with the written statement for the record is the list of recommendations and the agency that the Commission thought should take action on each of these recommendations.

Some of these recommendations are inexpensive. Some are not. Some can be adopted by VA or DOD, and/or DOD. Others will involve the Department of Labor or the Social Security Administration. Many will require legislation.

We understand that not all recommendations can be adopted immediately. We have identified 14 recommendations that, in our judgment, are higher priority. We hope that the Congress and the departments will carefully consider all recommendations.

To summarize our findings briefly—VA compensation currently paid to disabled veterans is generally adequate to offset the average impairment of earnings. A comparison with the earnings of veterans who are not service disabled demonstrated that disability causes lower earnings and employment at all levels of severity and types of disabilities. The amount of compensation is generally sufficient to offset loss of earnings except for three groups of veterans: those whose primary disability is PTSD or other mental disorders; those who are severely disabled at a young age; and those who are granted maximum benefits because their disabilities make them unemployable.

We also found that some of the special monthly payments, and ancillary and special benefits have not been adjusted over the years to reflect cost of living changes and to ensure that payments are adequate. We recommend these be updated and reviewed.

The Commission particularly focused on the issues concerning care for the severely injured such as the amputees and those with Traumatic Brain Injury (TBI).

We also focused on the families of the severely injured that are assisting in the care and rehabilitation of these wounded warriors. Some are sacrificing jobs, careers, homes, and health insurance, and face a tremendous impact on their own health in order to support their injured family members. We believe Congress should provide some health care and a caregiver allowance for these families.

The VA Rating Schedule: the Commission concluded that the current VA Schedule for Rating Disabilities, which is used to evaluate veterans' severity of disability, has not been adequately revised. IOM found that 47 percent of the codes have been revised since 1990 but 35 percent have not been revised since 1945. We recommended that the Rating Schedule be updated as soon as possible.

As a matter of priority, this update has got to include some specific criteria for the evaluation and rating of Traumatic Brain Injury and all mental disorders, especially Post Traumatic Stress Disorder. As revised, the Schedule should include new diagnostic clas-

sifications, up-to-date medical criteria, and should reflect medical advances.

In addition, the VA should create a process for keeping the Rating Schedule up to date to include publishing a timetable and creating an advisory committee for revising the medical criteria for each body system.

On PTSD, we found that there's been insufficient monitoring and coordination between VBA and VHA for veterans experiencing PTSD. The Commission believes that a holistic approach to PTSD should be established that couples compensation, treatment, and vocational assessment. We also believe that reevaluation should occur, and our suggestion was every two to three years, to gauge treatment effectiveness and to encourage wellness.

Regarding individual unemployability: as you know, veterans with service-connected disabilities rated at 60 percent or more, but less than 100 percent, and who are unable to work due to their disabilities, can be granted what is known as IU and paid at the 100 percent rate.

The number of such veterans has increased by 90 percent over the past few years, creating considerable attention. We found that the increase is largely explained by the aging of the cohort of Vietnam veterans.

As the Rating Schedule is revised, specific focus should be given to the criteria for PTSD and other mental disorders so that IU does not need to be awarded so frequently.

On the subject of presumptions: when there is evidence that a condition is experienced by a sufficient cohort of veterans, a presumption can be established so that it is presumed to be the result of military service. This has been done for radiation exposure, Agent Orange defoliant, and other conditions.

The Commission asked the IOM to review the existing processes for making these decisions and IOM recommended a detailed, comprehensive, and transparent framework based more on scientific principles. Our Commission believes that this framework, if adopted, will improve the process. We have some concern about the causal effect standard, but we would expect that to be addressed in the review.

On the subject of transition (which we've all talked about a lot): we recommended a realignment of the DOD disability evaluation process, as was mentioned earlier. We believe that the services should determine whether a servicemember is fit for duty and VA should determine the level of disability.

We are aware of the pilot program that's going on and I would like to commend the Senior Oversight Committee for the job that they are doing in tracking that pilot program.

We also believe that the DOD should mandate that separation examinations be performed on all servicemembers to ensure that all known conditions at the time of discharge are documented.

Regarding concurrent receipt of military retirement and VA disability payments: the Commission found these to be two different programs with entirely different missions. DOD retirement recognizes years of service, and VA disability payments compensate for impairment in earnings and should compensate for impact on quality of life.

We believe that payment offsets should also be eliminated for survivors of those who die in service or retirees who die of service-related causes so that the survivors can receive both VA dependency and indemnity compensation and the DOD survivors benefit plan.

We encourage the VA and the DOD to expedite their efforts to implement compatible electronic information systems. We think this is one of the most important actions that can be taken for the long run.

Claims processing: we studied the existing claims processing for disabled veterans and we are disappointed by the burdensome bureaucracy and the delays that our veterans face. Therefore, we recommend that VA establish a simplified and expedited process using best practices and maximal use of information technology to improve the claims cycle.

As was commented, we generally agreed with the advice presented by the Dole-Shalala Commission. We differed with two of their suggestions. We believe that all disabilities and injuries should be compensated based on the severity of the disability and not be limited to combat or combat-related injuries. Nor does our Commission believe that VA disability compensation should end and be replaced with Social Security at retirement age.

For the severely disabled, that would result in a reduction in income of somewhere in the neighborhood of 40 percent at a time when their failing health would likely require them to hire people to do normal things that they were able to do when younger.

As has been mentioned, we believe that, as a matter of principle, benefits should be based on the severity of the disability, not when or how the disability occurred.

I believe that I can speak for the entire Commission and recommend that all veterans should be provided benefits and services consistent with their disabilities. All should be evaluated and compensated using the same criteria and not establish a different system for veterans of the current conflict and those of the future while using a separate system for veterans of previous eras. Our concern is that we do not think the VA can manage two concurrent systems, given the difficulty that the VA has with the one system.

In conclusion, we are hopeful that if our recommendations are implemented, a system for future generations of disabled veterans and their families will be established that will ensure seamless transition and improve their quality of life. It is our hope that the President, the Congress, the VA, and the DOD take this opportunity to create a veterans disability benefits system that will adapt as the needs of future veterans change.

I speak on behalf of all of the Commissioners when I say it has been an honor and a privilege to serve our current and future veterans through this effort. During the course of our work, we felt the weight of our responsibilities and I think each one of us worked a little harder to ensure that we made a difference.

Each member should be thanked for their hard work, dedication, and professionalism. It was not an easy assignment and the commitment and resolve of these Commissioners was truly tremendous.

And so now, I would be happy to take questions.

[The prepared statement of General Scott follows:]

PREPARED STATEMENT OF JAMES TERRY SCOTT, LTG, USA (RET.), CHAIRMAN, VETERANS' DISABILITY BENEFITS COMMISSION

Chairman Akaka, Ranking Member Burr, Members of the Committee, I am pleased to appear before you today to discuss the findings, conclusions, and recommendations of the Veterans' Disability Benefits Commission. First, I would like everyone to understand that my statements today are my own and do not necessarily represent the views of the Commission. The Commission completed its work and submitted its report on October 3, 2007.

The Commission was created by Public Law 108–136 to study the benefits and services that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service. Specifically, the Commission was tasked to examine and make recommendations concerning:

- The appropriateness of such benefits;
- The appropriateness of the level of such benefits; and
- The appropriate standards for determining whether a disability or death of a veteran should be compensated.

Commissioners were appointed by the President and the four leaders of Congress.

For almost two and one-half years, the Commission conducted an extensive and comprehensive examination of issues relating to veterans' disability benefits. This is the first time that the subject has been studied in depth by an outside entity since the Bradley Commission in 1956. We identified 31 issues for study. We made every effort to ensure that our analysis was evidence based and data driven, and we engaged two well-known organizations to provide medical expertise and analysis:

- the Institute of Medicine (IOM) of the National Academies, and
- the CNA Corporation (CNAC).

We examined many issues with added emphasis on:

- The impact of disability on Quality of Life
- The VA Rating Schedule
- Post Traumatic Stress Disorder (PTSD)
- Individual Unemployability
- Presumptions
- Transition
- Concurrent Receipt
- Compatible Electronic Information Systems
- Claims Processing

I will address our key conclusions and recommendations on each of those topics.

We offered 113 recommendations covering a wide spectrum of veterans' disability benefits issues to ensure that the benefits fairly and uniformly compensate all service-disabled veterans and their families. The Commission's recommendations are included in Chapter 11 of our report. Enclosed with this statement, for the record, is the list presented in Chapter 11 that identifies who we thought could take action on each recommendation.

Some recommendations are inexpensive. Some are not. Some can be adopted by VA and/or DOD. Other recommendations involve DOL and SSA. Others will require legislation. The Commission understands that not all recommendations can be adopted immediately. We have identified 14 recommendations that, in our judgment, are higher priority. We hope the Congress and the Departments will carefully consider all recommendations.

*To summarize our findings*

VA compensation currently paid to disabled veterans is generally adequate to offset average impairment of earnings. A comparison with the earnings of veterans who are not service disabled demonstrated that disability causes lower earnings and employment at all levels of severity and types of disabilities. The amount of compensation is generally sufficient to offset loss of earnings except for three groups of veterans:

- those whose primary disability is PTSD or other mental disorders,
- those who are severely disabled at a young age, and
- those who are granted maximum benefits because their disabilities make them unemployable.

We found that some of the special monthly compensation payments, and ancillary and special benefits have not been adjusted over the years to reflect cost of living

changes and to ensure that payments are adequate. We recommended that these be updated and reviewed.

The Commission particularly focused on the issues concerning care for the severely injured such as amputees and those with Traumatic Brain Injury or TBI. Due to improvements in the armor our Services provide and the advances in military medicine, servicemembers are surviving from wounds that, in the past, they died from. In many ways, we have not demonstrated that we are prepared to provide adequate care and support for these veterans.

We received moving testimony concerning the experience of amputees and other severely disabled veterans undergoing treatment, multiple fittings, and lengthy training to use prostheses and we recommend that those with severe disabilities be provided a pre-stabilization allowance of up to 50 percent of compensation for up to 5 years.

The families of the severely injured are assisting in the care and rehabilitation of these wounded warriors. Some are sacrificing jobs, careers, homes, and health insurance, and facing a tremendous impact on their own health in order to support their injured family member(s). Congress should provide health care and a caregiver allowance for these families.

IMPACT OF DISABILITY ON QUALITY OF LIFE

• We believe the level of compensation should be based on the severity of disability and should make up for average impairment of earnings capacity and the impact of disability on functionality and quality of life. It should not be based on whether the disability occurred during combat or combat training, or the geographic location of injury, or whether the disability occurred during wartime or a time of peace.

• Current compensation payments do not provide payment above that required to offset earnings loss. Therefore, there is currently no compensation for the impact of disability on quality of life for most veterans.

• While permanent quality of life measures are developed and implemented, current compensation payments should be increased up to 25 percent with priority to the more seriously disabled.

THE VA RATING SCHEDULE

• The Commission concluded that the current VA Schedule for Rating Disabilities which is used to evaluate veterans' severity of disability has not been adequately revised. IOM found that 47 percent of codes have been revised since 1990 but 35 percent have not been revised since 1945. We recommend that the Rating Schedule be updated as soon as possible but certainly within the next 5 years.

• As a matter of priority, this update must include specific criteria for the evaluation and rating of Traumatic Brain Injury (TBI) and all mental disorders, especially Post Traumatic Stress Disorder (PTSD). As it is revised, the schedule should include new diagnostic classifications, up-to-date medical criteria, and reflect medical advances.

• In addition, the VA should create a process for keeping the Rating Schedule up to date, including publishing a timetable, and creating an advisory committee for revising the medical criteria for each body system.

PTSD

• We found that there is insufficient monitoring and coordination between VBA and VHA for veterans experiencing PTSD. An October 2007 IOM report on PTSD treatment (not reflected in our report) found that there is not even an agreed-upon definition of recovery and that there is not sufficient evidence of the efficacy of treatment modalities and pharmaceuticals.

• Although there has been a lot of discussion about the extent that OEF and OIF servicemembers experience PTSD, we noted that only some 1,400 servicemembers had been found unfit for duty due to PTSD out of some 83,000 over the past 7 years. This does not indicate that sufficient attention is being paid to this disorder.

• The Commission believes that a holistic approach to PTSD should be established that couples compensation, treatment, and vocational assessment. We also believe that reevaluation should occur every two to three years to gauge treatment effectiveness and encourage wellness.

INDIVIDUAL UNEMPLOYABILITY (IU)

• Veterans with service-connected disabilities rated 60 percent or more but less than 100 percent and who are unable to work due to their disabilities can be grant-

ed what is known as IU and be paid at the 100 percent rate. The number of such veterans has increased by 90 percent over the past few years causing considerable attention. We found that the increase is largely explained by the aging of the cohort of Vietnam veterans.

• As the Rating Schedule is revised, specific focus should be given to the criteria for PTSD and other mental disorders so that IU does not need to be awarded so frequently. Currently, 31 percent of veterans with a primary disability of PTSD are awarded IU. Since incapacity to work is part of the criteria for a rating of 100 percent for PTSD and other mental disorders, it is not clear why many of these veterans are not rated 100 percent instead of IU.

PRESUMPTIONS

• When there is evidence that a condition is experienced by a sufficient cohort of veterans, a "presumption" can be established so that it is presumed to be the result of military service. This has been done for radiation exposure, Agent Orange defoliant in Vietnam, and other conditions. The Commission asked the IOM to review the existing processes for making these decisions and IOM recommended a detailed, comprehensive, and transparent framework based more on scientific principles. Our Commission believes that this framework will improve the process but expresses concern over the causal effect standard that would be included instead of the existing standard for an association.

TRANSITION

• The Commission recommends a realignment of the DOD disability evaluation process used to separate or retire servicemembers who are not fit for military duty. The Military Services (Army, Navy, and Air Force) should determine whether a servicemember is fit for duty and VA should determine the level of disability of servicemembers who are found unfit for duty. This will ensure equitable and consistent ratings.

• We also believe that DOD should mandate that separation examinations be performed on all servicemembers to ensure that all known conditions at the time of discharge are documented.

CONCURRENT RECEIPT

• Regarding concurrent receipt of military retirement and VA disability payments, the Commission found these to be two different programs with entirely different missions. DOD retirement recognizes years of service and VA disability payments compensate for impairment in earnings and should compensate for impact on quality of life.

• Over time, Congress should eliminate the ban on concurrent receipt for all military retirees and for all servicemembers who are separated from the military due to service-connected disabilities. Priority should be given to veterans who separate or retire with less than 20 years of service and a service-connected disability rating greater than 50 percent or disability as a result of combat.

• Payment offset should also be eliminated for survivors of those who die in service or retirees who die of service-related causes so that the survivors can receive both VA Dependency and Indemnity Compensation and DOD Survivors Benefit Plan.

COMPATIBLE ELECTRONIC INFORMATION SYSTEMS

• VA and DOD should expedite their efforts to implement compatible electronic information systems. We believe this is one the most important actions that can be taken. Not only will this improve claims processing but it will enhance the ability to share medical records and avoid some of the unfortunate cases that "slip though the cracks" during the transition from VA to DOD.

• On this note, the Commission encourages VA and DOD to work together more often. Joint ventures, sharing agreements, and integration should be the norm, not the exception.

CLAIMS PROCESSING

• The Commission studied the existing claims processing for disabled veterans and was disappointed by the burdensome bureaucracy and delays that our veterans face. Therefore, we recommend that VA establish a simplified and expedited process using best practices and maximum use of information technology to improve the claims cycle.

THE DOLE-SHALALA COMMISSION AND THE ADMINISTRATION'S PROPOSED LEGISLATION

Our Commission generally agrees with the advice presented by the Dole-Shalala Commission, but we differ with two of their suggestions. We believe that all disabilities and injuries should be compensated based on severity of disability and not be limited to combat or combat-related injuries. From 1932 to 1972, compensation was paid at lower rates for peacetime vs. wartime injuries. In 1965, VA concluded that it could not justify paying different rates. We think the same principle applies to trying to distinguish between combat-related injuries and others. Regardless of how combat or combat-related activities are defined, deciding each case would require judgment and subjectivity on the part of VA rating officials and introduce a new level of complexity to what everyone agrees is already an overly complex process. The current policy requires a court martial determination of misconduct to make someone ineligible and we think that is the proper level of decision.

Nor does our Commission believe that VA disability compensation should end and be replaced with Social Security at retirement age. For the severely disabled, that would result in a reduction in income of somewhere in the neighborhood of 40 percent at a time when their failing health will likely require them to hire people to do normal things that they were able to do when younger.

Our Commission's recommendations are in many ways similar to the intent of the Administration's proposed legislation but we recommended stronger support for the families of those severely disabled and we would not restrict benefits such as family health care to those with serious injuries experienced in combat or combat-related circumstances. There is currently no commonly accepted or used definition for serious injuries but I feel that the definition proposed in the Administration's proposal is too stringent. It is not clear to me that all veterans currently rated 100 percent would meet that proposed definition. In our review of those discharged as unfit from 2000 through 2006, only about 1,500 of 83,000 were rated by DOD as 100 percent disabled and only 5,000 were rated as 50 percent or higher.

We believe as a matter of principle that benefits should be based on the severity of disability, not on when or how the disability occurred.

I believe that I can speak for the entire Commission and recommend that all veterans should be provided benefits and services consistent with their disabilities. All should be evaluated and compensated using the same criteria and not establish a different system for veterans of the current conflict and those of the future while using a separate system for veterans of previous eras.

I reviewed the provisions of the National Defense Authorization Act for 2009 and noted that it does not limit the process to combat or combat-related disabilities and defines serious disabilities as those injuries that may make a servicemember unfit for duty. I am personally very glad to see this.

*In conclusion*

- The Commission believes that if our recommendations are implemented, a system for future generations of disabled veterans and their families will be established that will ensure seamless transition and improve their quality of life. It is our hope that the President, Congress, VA, and DOD take this opportunity to create a veterans disability benefits system that will adapt as the needs of future veterans change.
- I speak on behalf of all of the commissioners when I say it has been an honor and a privilege to serve our current and future veterans through this effort. During the course of our work, we felt the weight of our responsibility and I believe each one of us worked a little harder to ensure we made a difference.
- Each member should be thanked for their hard work, dedication, and professionalism. This was not an easy assignment—their commitment and resolve was true to the end.

And now I would be glad to take questions.

Enclosure.

ATTACHMENT

## The Commission's Recommendations

| Number [1] | Recommendation | Actionable By |
|---|---|---|
| | CHAPTER 4 | |
| 4.1 | The purpose of the current veterans disability compensation program as stated in statute currently is to compensate for average impairment in earning capacity, that is work disability. This is an unduly restrictive rationale for the program and is inconsistent with current models of disability. The veterans disability compensation program should compensate for three consequences of service-connected injuries and diseases: work disability, loss of ability to engage in usual life activities other than work, and loss in quality of life. (Specific recommendations on approaches to evaluating each consequence of service-connected injuries and diseases are in ''A 21st Century System for Evaluating Veterans for Disability Benefits,'' Chapter 4.) [IOM Rec. 3–1] | Congress |
| 4.2 | VA should compensate for nonwork disability, defined as functional limitations on usual life activities, to the extent that the Rating Schedule does not, either by modifying the Rating Schedule criteria to take account of the degree of functional limitation or by developing a separate mechanism. [IOM Rec. 4–5] | Congress |
| 4.3 | VA should determine the feasibility of compensating for loss of quality of life by developing a tool for measuring quality of life validly and reliably in the veteran population, conducting research on the extent to which the Rating Schedule already accounts for loss in quality of life, and, if it does not, developing a procedure for evaluating and rating loss of quality of life in veterans with disabilities. [IOM Rec. 4–6] | VA |
| 4.4 | VA should develop a process for periodic updating of the disability examination worksheets. This process should be part of, or closely linked to, the process recommended above for updating and revising the Schedule for Rating Disabilities. There should be input from the disability committee recommended above (see IOM Rec. 4–1). [IOM Rec. 5–1] | VA |
| 4.5 | VA should mandate the use of the online templates that have been developed for conducting and reporting disability examinations. [IOM Rec. 5–2] | VA |
| 4.6 | VA should establish a recurring assessment of the substantive quality and consistency, or inter-rater reliability, of examinations performed with the templates and, if the assessment finds problems, take steps to improve quality and consistency, such as revising the templates, changing the training, or adjusting the performance standards for examiners. [IOM Rec. 5–3] | VA |
| 4.7 | The rating process should have built-in checks or periodic evaluations to ensure inter-rater reliability as well as the accuracy and validity of rating across impairment categories, ratings, and regions. [IOM Rec. 5–4] | VA |
| 4.8 | VA raters should have ready access to qualified health care 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 diagnostic tests). [IOM Rec. 5–5] | VA |
| 4.9 | Educational and training programs for VBA raters and VHA examiners should be developed, mandated, and uniformly implemented across all regional offices with standardized performance objectives and outcomes. These programs should make use of advances in adult education techniques. External consultants should serve as advisors to assist in the development and evaluation of the educational and training programs. [IOM Rec. 5–6] | VA |
| 4.10 | VA and the Department of Defense should conduct a comprehensive multidisciplinary medical, psychological, and vocational evaluation of each veteran applying for disability compensation at the time of service separation. [IOM Rec. 6–1] | VA and DOD |

[1] Stars denote the highest-priority recommendations, as described in the Executive Summary.

The Commission's Recommendations—Continued

| Number [1] | Recommendation | Actionable By |
|---|---|---|
| 4.11 | VA should sponsor research on ancillary benefits and obtain input from veterans about their needs. Such research could include conducting intervention trials to determine the effectiveness of ancillary services in terms of increased functional capacity and enhanced health-related quality of life. [IOM Rec. 6–2] | VA |
| 4.12 | The concept underlying the extant 12-year limitation for vocational rehabilitation for service-connected veterans should be reviewed and, when appropriate, revised on the basis of current employment data, functional requirements, and individual vocational rehabilitation and medical needs. [IOM Rec. 6–3] | VA |
| 4.13 | VA should develop and test incentive models that would promote vocational rehabilitation and return to gainful employment among veterans for whom this is a realistic goal. [IOM Rec. 6–4] | VA |
| 4.14 | In addition to medical evaluations by medical professionals, VA should require vocational assessment in the determination of eligibility for Individual Unemployability (IU) benefits. Raters should receive training on how to interpret findings from vocational assessments for the evaluation of IU claims. [IOM Rec. 7–1] | Congress and VA |
| 4.15 | VA should monitor and evaluate trends in its disability program and conduct research on employment among veterans with disabilities. [IOM Rec. 7–2] | VA |
| 4.16 | VA should conduct research on the earnings histories of veterans who initially applied for Individual Unemployability benefits past the normal age of retirement under the Old Age, Survivors, and Disability Insurance Program under the Social Security Act. [IOM Rec. 7–3] | VA |
| 4.17 | Eligibility for Individual Unemployability should be based on the impact of an individual's service-connected disabilities, in combination with education, employment history, and the medical effects of that individual's age on his or her potential employability. [IOM Rec. 7–4] | VA |
| 4.18 | VA should implement a gradual reduction in compensation to recipients of Individual Unemployability benefits who are able to return to substantial gainful employment rather than abruptly terminate their disability payments at an arbitrary level of earnings. [IOM Rec. 7–5] | VA |
| 4.19 | VA should adopt a new classification system using the ''International Classification of Disease'' (ICD) and the ''Diagnostic and Statistical Manual of Mental Disorders'' (DSM) codes. This system should apply to all applications, including those that are denied. During the transition to ICD and DSM codes, VA can continue to use its own diagnostic codes, and subsequently track and analyze them comparatively for trends affecting veterans and for program planning purposes. Knowledge of an applicant's ICD or DSM codes should help raters, especially with the task of properly categorizing conditions. [IOM Rec. 8–1] | VA |
| 4.20 | Considering some of the unique conditions relevant for disability following military activities, it would be preferable for VA to update and improve the Rating Schedule on a regular basis rather than adopt an impairment schedule developed for other purposes. [IOM Rec. 8–2] | VA |
| 4.21 | VA should seek the judgment of qualified experts, supported by findings from current peer-reviewed literature, as guidance for adjudicating both aggravation of preservice disability and Allen aggravation claims. Judgment could be provided by VHA examiners, perhaps from VA centers of excellence, who have the appropriate expertise for evaluating the condition(s) in question in individual claims. [IOM Rec. 9–1] | VA |

The Commission's Recommendations—Continued

| Number [1] | Recommendation | Actionable By |
|---|---|---|
| 4.22 | VA should guide clinical evaluation and rating of claims for secondary service connection by adopting specific criteria for determining causation, such as those cited above (e.g., temporal relationship, consistency of research findings, strength of association, specificity, plausible biological mechanism). VA should also provide and regularly update information to compensation and pension examiners about the findings of epidemiological, biostatistical, and disease mechanism research concerning the secondary consequences of disabilities prevalent among veterans. [IOM Rec. 9–2] | VA |
| *4.23 | VA should immediately begin to update the current Rating Schedule, beginning with those body systems addressing the evaluation and rating of Post Traumatic Stress Disorder, other mental disorders, and Traumatic Brain Injury. Then proceed through the other body systems until the Rating Schedule has been comprehensively revised. The revision process should be completed within 5 years. VA should create a system for keeping the Rating Schedule up to date, including a published schedule for revising each body system. | VA |
| | CHAPTER 5 | |
| 5.1 | Congress should change the character-of-discharge standard to require that when an individual is discharged from his or her last period of active service with a bad conduct or dishonorable discharge, it bars all benefits. | Congress |
| 5.2 | Maintain the present definition of line of duty: that servicemembers are on duty 24 hours a day, 7 days a week. | No action required |
| 5.3 | Benefits should be awarded at the same level according to the severity of the disability, regardless of whether the injury was incurred or disease was contracted during combat or training, wartime or peacetime. | No action required |
| 5.4 | Maintain the current reasonable doubt standard. | No action required |
| 5.5 | Age should not be a factor for rating service connection or severity of disability, but may be a consideration in setting compensation rates. | No action required |
| 5.6 | Maintain the current standard of an unlimited time limit for filing an original claim for service connection. | No action required |
| 5.7 | DOD should require a mandatory benefits briefing to all separating military personnel, including Reserve and National Guard components, prior to discharge from service. | DOD |
| 5.8 | Congress should create a formal advisory committee (Advisory Committee) to the VA to consider and advise the Secretary of VA on disability-related questions requiring scientific research and review to assist in the consideration of possible presumptions. [IOM Rec. 1] | Congress and VA |
| 5.9 | Congress should authorize a permanent independent review body (Science Review Board) operating with a well-defined process that will use evaluation criteria as outlined in this committee's recommendations to evaluate scientific evidence for VA's use in considering future service-connected presumptions. [IOM Rec. 2] | Congress |
| 5.10 | VA should develop and publish a formal process for consideration of disability presumptions that is uniform and transparent and that clearly sets forth all evidence considered and the reasons for decisions reached. [IOM Rec. 3] | VA |
| 5.11 | The goal of the presumptive disability decision-making process should be to ensure compensation for veterans whose diseases are caused by military service and this goal must serve as the foundation for the work of the Science Review Board. The committee recommends that the Science Review Board implement its proposed two-step process. [IOM Rec. 4] | Congress |

The Commission's Recommendations—Continued

| Number [1] | Recommendation | Actionable By |
|---|---|---|
| 5.12 | The Science Review Board should use the proposed four-level classification scheme, as follows, in the first step of its evaluation. A standard should be adopted for "causal effect" such that if there is at least as much evidence in favor of the exposure having a causal effect on the severity or frequency of disease as there is evidence against, then a service-connected presumption will be considered. [IOM Rec. 5]<br>• Sufficient: The evidence is sufficient to conclude that a causal relationship exists.<br>• Equipoise and Above: The evidence is sufficient to conclude that a causal relationship is at least as likely as not, but not sufficient to conclude that a causal relationship exists.<br>• Below Equipoise: The evidence is not sufficient to conclude that a causal relationship is at least as likely as not, or is not sufficient to make a scientifically informed judgment.<br>• Against: The evidence suggests the lack of a causal relationship. | Congress |
| 5.13 | A broad spectrum of evidence, including epidemiologic, animal, and mechanistic data, should be considered when evaluating causation. [IOM Rec. 6] | VA |
| 5.14 | When the causal evidence is at Equipoise and Above, an estimate also should be made of the size of the causal effect among those exposed. [IOM Rec. 7] | Congress |
| 5.15 | The relative risk and exposure prevalence should be used to estimate an attributable fraction for the disease in the military setting (i.e., service attributable fraction). [IOM Rec. 8] | VA |
| 5.16 | Inventory research related to the health of veterans, including research funded by DOD and VA and research funded by the National Institutes of Health and other organizations. [IOM Rec. 9] | VA |
| 5.17 | Develop a strategic plan for research on the health of veterans, particularly those returning from conflicts in the gulf and Afghanistan. [IOM Rec. 10] | VA |
| 5.18 | Develop a plan for augmenting research capability within DOD and VA to more systematically generate evidence on the health of veterans. [IOM Rec. 11] | VA and DOD |
| 5.19 | Assess the potential for enhancing research through record linkage using the DOD and VA administrative and health record databases. [IOM Rec. 12] | VA and DOD |
| 5.20 | Conduct a critical evaluation of gulf war troop tracking and environmental exposure monitoring data so that improvements can be made in this key DOD strategy for characterizing exposures during deployment. [IOM Rec. 13] | DOD |
| 5.21 | Establish registries of servicemembers and veterans based on exposure, deployment, and disease histories. [IOM Rec. 14] | VA and DOD |
| 5.22 | Develop a plan for an overall integrated surveillance strategy for the health of servicemembers and veterans. [IOM Rec. 15] | DOD |
| 5.23 | Improve the data linkage between the electronic health record data systems used by DOD and VA—including capabilities for handling individual soldier exposure information that is included as part of the individual's health record. [IOM Rec. 16] | VA and DOD |
| 5.24 | Ensure implementation of the DOD strategy for improved exposure assessment and exposure data collection. [IOM Rec. 17] | DOD |
| 5.25 | Develop a data interface that allows VA to access the electronic exposure data systems used by DOD. [IOM Rec. 18] | VA and DOD |
| 5.26 | DOD and VA should establish and implement mechanisms to identify, monitor, track, and medically treat individuals involved in research and other activities that have been classified and are secret. [IOM Rec. 19] | VA and DOD |
| 5.27 | VA should consider environmental issues such as blue water Navy and Agent Orange, Ft. McClellan and polychlorinated biphenyls, and Camp Lejeune and trichloroethylene/tetrachloroethylene in the new presumptions framework. | VA |

The Commission's Recommendations—Continued

| Number [1] | Recommendation | Actionable By |
|---|---|---|
| *5.28 | VA should develop and implement new criteria specific to Post Traumatic Stress Disorder in the VA Schedule for Rating Disabilities. Base those criteria on the ''Diagnostic and Statistical Manual of Mental Disorders'' and consider a multidimensional framework for characterizing disability caused by Post Traumatic Stress Disorder. | VA |
| 5.29 | VA should consider a baseline level of benefits described by the Institute of Medicine to include health care as an incentive for recovery for Post Traumatic Stress Disorder as it relapses and remits. | VA |
| *5.30 | VA should establish a holistic approach that couples Post Traumatic Stress Disorder treatment, compensation, and vocational assessment. Reevaluation should occur every 2–3 years to gauge treatment effectiveness and encourage wellness. | Congress and VA |
| 5.31 | The Post Traumatic Stress Disorder exam process:<br>• Psychological testing should be conducted at the discretion of the examining clinician.<br>• VA should identify and implement an appropriate replacement for the Global Assessment of Functioning.<br>Post Traumatic Stress Disorder data collection and research:<br>• VA should conduct more detailed research on military sexual assault and PTSD and develop and disseminate reference materials for raters. | VA and DOD |
| 5.32 | A national standardized training program should be developed for VA and VA-contracted clinicians who conduct compensation and pension psychiatric evaluations. This training program should emphasize diagnostic criteria for Post Traumatic Stress Disorder and comorbid conditions with overlapping symptoms, as set forth in the ''Diagnostic and Statistical Manual of Mental Disorders.'' | VA |
| 5.33 | VA should establish a certification program for raters who deal with claims for Post Traumatic Stress Disorder (PTSD), as well as provide training to support the certification program and periodic recertification. PTSD certification requirements should be regularly reviewed and updated to include medical advances and to reflect lessons learned. The program should provide specialized training on the psychological and medical issues (including comorbidities) that characterize the claimant population, and give guidance on how to appropriately manage commonly encountered rating problems. | VA |
| | CHAPTER 6 | |
| 6.1 | Congress should consider increasing special monthly compensation where appropriate to address the more profound impact on quality of life by the disabilities subject to special monthly compensation and review ancillary benefits to determine where additional benefits could improve disabled veterans' quality of life. | Congress |
| 6.2 | The amount of payment for aid and attendance should be adjusted to fully pay for the extent of assistance required. | Congress |
| 6.3 | Extend aid and attendance to severely injured active-duty servicemembers who are in a status pending discharge. | Congress |
| 6.4 | The automotive and housing adaptation benefit should be modified to cover service-connected veterans who need this assistance and are not currently eligible—for example, severe burn victims. | Congress |
| 6.5 | Provisions should be made to accommodate changing life circumstances by allowing a specially adapted housing grant at least twice. | Congress |
| 6.6 | Eliminate the premium paid by servicemembers for Traumatic Servicemembers' Group Life Insurance. | Congress |
| 6.7 | The maximum amount of coverage should be increased and up-to-date mortality rates should be used to calculate premiums for Service-Disabled Veterans' Insurance. | Congress |

The Commission's Recommendations—Continued

| Number [1] | Recommendation | Actionable By |
|---|---|---|
| 6.8 | Expand eligibility for the Veterans' Mortgage Life Insurance to include servicemembers of the Armed Forces who have received housing modification grant assistance from VA for severely disabling conditions. | Congress |
| 6.9 | Access to vocational rehabilitation should be expanded to all medically separated servicemembers. | Congress |
| 6.10 | All service disabled veterans should have access to vocational rehabilitation and employment counseling services. | Congress |
| 6.11 | All applicants for Individual Unemployability should be screened for employability by vocational rehabilitation and employment counselors. | Congress |
| 6.12 | The administration of the Vocational Rehabilitation and Employment Program should be enhanced by increased staffing and resources, tracking employment success beyond 60 days, and conducting satisfaction surveys of participants and employers. | VA |
| 6.13 | VA should explore incentives that would encourage disabled veterans to complete their rehabilitation plan. | VA |
| *6.14 | Congress should eliminate the ban on concurrent receipt for all military retirees and for all servicemembers who separated from the military because of service-connected disabilities. In the future, priority should be given to veterans who separated or retired from the military under chapter 61 with—<br>• fewer than 20 years service and a service-connected disability rating greater than 50 percent, or<br>• disability as a result of combat. | Congress |
| | CHAPTER 7 | |
| 7.1 | Congress should authorize VA to revise the existing payment scale based on age at date of initial claim and based on degree of severity for severely disabled veterans. | Congress |
| 7.2 | Congress should adjust VA compensation levels for all disabled veterans using the best available data, surveys, and analysis in order to achieve fair and equitable levels of income compared to the nondisabled veteran. | Congress |
| 7.3 | VA and DOD should be directed to collect and study appropriate data, with due restrictions to ensure privacy. These agencies should be granted statutory authority to obtain appropriate data from the Social Security Administration and the Office of Personnel Management only for the purpose of periodically assessing appropriate benefits delivery program outcomes. | Congress |
| *7.4 | Eligibility for Individual Unemployability (IU) should be consistently based on the impact of an individual's service-connected disabilities, in combination with education, employment history, and medical effects of an individual's age or potential employability. VA should implement a periodic and comprehensive evaluation of veterans eligible for IU eligible. When appropriate, compensation should be gradually reduced for IU recipients who are able to return to substantially gainful employment rather than abruptly terminating disability payments at an arbitrary level of earning. | VA |
| *7.5 | Recognizing that Individual Unemployability (IU) is an attempt to accommodate individuals with multiple lesser ratings but who remain unable to work, the Commission recommends that as the Schedule for Rating Disabilities is revised, every effort should be made to accommodate such individuals fairly within the basic rating system without the need for an IU rating. | VA |
| *7.6 | Congress should increase the compensation rates up to 25 percent as an interim and baseline future benefit for loss of quality of life, pending development and implementation of a quality-of-life measure in the Rating Schedule. In particular, the measure should take into account the quality of life and other non-work-related effects of severe disabilities on veterans and family members. | Congress |

The Commission's Recommendations—Continued

| Number [1] | Recommendation | Actionable By |
|---|---|---|
| 7.7 | Congress should create a severely disabled stabilization allowance that would allow for up to a 50 percent increase in basic monthly compensation for up to 5 years to address the real out-of-pocket costs above the compensation rate at a time of need. This would supplement to the extent appropriate any coverage under Traumatic Servicemembers' Group Life Insurance. | Congress |
| *7.8 | Congress should consider increasing special monthly compensation, where appropriate, to address the more profound impact on quality of life of the disabilities subject to special monthly compensation. Congress should also review ancillary benefits to determine where additional benefits could improve disabled veterans' quality of life. | Congress |
| 7.9 | DOD should reassess the policy of allowing separation without compensation for individuals found unfit for duty who are also found to have a preexisting disability for up to 8 years of active duty. | DOD |
| 7.10 | VA and DOD should adopt a consistent and uniform policy for rating disabilities using the VA Schedule for Rating Disabilities. | VA and DOD |
| 7.11 | DOD should reassess the ratings of servicemembers who were discharged as unfit but rated 0 to 30 percent disabled to determine if those ratings were equitable. (Note: Commission data only went back to 2000.) | DOD |
| *7.12 | VA and DOD should realign the disability evaluation process so that the services determine fitness for duty, and servicemembers who are found unfit are referred to VA for disability rating. All conditions that are identified as part of a single, comprehensive medical examination should be rated and compensated. | Congress, VA, and DOD |
| *7.13 | Congress should enact legislation that would bring the ancillary and special-purpose benefits to the levels originally intended considering cost of living and provide for automatic annual adjustments to keep pace with cost of living. | Congress |
| 7.14 | VA disability benefits (including Traumatic Servicemembers' Group Life Insurance), except VA compensation benefits received in lieu of military retired pay, should not be considered in state court spousal support proceedings. | Congress |
| 7.15 | Lump sum payments should not be considered to compensate veterans for their disabilities. | No action required |
| | CHAPTER 8 | |
| 8.1 | Congress should extend eligibility for the Civilian Health and Medical Program of the Department of Veterans Affairs to caregivers and create a ''caregiver allowance'' for caregivers of severely disabled veterans. | Congress |
| *8.2 | Congress should eliminate the Survivor Benefit Plan/Dependency and Indemnity Compensation offset for survivors of retirees and in-service deaths. | Congress |
| 8.3 | Allow the veteran's survivors, but not a creditor, to pursue the veteran's due but unpaid benefits and any additional benefits by continuing the claim that was pending when the veteran died, including presenting new evidence not in VA's possession at the time of death. | Congress |
| | CHAPTER 9 | |
| *9.1 | Improve claims cycle time by:<br>• establishing a simplified and expedited process for well-documented claims, using best business practices and maximum feasible use of information technology; and<br>• implementing an expedited process by which the claimant can state that the claim information is complete and waive the time period (60 days) allowed for further development.<br>Congress should mandate and provide appropriate resources to reduce the VA claims backlog by 50 percent within 2 years. | Congress and VA |
| 9.2 | Change the commencement date for the period of payment to the effective date of the award. (See also Recommendation 10.7) | Congress |

The Commission's Recommendations—Continued

| Number [1] | Recommendation | Actionable By |
|---|---|---|
| 9.3 | Reduce the appellate workload by focusing on improved accuracy in the initial decision-making process, enhance the appeals process by ensuring adequate resources to dispose of existing workload on a timely basis, and deploy technology for transferring electronic records between field offices and the Board of Veterans Appeals. | VA |
| 9.4 | VA should review the current duty to assist process and develop policy, procedures, and communications that ensure they are efficient and effective from the perspective of the veteran. VA should consider amending Veterans Claims Assistance Act letters by including all claim-specific information to be shown on the first page and all other legal requirements would be reflected, either on a separate form or on subsequent pages. In particular, VA should use plain language in stating how the claimant can request an early decision in his or her case. | VA |
| 9.5 | VBA regional office staff must receive adequate education and training. Quality reviews should be performed to ensure these frontline workers are well versed to rate claims. Adequate resources must be appropriated to hire and train these workers to achieve a manageable claims backlog. | Congress and VA |
| | CHAPTER 10 | |
| 10.1 | VA and DOD should enhance the Joint Executive Council's strategic plan by including specific milestones and designating an official to be responsible for ensuring that the milestones are reached. | VA and DOD |
| 10.2 | The Department of Labor and the Social Security Administration should be included in the Joint Executive Council to improve the transition process. | VA and DOD |
| 10.3 | VA and DOD should jointly create an intensive case management program for severely disabled veterans with an identifiable lead agent. | VA and DOD |
| 10.4 | To facilitate seamless transition, Congress should adequately fund and mandate the Transition Assistance Program throughout the military to ensure that all servicemembers are knowledgeable about benefits before leaving the service. | Congress |
| 10.5 | Benefits Delivery at Discharge should be available to all disabled separating servicemembers (to include National Guard, Reserve, and medical hold patients). | VA and DOD |
| 10.6 | DOD should mandate that separation examinations be performed on all servicemembers. | DOD |
| 10.7 | Disability payments should be paid from the date of claim. | Congress |
| 10.8 | DOD should expand existing programs that translate military occupational skills, experience, and certification to civilian employment. | DOD |
| 10.9 | DOD should provide an authenticated electronic DD–214 to VA. | DOD |
| 10.10 | VA and DOD should improve electronic information record transfers and address issues of lost, missing, and unassociated paper records. | VA and DOD |
| *10.11 | VA and DOD should expedite development and implementation of compatible information systems including a detailed project management plan that includes specific milestones and lead agency assignment. | VA and DOD |
| 10.12 | Congress should authorize and fund VA to establish and provide support services for the families of severely injured veterans similar to those provided by DOD. | Congress |
| 10.13 | DOD should standardize the definition of the term ''severely injured'' among the services and with VA, and create a common database of severely disabled servicemembers. | VA and DOD |
| 10.14 | DOD should consider the findings of the Severely Injured Marines and Sailors Program and the Army Wounded Warrior Survey. | DOD |
| 10.15 | DOD and VA should make transitioning servicemembers aware of Social Security Disability Insurance. | VA and DOD |
| 10.16 | Congress should consider eliminating the Social Security Disability Insurance minimum required quarters for severely injured servicemembers. | Congress |

The Commission's Recommendations—Continued

| Number [1] | Recommendation | Actionable By |
|---|---|---|
| 10.17 | DOD should remove Tricare requirements for copays and deductibles for the severely injured servicemembers and their families. | DOD |
| 10.18 | Maintain the accessibility and stability of quality health care for all disabled veterans. | No action required |
| 110.19 | VA and DOD should fund research in support of the needs of veterans from Operation Iraqi Freedom and Operation Enduring Freedom. | VA and DOD |
| | CHAPTER 11 | |
| *11.1 | Congress should establish an executive oversight group to ensure timely and effective implementation of the Commission recommendations. This group should be cochaired by VA and DOD and should consist of senior representatives from appropriate departments and agencies. It is further recommended that the Veterans' Affairs Committees hold hearings and require annual reports to measure and assess progress. | Congress |

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RESPONSES TO QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA, CHAIRMAN, TO JAMES TERRY SCOTT, LTG, USA (RET.), CHAIRMAN, VETERANS' DISABILITY BENEFITS COMMISSION

First, let me say that the answers I am providing to your questions reflect my views and not necessarily those of all the members of the Veterans' Disability Benefits Commission since the Commission completed its work in October 2007 and submitted the report at that time.

*Question 1.* The Commission offered an estimate that only 1.1 million new veterans will enter the veterans' population between 2006 and 2030. How did the Commission arrive at that estimate?

Response. This question apparently refers to the information contained in Table 6.3, Average Monthly Number of Veterans Receiving VA Disability Compensation and Annual Cost, 2000–2018, on page 229 of our Commission's report. This data was provided to the Commission by the Veterans Benefits Administration and I refer you to VBA for a detailed explanation of the model used to project the number of veterans receiving disability compensation and the estimated annual amount of the benefit. My understanding is that the number of veterans considers both the number of discharges anticipated by the Department of Defense and VA's actuarial projection of mortality of service disabled veterans. The number of discharges would be much greater than 1.1 million but offset by the expected number of veteran deaths.

*Question 2.* What was the Commission's conclusion as to whether medical expertise should be available to claims adjudicators when they are reviewing applications for compensation?

Response. Our Commission asked the Institute of Medicine (IOM) to provide advice on the role of clinicians in the claims/appeal process. We were aware that medical staff are no longer members of VA rating boards yet physicians are members of the Department of Defense disability evaluation process at all decision and appeal stages. IOM concluded that VA raters should have ready access to qualified health care experts who can provide advice on medical and psychological issues that arise during the rating process (IOM Recommendation 5–5 [1]). The Commission agreed with that recommendation. We believe that Congress will need to act to guide the Court of Appeals for Veterans Claims in what medical consultants may do (weigh the medical evidence) and may not do (substitute their opinion for the treating physician's.) This subject is addressed more fully in pages 116–119 in the Commission's report and pages 193–195 in the IOM report: *A 21st Century System for Evaluating Veterans for Disability Benefits*.

*Question 3.* The Commission found that not only is VA's current Rating Schedule out of date but that VA does not have an adequate system for updating the Rating

[1] IOM, *A 21st Century System for Evaluating Veterans for Disability Benefits*, The National Academies, 2007, 193–195.

Schedule nor the resources to create such a system. According to the Institute of Medicine report, which the Commission relied on, VA currently has only one physician and a support staff responsible for all updates pertaining to the Rating Schedule. Did the Commission have a view on what level of resources are needed in order to keep the Rating Schedule current? Did the Commission have a view on whether VA should have a specific unit and staff assigned to update and maintain the Rating Schedule?

Response. Our Commission did not estimate the staffing requirements needed to complete the revision of the Rating Schedule nor the staffing needed to keep the schedule up to date. Neither did IOM, although IOM noted that the Social Security Administration has six doctors and several times that number of analysts for its revision process. It is clear that VA has not made sufficient progress since its "major revision effort" was begun in 1990. Therefore, VA must devote much greater management attention and resources if it is to complete the revision of the schedule in a timely manner. A separate organizational element internal to VA and devoted to this effort might well a useful approach.

*Question 4.* One very significant change recommended by the Commission is expanding the concept of disability to include functional limitations in daily living and loss of quality of life. Please describe the Commission's process in arriving at this recommendation.

Response. Our Commission concluded that there has been an implied but unstated Congressional intent to compensate disabled veterans for impairment in quality of life due to their service-connected disabilities. Our conclusion was reflected in Research Question 2 of our 31 research questions. The Commission addressed this research question in two ways. We asked the IOM to suggest specific measures for assessing the impact of disability on quality of life. In addition, we requested that CNA Corporation (CNAC) conduct an extensive survey of a representative sample of disabled veterans to ascertain the extent of the impact. IOM's analysis is reflected in Chapter 3 of its report: *A 21st Century System for Evaluating Veterans for Disability Benefits*, and its recommendation 3–1 (pg. 89) concluded that limiting compensation to work disability or earnings loss would be too restrictive and inconsistent with current models of disability. IOM recommended also compensating veterans for loss of ability to engage in usual life activities other than work and loss in quality of life. The results of the CNAC survey demonstrated that disabilities diminish quality of life at all levels of ratings and further, that the impact is greater for those with mental rather than physical disabilities. Together, the IOM and CNAC findings provide a sound philosophical and research-based justification for compensating veterans for the impact of their service-connected disabilities on quality of life. That is what the Commission recommended.

*Question 5.* C.N.A.'s analysis of the impact of disabilities on veterans' earning capacities found that veterans who enter the compensation system at a younger age earn significantly less over the course of their lifetime than do veterans who enter the system later in life. The Commission's report recommends revising the payment scale to increase payments to younger veterans, especially the severely disabled. Did the Commission discuss how this might be done without leaving older veterans with the impression that they are being shortchanged?

Response. The CNAC analysis clearly demonstrates that a disparity exists for the younger veteran and that it is because veterans entering the system at older ages have much of their working life behind them. This would need to be explained to the older veterans. Our Commission did not discuss specific approaches that could be used to explain these findings to older veterans.

*Question 6.* Based on an analysis by CNA, the Commission's report concludes that the dramatic increase in the number of I.U. recipients in recent years is not due to manipulation of the system, as some have suggested. Instead, the report suggests that a proper revision of the Rating Schedule would remove the need to deem many veterans as individually unemployable. Please expand on the Commission's views on the current deficiencies in the Rating Schedule and on what measures might correct the over-reliance on I.U.

Response. The over-reliance on IU is based on the limitations of the current schedule which requires a finding of IU in order to address demonstrated unemployability. The single biggest deficiency in the Rating Schedule regarding IU is found in the criteria for mental disorders, especially PTSD. A single set of criteria is used for rating all mental disorders. These criteria require the disorder to cause the veteran to be unable to work in order to be rated at the 100 percent level. Of the 223,000 veterans assigned IU status as of December 2005, 31 percent had PTSD and 16 percent had other mental disorders. Thus, almost half had mental disorders. It is not clear why these veterans were not rated 100 percent without the need to

assign IU status if they are truly unable to work due to their mental disorders. Our Commission recommended revision of the criteria and a separate set of criteria for PTSD. Many of these veterans can be rated 100 percent instead of IU if their disabilities truly make them unable to work.

*Question 7.* The Commission's report recommends that VA launch a research effort to determine the extent to which the current Rating Schedule fails to compensate veterans for loss of quality of life for a particular disability. The report does not come to any conclusions about how the current Rating Schedule falls short in compensating for quality of life, but nonetheless recommends that Congress increase compensation rates up to 25 percent as "an interim and baseline future benefit for loss of quality of life." Please explain how the Commission arrived at this recommendation. Did the Commission have a view on how long this increase should remain in place?

Response. Our Commission had CNAC conduct an analysis of earnings that concluded that overall disability compensation payments overcome average loss of earnings capacity except for veterans with PTSD or other mental disorders and those severely disabled at a younger age. However, the analysis also found that disability compensation does not provide any compensation for the impact of disability on quality of life. IOM recommended that compensation be paid for impact on quality of life as well as lost earnings while acknowledging that the measurement tools or scales currently available are still in the formative stages. Therefore, IOM recommended, and our Commission agreed, that VA should launch a research and development effort and study ways of determining loss of quality of life. In light of VA's lack of progress in revising the Rating Schedule and in anticipation of a fairly lengthy process to develop and validate the tools to measure loss of quality of life, our Commission felt that immediate action should be taken to begin to compensate veterans in the meantime. Thus, we recommended that current compensation rates be increased by up to 25 percent (and I stress "up to"), with first consideration for the severely disabled. Congress and VA must determine exactly how the increase would be implemented. This temporary increase should remain in effect until the more structured process could be developed, authorized (if needed), and implemented.

*Question 8.* The Commission recommended that VA explore compensating veterans for the non-work aspects of disability as well as for losses in quality of life, independent of one another. These two concepts appear to be closely related. How can a new Rating Schedule and payment scale avoid an overlap in the adverse effects of disability that the two elements each account for?

Response. Our Commission recognized that some of the criteria contained in the Rating Schedule, particularly for mental disorders, could be viewed as addressing quality of life and the non-work aspects of disability. To some extent, the Special Monthly Compensation (SMC) payments for such things as loss of or loss of use of limbs or organs also address quality of life and non-work aspects of disability rather than loss of earnings. Loss of quality of life and the other non-work aspects of disability could be integrated into the revised Rating Schedule. An alternative is to consider the approach of some foreign countries that have completely separate scales to address quality of life and loss of earnings. Some offer a lump sum payment. The mechanisms for establishing a payment scale must be developed by Congress and VA.

*Question 9.* The Commission's report discusses at some length VA's vocational rehabilitation and employment program and summarizes a number of reports and evaluations that have been completed since 1999. However, the report does not appear to state an independent view on the role of vocational rehabilitation within the context of the rehabilitation of an individual with a severe disability. Please describe what you believe to be the Commission's view on VA's current vocational rehabilitation program and what role it is playing in rehabilitating veterans with serious disabilities.

Response. Our Commission developed a series of eight principles intended to underpin the policies and practices of veterans' disability benefits now and in the future. Principle 2 states: "The goal of disability benefits should be rehabilitation and reintegration into civilian life to the maximum extent possible while preserving the veteran's dignity." We recognized that numerous efforts have been undertaken over the past several years to restructure and refocus the vocational rehabilitation program and its organizational structure, largely to place greater emphasis on employment rather than on education and training. We also noted that the three largest groups of participants were rated 30 percent, 40 percent, and 20 percent, indicating that perhaps sufficient emphasis may not be given to the more seriously disabled.

We did not devote sufficient attention and analysis to vocational rehabilitation to offer detailed recommendations beyond those in the report.

*Question 10.* To the extent that some component of payment of disability benefits is based on a "loss of earnings," does that suggest that the successful completion of a program of vocational rehabilitation and placement in a job should result in a reevaluation of the extent to which earnings are adversely impacted by a disability?

Response. I do not believe that any individual veteran who completes vocational rehabilitation should automatically be re-evaluated. Nor do I think that disability compensation should in any way become a means tested program. Veterans should be encouraged to overcome their disabilities to the maximum extent possible without fear of losing benefits. However, disability benefits for earnings loss is based on the average loss for all similarly situated veterans and our Commission recommended periodic analysis of earnings (recommendations 7.2 and 7.3). To the extent that successful vocational rehabilitation of disabled veterans results in increased earnings, the average loss of earnings will be impacted and the analysis would identify the impact. Consideration can then be given to adjustment of future payment rates if warranted.

*Question 11.* Under VA's VR&E program of Independent Living Services there is an annual cap on participation of 2,500. Did the Commission look at the impact this cap may have on the provision of services to severely disabled individuals and their rehabilitation and reintegration?

Response. The Commission was not aware of the existence of a cap on independent living and did not address this issue. I believe that VA should be prepared to assist all severely disabled service-connected veterans who need assistance with independent living. I do not know the purpose of an arbitrary cap that could result in denying help to any qualified veteran who needs it.

*Question 12.* The Commission made several recommendations concerning compensating disabled veterans for loss of quality of life. I know that the military considers quality of life an important part of the equation for taking care of servicemembers and that quality of life can contribute significantly to the morale of military units. As one who served over thirty years in uniform, please give us your thoughts on how it should be defined and measured in the context of a disability compensation system.

Response. I agree that quality of life is an extremely important aspect of military life and is reflected in morale, retention and reenlistment rates, recruitment, and especially mission success. I think there is ample evidence and the Department of Defense devotes considerable efforts to assessing the impact housing, recreation, and benefits such as commissary privileges and significant funding on improving those aspects found to be of greatest importance to servicemembers and their families. In the context of a disability compensation system, I believe that IOM accurately described the many dimensions of quality of life as cultural, psychological, physical, interpersonal, spiritual, financial, political, temporal, and philosophical. All of these dimensions are important aspects to be considered when assessing the impact of disability. IOM also identified and described many of the various approaches used to measure and compensate for impact on quality of life. The range of approaches include programs in Canada and Australia for disabled veterans. I believe that a more thorough and detailed analysis of both measures and compensation schemes should be completed in an expedited manner so that options can be considered and policy decisions made as soon as possible.

*Question 13.* The Commission noted that it found incidences of non-compliance with veterans' preference enforcement in hiring and contracting and with civilian requirements for certification and licensure. However, there do not appear to be any recommendations in this area. Please discuss how the Commission dealt with this issue and why no recommendations were made.

Response. The Commission became aware of allegations of non-compliance through testimony at public meetings and correspondence from veterans. This topic was outside the Commission's charter, and we did no analysis to determine the scope of the problem. Therefore, we did not include recommendations on this issue in our final report as a result.

*Question 14.* The Commission recommended that VA and DOD jointly create an intensive case management program for severely disabled veterans. In response to a recommendation of the Dole-Shalala Commission, VA is hiring ten Recovery Care Coordinators as part of a pilot program to improve case management. Do you believe that this current effort responds to the Commission's recommendation or did the Commission envision a larger program?

Response. The Commission did not attempt to estimate the appropriate number of case managers. I would defer to the best judgment of VA and DOD.

*Question 15.* Did the Commission view the term "severely injured," for which the Commission recommended DOD adopt a standardized definition, as the same as the term "severely disabled?" If not, what are the differences between the two terms?

Response. The term severely injured has been generally used by the services and therefore that is the term that the Commission used. In hindsight, perhaps we should have used the term "severely disabled" since there are many instances in which a servicemember becomes severely disabled as a result of a disease or an event such as a stroke, not as a result of an injury. The severity of the disability seems to be what is of greatest importance. The point we tried to make is that a commonly accepted definition is not in use.

*Question 16.* Please discuss the disparities that the Commission found between the transition benefits and services available to members of the Guard and Reserve as opposed to those available to active duty servicemembers.

Response. Our Commission was aware of the efforts of the Commission on the National Guard and Reserves and tried to be cognizant of the special challenges faced by the Guard and Reserves. However, we were not able to devote a great deal of effort researching this area. We specifically addressed the Guard and Reserves in Recommendation 5.7 which would require a mandatory benefits briefing for all separating servicemembers, including National Guard and Reserves. Also, Recommendation 10.5 pertaining to Benefits Delivery at Discharge would make BDD services available to all separating servicemembers (to include National Guard, Reserve, and medical hold patients) who may not currently participate because they often do not have an established separation date or one that falls within 180 days of separation.

*Question 17.* Was it the Commission's intention that service-connected compensation would be withheld in whole or in part if a veteran with a psychiatric disability was not participating in a recommended treatment program?

Response. The Commission did not specifically discuss withholding compensation in whole or in part but some level of penalty for non-compliance may be implied if treatment, compensation, and vocational assessment are coupled and a reevaluation is completed every 2–3 years as recommended. The Commission understood the difficulty associated with implementing this recommendation and did not want to be too prescriptive, allowing VA and the Congress to decide the best way to implement the intent of this recommendation. We did not feel that veterans with PTSD are well served if only compensation is provided without providing for treatment, vocational rehabilitation, and follow up to determine efficacy of treatment.

*Question 18.* Was it the Commission's expectation that an additional service-connected compensation benefit would be paid only if a veteran with a psychiatric disability was participating in a recommended treatment program?

Response. The holistic approach we recommended might include an additional benefit for treatment, but compliance with treatment should be a requirement.

*Question 19.* How did the Commission envision the relationship between reevaluation for PTSD and payment of compensation?

Response. Again, the Commission did not want to be too prescriptive and allowed sufficient latitude for the mental health and benefits professionals to develop a reasonable program design.

*Question 20.* According to the Institute of Medicine, the only treatment for PTSD that has been concluded to be effective is exposure therapy. This therapy may not be available in all geographic areas. Under what circumstances, if any, should veterans be permitted to receive service-connected compensation or additional compensation if effective therapy is not reasonably available in the geographic area where they reside?

Response. The IOM report: *Treatment of Post Traumatic Stress Disorder*, was published after the completion of the Commission's report and could not, therefore be reflected in our report. From a very brief review of this report, I noted that IOM specifically said that ". . . concluding that the evidence is inadequate to determine efficacy is not the same as concluding that a treatment modality is inefficacious."[2] IOM further stated that they did ". . . not intend to imply that, for example, exposure therapy is the only treatment that should be used in treating individuals with PTSD."[3] I think it is the responsibility of VA to ensure that appropriate treatment for service-connected disabilities is available, in the private sector if necessary. As a person who resides in a rural area of the country, I am well aware that there are

[2] IOM, *Treatment of Post Traumatic Stress Disorder*, The National Academies, 2008, 1.
[3] Ibid., 14.

many areas of the country in which adequate health care of all kinds is not readily available. To some extent, it is a matter of individual choice as to where a disabled veteran lives. The choice is often accompanied by limitations in certain conveniences and services, including availability of health care.

*Question 21.* Was it the intention of the Commission that veterans would be required to participate in any treatment or only treatment which has been proven to be effective in order to receive compensation or additional compensation for PTSD or other mental disorders?

Response. Again, the IOM report on PTSD treatment post dated our Commission's report. Our intent was that veterans with PTSD should participate in approved treatment. In my judgment, there was inadequate research available to specify which treatments are "proven."

*Question 22.* How should compliance with treatment be evaluated in cases where the treatment has significant side effects or is contraindicated by reason of other medical conditions, including pregnancy?

Response. Our Commission did not address the issue of treatment or pharmacology that is contraindicated or has side effects. VA addresses these situations on a daily basis and medical opinion should prevail.

*Question 23.* Because veterans with mental disabilities would be required to be re-evaluated on a periodic basis, it appears that these veterans could never receive a rating of permanent and total disability. As a result, their families would be ineligible for CHAMPVA health care or dependents' education benefits. Was this the Commission's intention?

Response. The Commission did not assume that reevaluation every two to 3 years would have automatic bearing on eligibility for CHAMPVA health care for dependents. This situation is resolvable by Congress and VA.

*Question 24.* The Commission believes that veterans who completed at least one period of honorable service should be barred from VA benefits if a later period of service terminates under conditions other than honorable. In a number of cases, subsequent evaluation of veterans, especially combat veterans, has indicated that the bad behavior (including AWOL status) for which they received a less than honorable discharge was related to psychiatric impairments, including substance abuse from attempts to self-medicate. What consideration did the Commission give to the effect of psychiatric disabilities, sometimes mischaracterized as personality disorders, on the character of discharge?

Response. The Commission's recommendation is to bar all benefits for those discharged with a bad conduct or dishonorable discharge. It did not recommend barring those with discharges in the category of other than honorable. There are existing VA and DOD processes under which individuals with uncharacterized discharges or discharges under other than honorable conditions can apply for reconsideration.

*Question 25.* Should VA benefits be provided to veterans who have had their discharges upgraded by a military review board authorized to correct the character of discharge?

Response. Discharges upgraded by a military review board would be accepted as upgraded.

*Question 26.* As proposed in the draft America's Wounded Warriors Act, should a portion of a veteran's compensation ever be automatically utilized as a premium for survivor benefits if that benefit is then offset against dependency and indemnity compensation for which the surviving spouse would otherwise be entitled? Is this a program that the Commission considered?

Response. The Commission did not consider an approach in which survivor benefits could be ensured by a voluntary (or involuntary) contribution from disability compensation similar to the DOD Survivor Benefit Program (SBP).

*Question 27.* Given the Commission's experience with relying on reports from outside groups, is 7 months adequate time for VA to contract for a report and then present that completed report to Congress on such a complicated and important issue as appropriate compensation amounts under a new disability system that reflects average loss of earning capacity and loss of quality of life?

Response. I have not had an opportunity to review the scope and requirements of the new VA contracted study so I am not in a position to comment on the adequacy of the time allowed. Certainly, completing any kind of detailed study within 7 months will be a challenge.

RESPONSES TO QUESTIONS SUBMITTED BY HON. RICHARD BURR, RANKING MEMBER, TO JAMES TERRY SCOTT, LTG, USA (RET.), CHAIRMAN, VETERANS' DISABILITY BENEFITS COMMISSION

*Question 1.* I understand that you have had an opportunity to review a summary of the bill I have been working on, which would get the Department of Defense out of the business of rating disabilities, create transition payments for those found unfit for duty, require a complete update of the Rating Schedule, and compensate for loss of quality of life. Given that the work of your commission heavily influenced that draft bill, I would be interested in your preliminary thoughts about it and any suggestions you may have for how it could be improved.

Response. I have reviewed the summary of your draft bill and generally agree with its major provisions. Understanding that one bill cannot address all of the Commission's recommendations, I would like to see some future action on the key recommendations we offered.

*Question 2.* You mentioned in your testimony that all veterans should be evaluated and compensated under the same criteria and that we should not set up different systems for different generations of veterans.

*A.* If the Department of Veterans Affairs (VA) updates the Rating Schedule to incorporate a quality of life component, would you suggest that we allow all veterans to be re-rated under that updated schedule?

Response. That would be one approach. Another is to base the quality of life component on the existing level of disability, which may make re-rating unnecessary.

*B.* If so, do you have any suggestions for how we could help VA deal with a potentially large influx of claims from veterans seeking to be re-rated?

Response. Whatever approaches are approved by VA and the Congress, any requirement to re-rate large numbers of veterans should be avoided.

*Question 3.* You noted in your testimony that you are in general agreement with recommendations made by the Dole-Shalala commission last year, but you did not support the distinction between combat and non-combat veterans and ending compensation at retirement age. If those aspects were removed, would you support their recommendations in total?

Response. The Dole-Shalala report and recommendations were somewhat vague in a number of areas. The body of the report contained a number of recommendations that were not included in the major recommendations offered. For those reasons I cannot say that I support their recommendations "in total."

*Question 4.* As the Institute of Medicine found, updating the Rating Schedule to compensate for loss of quality of life "would be difficult and costly." Do you agree with that assessment? If so, do you believe it is still worth pursuing?

Response. Apparently updating the Rating Schedule is difficult and costly as VA has failed to do so in a comprehensive manner up to now. I believe that compensation for loss of quality of life is an important factor in revising the schedule and do not think that developing a quality of life component is an unreasonable burden.

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RESPONSE TO QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON, SENATOR FROM TEXAS, TO JAMES TERRY SCOTT, LTG, USA (RET.), CHAIRMAN, VETERANS' DISABILITY BENEFITS COMMISSION

*Question 1.* How many positions within the VA are tailored to coordinate health care services for wounded servicemembers? What are the titles and responsibilities for the persons that are responsible for coordinating a wounded servicemember's health care? Please highlight any distinctions that exist between those serving in each of the different armed services, the National Guard, and the Reserves.

*Question 2.* How many positions within the VA are tailored to coordinate disability benefits for wounded servicemembers? What are the titles and responsibilities for the persons that are responsible for coordinating a wounded servicemember's disability benefits? Please highlight any distinctions that exist between those serving in each of the different armed services, the National Guard, and the Reserves.

*Question 3.* What is the VA doing to improve the transition experienced by wounded servicemembers from the Department of Defense to the VA?

*Question 4.* What is the VA doing to reduce the redundancy that exists between personnel that coordinate health care and disability benefits of a wounded servicemember's care?

*Question 5.* What is the VA doing to improve communication between the Veterans Health Administration (VHA) and the Veterans Benefits Administration

(VBA) to ensure the coordination of health care and disability benefits for wounded servicemember?

*Question 6.* What is the VA doing to improve communication with the Department of Defense to ensure a seamless transition between the two systems for wounded servicemembers?

Response. Senator Hutchison, I am not in a position to answer these questions since I do not possess the necessary current knowledge of VA operations. Many of the important issues you ask about are currently being addressed by VA, and I do not know their status. As you know, the Commission reported out in early October and I am not privy to the current status of these issues. I respectfully defer to the Department of Veterans Affairs.

Chairman AKAKA. Thank you very much, General. We will have two rounds of questions this morning for you.

General, I know you dealt with and also met with other organizations before your recommendations were made. Can you please describe in some detail the process that the Commission followed to examine the findings and recommendations made by the Institute of Medicine and CNA Corporation to decide whether to adopt the findings and recommendations of those organizations?

General SCOTT. Well, we begin, sir, by identifying 31 issues that we thought were worthy of study. Some of them required medical expertise and were assigned to the IOM for analysis. Some of them required a significant amount of data gathering and analysis and those were forwarded to the CNA Corporation. Some of them we were able to deal with through our staff. So we divided these 31 problem areas or issues between the three entities and went to work on them.

Now, the IOM, of course, as you well know, is a very independent organization and they provided the results of their studies, which are available as part of our report, and we carefully reviewed each recommendation that the IOM made. And we accepted virtually all of them—a couple with comment—and I believe there was one or two that we did not agree with. But, we discussed each recommendation they made in the light of how the Commissioners felt it fit into the program.

The same thing with the CNA—they provided us with a lot of data, some of which we provided you at the April hearing and the rest of which we provided your staff, and is included in the book. We asked at each juncture, well, what does this mean? You know, is this a gee-whiz figure and is that where it ends? Or is it something we need to deal with? And I go back to the analysis that said that, essentially, the compensation for loss of average earnings was adequate to cover the veterans that had it, except for three instances, and I believe those were: those with mental ailments or PTSD; those who entered the system at a very young age; and those who are granted maximum benefits because their disabilities make them unemployable.

Anyway, we took the information they provided and the analysis, and applied it to our own judgment and our own review, and we accepted, again, a great amount of their recommendations. We didn't accept them as, well, here they are, so we'll accept them all. Each one was discussed at length; and if it became a part of one of the Commission recommendations, then it appears in the 112–113 that we made. If it was one of those that we agreed with but did not incorporate into our results, well, it's in their reports.

So, it was done very carefully, very methodically over a long period of time, as many of the people sat through our endless sessions as we discussed these recommendations from the IOM and the CNA.

Does this get at your question, sir?

Chairman AKAKA. Yes, sir.

General, we understand also that there have been some assertions without recommendations. My question to you on that is, what weight was the Commission intending that Congress give to assertions where the Commission makes no recommendations, but cites, sometimes strongly, another group's recommendation? Let me give you an example.

In the beneficiary travel section, the Commission cites a Disabled American Veterans' resolution that recommends a line item in the VA budget specifically for beneficiary travel. There was an assertion made there, and so, I'm asking you about these other groups' recommendations.

General SCOTT. Well, if it was in one of our recommendations, we felt strongly about it. If it was an assertion, it was something that we discovered that we thought was worthy of comment. I believe the way we addressed that particular issue is, we said that the VA should have the same authority as the DOD to provide travel, food and lodging and all of that for the injured servicemember's family. I believe we covered that particular assertion in that recommendation.

So, if we felt strongly about it, it made it into the recommendation, sir.

Chairman AKAKA. General, the Commission recommended that reevaluations of veterans receiving benefits for PTSD should occur every two to three years to gauge treatment effectiveness and encourage wellness.

I note that IOM, in their report reviewed by the Commission, recommended that, and I quote, "the determination of whether and when reevaluations of PTSD beneficiaries are carried out should be made on a case-by-case basis using information developed in a clinical setting," unquote.

IOM also noted that the stressors associated with an evaluation for PTSD may increase symptoms.

My question to you is, why did the Commission reject the IOM recommendation on this issue?

General SCOTT. I would not characterize it as a rejection. I would characterize it as a difference between how the medical people look at reevaluation and how a group of, basically, veterans looked at it.

The IOM believes, and it is pretty much throughout their study, that the diagnosing physician or the clinician should make the recommendations for follow-on treatment for reevaluation and all of that; and I think that's probably the way that most medical people look at things. In other words, the IOM didn't think there should be a template that said, every two to three years everybody gets looked at.

Our view was, basically, that reevaluation was an integral part of a holistic approach, which included compensation, treatment, and vocational rehabilitation. I believe if the Commissioners were

all here, they would say that two to three years would be a guide and not a hard requirement. I think its just the way—the difference in the approach—that medical people have to these things and they leave it to the head clinician, versus the approach that we had which was, well, if we don't tell them to do it on a certain interval, they might not do it at all. So, I think it was a difference in approach.

Personally, I would never want to get into an argument with the IOM regarding the frequency of reevaluation. I might want to get into an argument with somebody about how good the initial evaluation was and how thorough the reevaluations were. But the timing issue—I do not think that's a critical issue for me.

Chairman AKAKA. Thank you very much, General.

Senator Burr.

Senator BURR. General, let me stay in the same area for just a second.

The Commission suggested linking Post Traumatic Stress Disorder treatment and rehabilitation with receipt of compensation.

General SCOTT. Right.

Senator BURR. Walk us through how the Commission envisions that being implemented?

General SCOTT. Well, sir, let me start with the Commission's conclusion and discussion—that the body of research on PTSD was limited to the point that it was very difficult for the IOM or anybody else to get their arms around. In other words—and I hope this is not offensive—but, we have just been paying people to go away with PTSD.

It has been a way of compensating veterans who are diagnosed with PTSD, but it has precluded, in the judgment of the Commission, any effort to make these people better. And, it is our judgment that one of the principle goals of the VA, and of us, was that we want to make people better, so that they can be returned to the fullest extent possible to ordinary life. Without treatment, I do not see how we were fulfilling that obligation. So, that is where treatment came from.

The approach of linking treatment, compensation, vocational rehabilitation and reevaluation was so that we could get a system where you could follow how people were doing.

Again, I am not necessarily hung up on the frequency of reevaluation, but it seems to me that if you do not reevaluate you do not know whether the treatment is doing any good or not. And many of the medical professionals believe that, while PTSD is not perhaps curable, it is treatable. And my judgment would be that we have not, as a Nation, in the past, made adequate effort to treat it.

And so, by linking these together in a non-adversarial way—to address Senator Tester's comments earlier—the Commission believed that that is a way we can get our arms around this PTSD issue. And, we can also gather the data that we need in order to do a better job in the future, perhaps prevention or early treatment and all of that. So, that is where it kind of came from, sir.

Senator BURR. Do you or the Commission believe that there are other disabilities that would be appropriate to tie compensation to

treatment? In other words, are there areas—not just limited to PTSD—where this would be appropriate and effective?

General SCOTT. Well, I think that anything that dealt with mental problems or issues could fall into that. In other words, you could ask the question, if a servicemember has lost a limb, once the stabilization has occurred and all of that, how much added benefit would there be to trying to tie compensation and treatment and all of those things together? It is minimal. I guess what I would say is that we Commissioners saw a difference between the mental side—which is much harder to get your arms around—and the physical side; which, in our judgment, the VA does a good job in the treatment and vocational rehabilitation of those physically injured.

Maybe not everybody agrees, but at least the VA has a program and an approach to dealing with physical injuries that occur. But when things are of a mental nature, including TBI, we believe that requires a lot more careful monitoring, a lot more of a treatment regimen and the like.

Senator BURR. General, I would like you to clarify and clear up something. The Commission recommended that some disability payments should be increased up to 25 percent. Many have interpreted the recommendations of the Commission to be that the entire Rating Schedule should increase 25 percent. That is not how I understood the recommendations of the Commission.

Would you try to clarify exactly what the Commission meant in that statement?

General SCOTT. Right. Well, I found myself misquoted on that on more than one occasion. I decided, well, it was probably due to lack of clarity on my part from trying to explain it. What we determined as a Commission was that, and you pointed this out, there is currently no payment nor compensation for loss of quality of life.

We believe that, based on the severity of the disability, there probably ought to be some sort of a sliding scale for compensation for loss of quality of life. The example would be, if you have someone with a 10 percent disability, one could made an argument that the effect on the quality of life would be, if not minimal, then certainly not great, but someone with 100 percent disability you would anticipate that the impact on quality of life would be significant.

So, the way we discussed it was that, well, for the 100 percent disabled up to 25 percent—something like around 25 percent additive—might cover the quality of life issues. But for the 10 percent certainly we would not recommend that they get full 25 percent quality of life addition because it probably has not affected their quality of life as much. So, we looked at it as a sliding scale based on disability with a maximum being about 25 percent. We also said that needed further study.

We felt obliged—if we were going to say, well, something has got to be done about quality of life—that we had to offer some sort of a model as to how that could be approached. It may not be the very best model, but we felt like we have got to do something about quality of life. So, rather than ask Congress or VA to figure it out, we felt obliged to put some sort of a model in there that at least could be considered. And it was on a sliding-scale basis, based on

degree of severity of the disability with the maximum being about 25 percent.

Senator BURR. Let me make sure I've also got my facts right. The Commission noted that there are some disabilities that have no impact on the ability to work and recommended that the VA conduct research on the extent to which the Rating Schedule already accounts for the loss of quality of life. Correct?

General SCOTT. Right.

Senator BURR. What is the Commission's recommendation relative to that point?

General SCOTT. Well, it goes back to the need to revise the Rating Schedule to address the problems of levels of disability in the context of today's society and today's medicine, and all of that. And, one of the things we were talking about there was that we weren't sure that all of the disabilities that were listed in the current Rating Schedule ought to be there, or ought to be there in the format they were. So, I think that is where that one came from.

Senator BURR. I appreciate the Chairman's indulgence. If I understand you correctly, the Commission looked and said there has to be a new Rating Schedule.

General SCOTT. Right.

Senator BURR. And, in that new Rating Schedule there are things that we have identified—PTSD and mental health issues—that we believe are woefully under-represented in payments in the current system.

There are things in the current system that the only way we could justify the payment is to say, quality of life played a part in the decision of, one, it being there or, two, the size of the payment. But, in the future there are some things that are going to be enhanced, there are some things that may go down, there are some things that may be eliminated, there are some things that may be added.

General SCOTT. Well, that is right, and that is why this revision of the Rating Schedule is so critical.

The concern that we had was that no where in the existing system is quality of life compensation quantified. Now, there is a body of thought in the organization that, well, the compensation, such as it is—let's say, I think it is $900 for 60 percent disability, something like that—that built into it is something that deals with quality of life. But, we found that, actually, the compensation is adequate to cover loss of average earnings but not of anything to do with quality of life.

So, what we were attempting to do was to separate out quality of life from average loss of earnings and, as you say, a new Rating Schedule may have some different approaches to ailments. There may be some new ones—and I am thinking now of TBI which we have never talked about before in great detail—and there may be some others that are combined or, arguably, might be dropped.

Senator BURR. Thank you.

I thank the chair.

Chairman AKAKA. Thank you very much, Senator Burr.

On the second round here, General, I just want to go back to the last question that I asked you about process for examination.

In the IOM report I discussed earlier, IOM also found that there is evidence that disability payments may actually contribute to better treatment outcomes.

My question to you is, on what basis did the Commission determine that reevaluations every two to three years would encourage wellness? Are there other medical or mental health conditions, which the Commission found that reevaluation would encourage wellness?

General SCOTT. Well, the data from the Center for Naval Analysis that analyzed the relationship between physical disability and overall mental health, and mental disability and overall physical health, led us to conclude that some kind of evaluation or treatment or both might improve the overall mental health or the overall physical health of the veteran who is disabled in some way. And, again, we were coming at it from the standpoint of, what we want to do is try to make them all better.

Now, we understand that that is resource-intensive and we understand that the VA has to set some priorities of how their medical professionals' time should be used. But if you look at the CNA reports in conjunction with the IOM, you kind of conclude that, well, there are a lot of these people whose general overall health, mental or physical or both, could be improved if they were receiving reevaluations or treatment.

The fear that some of the organizations have about reevaluations is that, if you're called in for reevaluation, they say they want to take money away from you. And we do not see it as that. We did not see it that way. We saw it as a way of determining—as having benchmarks for the physical and mental health situation of the veteran, benchmarks from either a treatment regimen or a reevaluation regimen or both, so that you could maybe improve their health. So, that was the basis that the Commission used for recommending that.

Chairman AKAKA. General, at our hearing last October, you testified that it was the Commission's guess that it would take five years to update the entire schedule of disabilities. However, the Commission offered that some priorities, such as TBI and PTSD, would be a good starting point and that the Commission hoped these would be done in a more expeditious fashion.

Please explain the timeline the Commission envisioned for how rapidly the TBI and PTSD revisions of the disability schedule could be done.

General SCOTT. Well, again, the comment about five years was, of course, pulled out of the report and it is another one that I probably did a poor job of explaining, where the five years came from. Because what we said was, we were trying to set an outside boundary which would force the revision to fall inside.

What we probably should have said in the report, and what I probably should have said in October is, that this can be done more quickly than that.

Basically, I do not think the Commissioners felt that they were qualified to say well, let's see—it's about a two-year deal or its about a two and one-half year deal. We really didn't feel qualified to make a precise comment, so, what we said was, well, it all needs

a look. Somebody should force them to do it short of five years—the whole thing.

Some parts of it need an immediate look, which I am proud to say that the TBI and the PTSD are both in the works at VA. In fact I think their paper on TBI has been released for comment.

So, these things are picked up on. I kind of go back to wishing I had said, that we do not know what the right figure would be for how long it would take the VA to do a complete revision of the Schedule. And I wish I had said, you know, that is something the VA is going to have to come in and justify to you—how long it would take, rather than just say, well, we ought to force them to do it within five years, which is what we said in the report.

So, it is probably something that if I was rewriting the report or revising my comments, I would try to steer away from the five years because it has been interpreted to mean, well—there is no way that the VA can do any of this short of five years, unfortunately. And that is not the way it was meant in the report, and that is not the way I meant it in the comments.

Basically, we do not know what the right number is for how long it should take the VA to revise the entire Schedule. I think the VA probably could give you some figures on that—on what their estimate might be.

Chairman AKAKA. Thank you very much.

Senator Burr.

Senator BURR. Mr. Chairman, I'll be very brief.

General Scott, I am going to warn you. I am going to send you some questions because I am not going to be able to get everything in.

General SCOTT. Okay.

Senator BURR. Two of them, and I won't ask for answers right now. Can a third-party group, organization, or company be hired or tasked to update the Rating Schedule? If so, how; and if not, why?

And, if all veterans were allowed to be rerated into a new system, how would the VA handle the volume of requests? And I am very anxious to know your recommendations on that.

The one question I do want to ask you is this: all three Commissions emphasized the need for DOD to get out of the disability rating business; to update the Disability Rating Schedule; to compensate veterans for loss of quality of life; and to place additional emphasis on rehabilitation.

In your view, since these problems have existed for five decades, why hasn't anything been done about it?

General SCOTT. Well, my opinion would be that the VA has not been resourced at a level that allowed them to adjudicate the cases on a more timely basis, and of course, it goes beyond just giving them money. You have got to recruit, train, retain people. And I think the training and retention of adjudicators is probably a reason why that has fallen behind and is still behind.

Beyond the resource issue, I think some of it is, there has been a reluctance to adopt such things as the Commission recommended: use more technology in the rating system; use more automated forms instead of, essentially, just doing it by hand. And they are moving in that direction. I think that is part of how they have fall-

en behind—a failure to follow good business practices that we see in many organizations. And, some of it is for the right reason: because they are worried about the individual veteran.

You do not want to come up with a system where you just punch in four numbers and it comes up—here is your rating—because everybody is different. So, it puts them in a quandary. But, I think the failure to adapt modern technologies and techniques; and a lack of resources; and maybe some management failures in terms of the recruiting, training, and retaining of adjudicators is part of it.

I am not sure I got at your whole question.

Senator BURR. I think we probably all know the answer to it—the political will. I think your Commission found what you proposed is extremely tough. It is hard. It affects a lot of lives. I think you did and I am going to walk through a door you opened.

General SCOTT. Okay.

Senator BURR. I probably would not do it if you had not opened it. I think there is a tendency on the part of government to find the easy way out, to stay away from the tough things, to stay away from the things that make some people happy and some people mad. And that has led us to the statement you made, "pay them to go away."

Just increasing a disability payment without increasing the opportunities to be productive in the future; I perceive we fail if that is the route we choose. If, in fact, we incorporate what we know and what medicine has taught us works, it may mean less money for some; it might mean no money for some, because they have overcome their disability. But, at the end of the day, if their ability to integrate back into the work force, their quality of life is enhanced, their earnings capacity has returned, I will feel that we succeeded.

I think we both know this is a mine field to walk down, and few Congresses in the past and few administrations in the past and few bureaucrats in the town are willing to do this heavy of a lift.

I hope you have learned from the time you've headed the Commission—and I think the Committee understands the importance of this—this is something we need to tackle. It is not going to be easy; it is going to be hard. We are not going to make everybody happy. Some people are going to be mad. But, at the end of the day, if our focus is on those men and those women who have given so much or the ones that are positively affected, then we will have done our job.

General SCOTT. Yes, sir. I do think a part of that is that we have got to have a Rating Schedule that addresses the issues. I do not think you can get to where you are talking about going with the current Rating Schedule; and, yes, it is a very touchy thing. There is a lot of concern that it will be used as a tool to reduce payments across the board, or to make it harder for a disabled veteran to get compensation, or all that. So, there is a whole lot to it.

And that kind of gets back to this business of who can revise the Rating Schedule. Certainly third-party groups can help. But a lot of the expertise in the Rating Schedule lies in the VA itself, and maybe people, former VA employees, could probably help a good bit. I do not think you can go out and hire a contractor to revise

the Rating Schedule unless the statement of work makes it very clear they are going to have to use some people with some true expertise in the area, or they are going to come up with something that is politically useless, that cannot be implemented.

And, you know, some of the things that I have seen and some of the notes that were passed around about pending legislation that I thought were pretty useful were ones that made it clear that veterans are grandfathered in—people who had been receiving benefits for 20 years and all of that.

The business about new systems—my concern is that, if we are not careful, we are going to wind up with two parallel systems that people will be able to hop back and forth based on their own volition. And if we do that, I just do not think the VA can handle it.

Senator BURR. I appreciate your observations and thank the Chairman for his indulgence. My biggest fear is that, if your statement is right, that it would take up to five years to totally revamp a rating system—that exceeds a four-year period of certainty in Washington, which is called an administration's length of term.

I fear we might be here—I won't be and the Chairman won't be here, but some in the room might be—50 years from now. And it will, in fact, be us that are quoted talking about changing the system and the system will look exactly the same.

So, I would only say to you and to all who are concerned with this, if that is the case, maybe it is time we begin to think out of the box as to how we could accomplish this in an expeditious way—one that works within the time frames of what Washington requires us to work in to get big things done.

General, I thank you.

General SCOTT. Yes, sir.

Chairman AKAKA. Thank you very much, Senator Burr.

General, I will have some questions to submit for your responses and so will Senator Burr and other members, I think, of this Committee.

I want to thank you for your statement and your responses to our questions. I thank you for what you are doing and look forward to working with you on trying to accomplish some of the recommendations that you have mentioned.

So, thank you.

General SCOTT. Yes, sir. I look forward to receiving your written questions and we will give you the very best answers we can come up with.

Chairman AKAKA. Thank you very much.

General SCOTT. Yes, sir. Thank you.

Chairman AKAKA. Now, I welcome our second panel. I am pleased that representatives of three advocacy groups have agreed to share with us their organizations' views of the recommendations of the Veterans' Disability Benefits Commission. Included on this panel are Todd Bowers, the Director of Government Affairs for the Iraq and Afghanistan Veterans of America; Gerald Manar, the Deputy Director of the VFW's National Veterans Service, who is presenting the views of the Independent Budget VSOs; and Mr. Steve Smithson, who serves as the Deputy Director for Claims Service for the National Veterans Affairs and Rehabilitation Commission of The American Legion.

I thank all of you for being here today and look forward to hearing your perspectives on the Commission's report. Of course, your full statements will appear in the record of the hearing.

Mr. Bowers, will you please begin with your statement.

**STATEMENT OF TODD BOWERS, DIRECTOR OF GOVERNMENT AFFAIRS, IRAQ AND AFGHANISTAN VETERANS OF AMERICA**

Mr. BOWERS. Mr. Chairman and Distinguished Members of the Committee, I thank you for inviting me to testify this morning on behalf of Iraq and Afghanistan Veterans of America (IAVA).

Founded in June 2004, the Iraq and Afghanistan Veterans of America is the Nation's first and largest nonprofit and nonpartisan group dedicated to improving the lives of Iraq and Afghanistan veterans and, very importantly, their families.

Everyday, veterans from the wars in Iraq and Afghanistan face serious bureaucratic barriers to receiving fair compensation for their injuries. Everyone agrees that action must be taken to reform the system. Dozens, perhaps hundreds, of plans have been put forth.

The work of the Veterans' Disability Benefits Commission, however, is unique in its scope and its thoroughness. The Veterans' Disability Benefits Commission spent years studying the intricacies of the disability benefits system, uncovering and documenting gaps and flaws in this system, and producing a comprehensive document that should act as a road map to the veterans' disability benefits reform. At IAVA we actually refer to it as the disability benefits reform bible.

Today, I would like to highlight three recommendations put forward by the Commission.

First, streamlining the disability system: as the Commission concluded, there should be one DOD/VA medical evaluation and interoperable medical records. The DOD should determine fitness for duty and should pay for a military pension or severance pay to those found unfit. The VA should determine the level of disability to compensate for loss of future earnings and quality of life. All of this should be communicated through Recommendation 5.21. By establishing a set of registries of servicemembers and veterans based on exposure, deployment, and disease histories, VA and DOD will finally be able to effectively communicate with servicemembers and their veterans.

Second, the entire VA disability benefits schedule should be revised. Disability ratings must take better account for the signature injuries of the Iraq War—Post Traumatic Stress Disorder and Traumatic Brain Injury. The May 2007 report by the Institute of Medicine and the National Research Council concluded that the VA's PTSD evaluation techniques are ineffective. According to the report, the criteria for mental disorders are crude, overly general, and unreliable.

In addition, the report questioned the use of separate ratings for mental illnesses that often appear together, things like PTSD and depression, the inconsistent criteria for rating relapsing/remitting conditions, and the use of occupational impairment as the sole metric for PTSD disability.

Finally, the Rating Schedule should also provide adequate compensation for both loss of earning capacity and loss of quality of life. Moreover, Congress must address the Commission's finding that young veterans are undercompensated. While such a system is being put in place, IAVA recommends that the compensation rates are increased while the Rating Schedule is being revised, as recommended by the VDBC.

The question remains, however, whether and how these and other valuable recommendations will be implemented. Our concern is that the Commission's recommendations will join the work of many other Commissions before them, collecting dust on a shelf. It is for that reason that we believe one of the most important recommendations of the Commission is their final one. Congress should establish an executive oversight group to ensure timely and effective implementation of the Commission's recommendations.

Along with the recommendations of the Dole-Shalala Commission, the work of the GAO, and other government oversight agencies, Congress has been presented with effective solutions to many of the problems facing today's wounded warriors. It is up to you to take bipartisan action.

By instituting an executive oversight group, Congress and the veterans' community can be assured that troops and veterans are getting the care they have so rightfully earned.

And I would also like to drive back from this that in my personal experience just three years ago, on my second tour, when I was wounded in Iraq, when I was shot in the face by a sniper, I never thought that I would be someone who was involved with the disability ratings system.

For the past eight months I have seen what going from a vet center, through the VA, to understanding what the system is. I will be honest with you; it is extremely difficult. My in-box is filled with some of my junior Marines asking me, "Sergeant Bowers, how do I do this? I know you are going through it." My answer to them is always, "It is extremely complex, but I promise you, as a Nation we are working on fixing these things."

And I cannot express enough how concerned we are at IAVA that many of these recommendations are, as I mentioned, going to be put on a shelf to collect dust. I have reviewed 11 Commissions that have been established since 1993 with upwards of 1,000 recommendations and many of those have not been implemented. It is going to be imperative that Congress take the time to look at everything that they have provided for you. They have given you the ammunition. You have got the rifle, you have got the target, squeeze the trigger and let us get these implemented as soon as possible.

I am open to any questions that you may have afterwards. Thank you, Mr. Chairman.

[The prepared statement of Mr. Bowers follows:]

PREPARED STATEMENT OF TODD BOWERS, DIRECTOR OF GOVERNMENT AFFAIRS, IRAQ AND AFGHANISTAN VETERANS OF AMERICA

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Today, I would like to highlight three key recommendations put forward by the Commission.

First, streamlining the disability system. As the Commission concluded, there should be one DOD/VA medical evaluation and interoperable medical records. The DOD should determine fitness for duty, and should pay for a military pension or severance pay to those found unfit. The VA should determine the level of disability to compensate for loss of future earnings and quality of life. All of this should be communicated through Recommendation 5.21 by establishing a set of registries of servicemembers and veterans based on exposure, deployment, and disease histories VA and DOD will finally be able to effectively communicate with servicemembers and veterans.

Second, the entire VA disability benefits schedule should be revised. Disability ratings must take better account for the signature injuries of the Iraq War—PTSD and TBI. The May 2007 report by the Institute of Medicine and the National Research Council concluded that the VA's PTSD evaluation techniques are ineffective. According to the report, the criteria for mental disorders are "crude," "overly general," and unreliable. In addition, the report questioned the use of separate ratings for mental illnesses that often appear together (like PTSD and depression), the inconsistent criteria for rating relapsing/remitting conditions, and the use of "occupational impairment" as the sole metric for PTSD disability.

Finally, the Rating Schedule should also provide adequate compensation for both loss of earning capacity and loss of quality of life. Moreover, Congress must address the Commission's finding that young veterans are undercompensated. While such a system is being put in place, IAVA recommends that compensation rates are increased while the Rating Schedule is revised, as recommended by the Veterans' Disability Benefits Commission.

The question remains, however, whether and how these and other valuable recommendations will be implemented. Our concern is that the Commission's recommendations will join the work of many other commissions before them—collecting dust on a shelf. It is for that reason that we believe the most important recommendation of the Commission is their final one:

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By instituting an executive oversight group, Congress and the veterans' community can be assured that troops and veterans are getting the care they have earned.

Chairman AKAKA. Thank you very much, Mr. Bowers.

Mr. Manar.

## STATEMENT OF GERALD T. MANAR, DEPUTY DIRECTOR, NATIONAL VETERANS SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. MANAR. Chairman Akaka, Ranking Member Burr, thank you for this opportunity to address you this morning. I am pleased to provide the views of the members of the Independent Budget—AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars of the United States—on the findings and recommendations of the Veterans' Disability Benefits Commission concerning the current disability compensation system.

During its two and one-half years, the VDBC held 55 days of hearings, heard testimony from hundreds of individuals, experts and organizations, commissioned two major studies from the Institute of Medicine, surveyed thousands of veterans, survivors, service officers and VA employees and, through the Center of Naval Analysis, analyzed income data from millions of veterans.

Except for administrative matters, all of its work was done out in the open where the harsh light of public scrutiny could, and did, illuminate its deliberations and conclusions.

While the Commission's final report offered 113 recommendations, we will focus our testimony on its recommendations dealing with the disability compensation program. Specifically, today we will discuss the Schedule for Rating Disabilities, quality of life, and individual unemployability.

The current Rating Schedule is the latest of a long line of disability evaluation tools going back nearly a hundred years. The Commission found that the Rating Schedule has been revised, often substantively, since 1945. Still, sections of it have been rarely touched and parts are significantly out of date.

To address this problem, the Commission adopted a number of recommendations advanced by an Institute of Medicine Committee it commissioned to study the Rating Schedule. The IOM suggested that VA should create a permanent disability advisory committee, staffed with experts in medical care, disability evaluation, functional and vocational assessment and rehabilitation, and include representatives of the health policy, disability law, and veterans' communities to oversee and methodically update the Ratings Schedule.

We strongly support this recommendation and believe it is essential that the advisory committee working should be fully open and transparent.

It is our considered belief, based on our long and detailed experience with evaluating veterans' disabilities, that it will take years of hard work by a competent staff comprised of experts in a variety of medical and legal disciplines to develop new rating criteria that accurately assess service-connected disabilities.

We agree with the VDBC that the initial research, review, and revision of the Rating Schedule should be completed within a five-year period. Considering the complexity of the task, we believe that any attempt to complete this project in significantly less time will produce a significantly flawed document.

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

In reviewing the disability compensation program, the VDBC did more than just look at the Rating Schedule. It commissioned original research into whether current levels of compensation adequately replace, on average, lost earnings of veterans with service-connected disabilities when compared to non-disabled veterans. Much to the surprise of nearly everyone, the Center for Naval Analysis determined that current levels of compensation, with the

exception of three groups referenced in my written statement, are fairly accurate for most groups of veterans.

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

That is why we support the Commission's recommendation to revise the Rating Schedule to take into account the impact that service-connected disabilities have on a veteran's quality of life.

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

Individual unemployability is the one provision in the Rating Schedule that allows VA to take individual circumstances such as education, employment experiences and other facts into consideration when deciding whether service-connected disabilities keep a veteran from working.

This single provision concedes that some people can be made more disabled by certain disabilities than others. This provision requires VA to exercise judgment to determine if a veteran is made totally disabled by their service-connected disabilities.

In light of this, we support the recommendation of the Commission to modify evaluative criteria—especially for psychiatric conditions and injuries causing cognitive dysfunction—to recognize that such injuries are far more disabling than previously thought. Most importantly this will provide for a more appropriate level of compensation for this Nation's defenders who are so stricken.

We also believe that more appropriate evaluations will eventually reduce the number of veterans who are awarded individual unemployability.

We strongly oppose the wholesale elimination of this one provision that allows VA to compensate the individual veteran when service-connected disabilities make employment impossible.

Mr. Chairman and Senator Burr, thank you for the opportunity to appear before you today. I will be pleased to answer any questions that you may have.

[The prepared statement of Mr. Manar follows:]

PREPARED STATEMENT OF GERALD T. MANAR, DEPUTY DIRECTOR, NATIONAL VETERANS SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

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

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

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

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

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

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

## SCHEDULE FOR RATING DISABILITIES

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

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

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

To address this problem, the Commission adopted a number of recommendations advanced by an Institute of Medicine Committee (IOM) that the Commission had contracted with to study the disability evaluation of veterans. In its report, *A 21st Century System for Evaluating Veterans for Disability Benefits*, the IOM suggested that VA should create a permanent disability advisory committee, "staffed with experts in medical care, disability evaluation, functional and vocational assessment and rehabilitation, and include representatives of the health policy, disability law, and veteran communities." The Advisory Committee would meet regularly and offer direction and oversight to the regular review and updating of the Rating Schedule. In addition to this Committee, the IOM recommended that VA substantially increase the number of staff members permanently assigned to accomplishing the changes directed by the Advisory Committee.

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

Some critics of the current disability compensation program have suggested that the Rating Schedule can be thoroughly and completely reviewed and updated in as little as six months. As I testified on October 17, 2007, anyone can revise the Rating Schedule in a few weeks or months. However, the result will simply be a different Rating Schedule. It is our considered belief, based on our long and detailed experience with evaluating veterans' disabilities, that it will take years of hard work by a competent staff of medical, vocational and legal experts to devise new rating criteria for all the body systems which allows for the accurate assessment of service-connected disabilities.

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

## QUALITY OF LIFE

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

So the CNA determined that current levels of compensation replaced average lost earnings for most veterans. However, losing a hand or foot, acquiring an arthritic knee, or suffering a Traumatic Brain Injury is not the same as suffering an economic loss that some court can remedy by awarding the plaintiff a judgment. When someone suffers a permanent disability while serving their country the injury suffered is more than loss of earnings capacity. No matter how well a prosthetic leg allows someone to walk or how durable an artificial knee is or how much progress therapy and drugs allows a TBI veteran to function, the fact is that these men and women suffer much more than an economic loss. They are deprived of the opportunity to live their lives at the same high level and do the same things they could have done had they not been injured.

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

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

## INDIVIDUAL UNEMPLOYABILITY

The compensation program was intentionally designed to assess a veteran's symptoms resulting from service-connected disabilities and provide compensation based on the average loss of earnings capacity. It was not designed to determine what the actual lost earnings would be for you or me, the special circumstances of any one

veteran; the 1925 Rating Schedule attempted to do that and failed miserably. Such a computation must fail because the government does not have the time, staffing or expertise to compute lost earnings for any particular individual when they leave service or throughout their life as education, occupation, geographic location marital status, and other life events occur.

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

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

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

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

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

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

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

Chairman AKAKA. Thank you very much, Mr. Manar.

Now, we will hear from Mr. Smithson.

**STATEMENT OF STEVE SMITHSON, DEPUTY DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION**

Mr. SMITHSON. Mr. Chairman and Ranking Member Burr, thank you for the opportunity to present The American Legion's views on the recommendations of the Veterans' Disability Benefits Commission with respect to the current disability compensation system.

As noted in my written statement, the veterans community was initially leery of the Veterans' Disability Benefits Commission, given the history surrounding its creation, as well as the fact that

key members of Congress and others publicly touted the Commission as a vehicle for radical changes in the VA disability system, changes that would negatively impact and restrict entitlement to benefits for a large number of veterans.

American Legion staff closely followed the Commission's activities and provided written and oral testimony, as well as other input, throughout the Commission's existence. From the very beginning, Commission Chairman General Scott assured the VSOs and others that the Commission did not have a hidden agenda and its purpose was not to cut or otherwise restrict veterans' benefits. During the course of the Commission's two and one-half year study, The American Legion's concerns diminished and our skepticism turned to optimism as the release of its final report approached.

The final report—the culmination of an exhaustive study of veterans' benefits—is extremely thorough and its recommendations set forth a commonsense approach to addressing many of the problems plaguing the veterans' compensation system. We appreciate the Commission's hard work and commitment and we are generally pleased with its recommendations.

My written statement focuses, for the most part, on recommendations that will directly impact the disability compensation system, as well as those addressed as high priority in the Executive Summary. At this time I will briefly highlight The American Legion's position regarding some of these recommendations.

The American Legion fully supports the Commission's recommendations regarding line of duty, time limit to file a claim, lump sum payments and reasonable doubt. We are hopeful that the Commission's thorough study of these issues and subsequent recommendations will put an end to further proposals to change current policies.

We are, however, disappointed with the Commission's recommendation regarding character of discharge and strongly oppose any change to the current standard that allows eligibility to VA benefits based on separate periods of honorable service.

Regarding Recommendations 7–4 and 7–5 pertaining to individual unemployability, The American Legion supports the gradual reduction in compensation benefits of veterans who are able to return to substantially gainful employment rather than abruptly terminating benefits at an arbitrary level of earning. But, we strongly oppose the portion of the recommendation that could be interpreted as requiring consideration of age in determining entitlement to this benefit. We are also extremely leery of the recommendation that encourages the elimination of the current IU benefit on the anticipation of a revised Rating Schedule that would supposedly eliminate the need for that benefit.

The American Legion is supportive of initiatives to expedite the claims process and reduce the claims backlog but we do not support imposing arbitrary deadlines to accomplish this goal as proposed in Recommendation 9–1 because experience has shown that such production driven efforts have a tendency to sacrifice quantity over quality, often resulting in more errors, and, ultimately, an increase in appeals.

The American Legion also supports the development of rating criteria specific to Post Traumatic Distress Order. The Rating

Schedule currently uses one set of rating criteria for all mental disorders. There are unique aspects of PTSD that are not properly evaluated by the current rating criteria and it makes sense to develop rating criteria that address the specific symptoms involved with PTSD.

Finally, The American Legion does not support recommendations that would replace the current association standard in the presumption determination process with the more stringent causal effect standard. The association standard is consistent with the nonadversarial and liberal nature of the VA disabilities claims process.

Moreover, as in the case of the 1991 Gulf War, there is often a lack of specific or reliable exposure data due to improper recordkeeping, resulting in a lack of reliable exposure data. During Operations Desert Shield and Storm, there was insufficient information to properly determine servicemember exposure to the numerous environmental and other hazards U.S. troops were exposed to within the Southwest Asia theater of operations during the war. The lack of such data would clearly diminish the value and reliability of the causation standard as recommended by the Institute of Medicine and endorsed by the Commission.

Even the Commission, despite its recommendation, noted it was concerned that causation, rather than association, may be too stringent and encouraged further study of the matter.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions at this time.

[The prepared statement of Mr. Smithson follows:]

PREPARED STATEMENT OF STEVE SMITHSON, DEPUTY DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. Chairman and Members of the Committee, thank you for this opportunity to present The American Legion's views on the recommendations of the Veterans' Disability Benefits Commission (VDBC or Commission) with respect to the current disability compensation system.

Due to the history surrounding the establishment of the Commission, The American Legion and others in the veteran service organization (VSO) community feared that it would be used as a tool to restrict veterans' benefits. In fact, key members of Congress and other government officials publicly expressed their desire to use the VDBC as a vehicle to institute radical changes in the VA disability system that would negatively impact and restrict entitlement to benefits for a large number of veterans.

Concerned about the questionable history surrounding the creation of the VDBC and the impact its recommendations would undoubtedly have on VA's disability compensation program, American Legion staff closely monitored the Commission's activities and provided written and oral testimony, as well as other input, on several occasions. From the very beginning, Commission Chairman Terry Scott assured the VSOs and others that the Commission did not have a hidden agenda and its purpose was not to cut or otherwise restrict veterans' benefits. During the course of the Commission's two and one-half-year study, The American Legion's concerns diminished and our skepticism turned to optimism as the release of its final report approached. Our approach, however, is still "trust but verify."

The American Legion appreciates the Commission's hard work and commitment and we are generally pleased with its recommendations. As the final report contains 113 recommendations, this statement will focus, for the most part, on recommendations that will directly impact the disability compensation system as well as those addressed as high priority in the Executive Summary.

EXECUTIVE SUMMARY PRIORITY RECOMMENDATIONS

*Recommendation 4–23* (Chapter 4, Section I.5)

VA should immediately begin to update the current Rating Schedule, beginning with those body systems addressing the evaluation and rating of Post Traumatic

Stress Disorder (PTSD) and other mental disorders and of Traumatic Brain Injury (TBI). Then proceed through the other body systems until the Rating Schedule has been comprehensively revised. The revision process should be completed within 5 years. VA should create a system for keeping the Rating Schedule up to date, including a published schedule for revising each system.

*American Legion Position.* Most major body systems in the Rating Schedule have been updated over the last few years. The American Legion supports the updating of conditions such as TBI that have not been recently updated. We wish to also note that the Rating Schedule is not the major cause of problems with the VA disability compensation process. VA problems such as inadequate staffing, inadequate funding, ineffective quality assurance, premature adjudications, and inadequate training still plague the VA regional offices. The American Legion wants to emphasize that, in most cases, it would be inappropriate to reduce the value of a disability as long as our troops are in harm's way.

*Recommendation 5–28* (Chapter 5, Section III.3)

VA should develop and implement new criteria specific to Post Traumatic Stress Disorder in the VA Schedule for Rating Disabilities. VA should base those criteria on the Diagnostic and Statistical Manual of Mental Disorders and should consider a multidimensional framework for characterizing disability due to Post Traumatic Stress Disorder.

*American Legion Position.* The Rating Schedule currently uses one set of rating criteria for all mental disorders. There are unique aspects of PTSD that are not properly evaluated by the current rating criteria and it makes sense to develop rating criteria that address the specific symptoms involved with PTSD.

*Recommendation 5–30* (Chapter 5, Section III.3)

VA should establish a holistic approach that couples Post Traumatic Stress Disorder treatment, compensation and vocational assessment. Reevaluation should occur every 2-3 years to gauge treatment effectiveness and encourage wellness.

*American Legion Position.* While The American Legion supports a holistic approach to the treatment and compensation of PTSD that encourages wellness, we are concerned that a mandatory reevaluation every 2–3 years could result in undue stress among PTSD service-connected veterans. They may be fearful that the sole purpose of such reevaluation would be to reduce compensation benefits. This perception could undermine the treatment process. We would, therefore, encourage study and review of possible unintended consequences regarding this portion of the Commission's recommendation.

*Recommendation 6–14* (Chapter 6, Section IV.2)

Congress should eliminate the ban on concurrent receipt for all military retirees and for all servicemembers who separated from the military due to service-connected disabilities. In the future, priority should be given to veterans who separated or retired from the military under Chapter 61 with:

- fewer than 20 years service and a service-connected disability rating greater than 50 percent, or
- disability as the result of combat.

*American Legion Position.* The American Legion strongly supports full concurrent receipt and we are pleased with that portion of the recommendation.

*Recommendation 7–4* (Chapter 7, Section II.3)

Eligibility for Individual Unemployability should be consistently based on the impact of an individual's service-connected disabilities, in combination with education, employment history, and medical effects of an individual's age or potential employability. VA should implement a periodic and comprehensive evaluation of Individual Unemployability-eligible veterans. Authorize a gradual reduction in compensation for Individual Unemployability recipients who are eligible to return to substantially gainful employment rather than abruptly terminating disability payments at an arbitrary level of earning.

*American Legion Position.* Although The American Legion supports the provision of this recommendation calling for the gradual reduction in compensation benefits for Individual Unemployability (IU) recipients who are able to return to substantially gainful employment, we strongly oppose the portion of the recommendation that could be interpreted as requiring the consideration of age in determining eligibility to IU. It is inherently unfair to punish an older veteran who would not be able to work at any age because of a service-connected condition while awarding the benefit to a similarly disabled younger veteran. The current rule states (in essence)

that the impact of a service-connected condition on a veteran cannot be evaluated to a higher degree because the veteran is old. 38 CFR § 3.341(a). The schedule is based on the average impairment in earning capacity. If the veteran cannot work because of service-connected disability(s) then IU should be awarded. Moreover, we have found that younger veterans have to overcome VA bias when they apply for IU because VA raters think that younger people have a better chance of going back to work. Thus, allowing age to be used as a factor in determining eligibility for IU purposes may end up adversely impacting both older and younger veterans.

*Recommendation 7–5* (Chapter 7, Section II.3)

Recognizing that Individual Unemployability is an attempt to accommodate individuals with multiple lesser ratings, but who remain unable to work, the Commission recommends that as the "VA Schedule for Rating Disabilities" is revised, every effort should be made to accommodate such individuals fairly within the basic rating system without the need for an Individual Unemployability rating.

*American Legion Position.* The American Legion is extremely leery of any recommendation that would encourage the elimination of a specific benefit program on the anticipation of a revised Rating Schedule that would supposedly eliminate the need for that benefit. The current policy as enunciated by 38 CFR § 3.340 states, "[T]otal disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation." This policy is fair and consistent with the non-adversarial nature of the VA claims process. Therefore, this policy should not be altered.

38 CFR § 4.16b states:

> (b) It is the established policy of the Department of Veterans Affairs that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled.

The bottom line is that veterans who are unable to work due to service-connected disability should be compensated at the 100% level, whether it be based on a schedular evaluation (either single service-connected disability or a combined schedular evaluation) or based on Individual Unemployability. This has been a longstanding VA policy and we see no need to change it. See 38 CFR § 3.340.

*Recommendation 7–6* (Chapter 7, Section III.2)

Congress should increase the compensation rates up to 25 percent as an interim and baseline future benefit for loss of quality of life, pending development and implementation of quality of life measure in the Rating Schedule. In particular, the measure should take into account the quality of life and other non-work related effects of severe disabilities on veterans and family members.

*American Legion Position.* The American Legion supports an increase in compensation benefits to adequately account for a service-connected disability's impact on a veteran's quality of life. Before any change is made, however, we would like to carefully analyze how this would impact special monthly compensation, which is based, in part, on loss of quality of life.

*Recommendation 7–8* (Chapter 7, Section III.2)

Congress should consider increasing special monthly compensation (SMC), where appropriate, to address the more profound impact on quality of life by disabilities subject to special monthly compensation and review ancillary benefits to determine where additional benefits could improve a disabled veteran's quality of life.

*American Legion Position.* The American Legion fully supports increasing special monthly compensation to address profound impacts on quality of life for disabilities subject to SMC, as well as reviewing ancillary benefits for the purpose of determining where additional benefits could improve a disabled veteran's quality of life.

*Recommendation 7–12* (Chapter 7, Section V.3)

VA and DOD should realign the disability evaluation process so that the Services determine fitness for duty, and servicemembers who are found unfit are referred to VA for disability rating. All conditions that are identified as part of a single, comprehensive medical examination should be rated and compensated.

*American Legion Position.* The American Legion has long been concerned with low disability ratings issued by the military's disability evaluation system and we fully support limiting the military's role to determination of fitness while leaving the rating process to the Department of Veterans Affairs. We do, however, have concerns as to how this extra work for the VA would be funded.

*Recommendation 7–13* (Chapter 7, Section VI)

Congress should enact legislation that would bring the ancillary and special purpose benefits to levels originally intended considering cost of living and provide for annual adjustments to keep pace with the cost of living.

*American Legion Position.* This recommendation is appropriate, as ancillary and special purpose benefits, as reflected in the VDBC's report, have not been adjusted to keep pace with cost of living changes resulting in the failure of the benefits to fulfill their intended purposes.

*Recommendation 8–2* (Chapter 8, Section III.1B)

Congress should eliminate the Survivor Benefit/Dependency and Indemnity Compensation offset for survivors of retirees and in-service deaths.

*American Legion Position.* The American Legion fully supports this recommendation.

*Recommendation 9–1* (Chapter 9, Section II.6.A.b)

Improve claims cycle time by:

• Establishing a simplified and expedited process for well documented claims, using best business practices and maximum feasible use of information technology; and

• Implementing an expedited process by which the claimant can state the claim information is complete and waive the time period (60 days) allowed for further development.

Congress should mandate and provide appropriate resources to reduce the VA claims backlog by 50% within 2 years.

*American Legion Position.* While we are fully supportive of initiatives to expedite the claims process and reduce the claims backlog. The American Legion, however, is not supportive of imposing arbitrary deadlines to reduce the claims backlog because experience has shown that such production-driven efforts have a tendency to sacrifice quality for quantity, resulting in more errors and, ultimately, an increase in appeals. Additionally, while we support an expedited process to grant benefits, compliance with statutory duties to assist and notify must be fully complied with in claims in which benefits would be denied. An immediate reduction in the backlog could be accomplished by VA management encouraging VA raters to grant benefits when there is sufficient evidence in the record rather than developing the record to support a denial.

*Recommendation 10–11* (Chapter 10, Section VII)

VA and DOD should expedite development and implementation of compatible information systems including a detailed project management plan that includes specific mile and lead agency assignment.

*American Legion Position.* The American Legion supports this recommendation.

*Recommendation 11–1* (Chapter 11)

Congress should establish an oversight group to ensure timely and effective implementation of the Commission's recommendations. This group should be co-chaired by VA and DOD and consist of senior representatives from appropriate departments and agencies. It is further recommended that the Veterans' Affairs Committees hold hearings and require annual reports to measure and assess progress.

*American Legion Position.* The American Legion has no objections to this recommendation. We do, however, urge that this recommendation be amended to specifically address VSO participation in this oversight process.

OTHER RECOMMENDATIONS

*Recommendation 5–1* (Chapter 5, Section I.1)

Congress should change the character-of-discharge standard to require that when an individual is discharged from his or her last period of active service with a bad conduct or dishonorable discharge, it bars all benefits.

*American Legion Position.* The American Legion strongly opposes this recommendation. The Commission voted twice not to recommend a change to the current 30-year old policy that allows eligibility for VA benefits based on separate honorable periods of service. The VDBC finally decided on this position after a third vote of 8–4. We are disappointed in not only the recommendation, but also the nature in which the Commission arrived at its decision.

As noted in the VDBC's report, it is clear from a review of the legislative history that Congress intended to liberalize the overly-strict requirement of discharge under

honorable conditions when it enacted the current "under conditions other than dishonorable" standard in 1944. The current standard correctly and fairly acknowledges that those who were discharged for relatively minor offenses should not be barred from receiving veterans' benefits. Congress' intent was also clear when it amended the law in 1977 to allow an individual who was discharged under dishonorable conditions, or conditions otherwise precluding basic eligibility, to receive VA benefits based upon a separate period of service if VA determined that the individual was discharged from the other period of service under conditions other than dishonorable or would have been discharged under conditions other than dishonorable if not for reenlistment.

Endorsing a change in the character-of-discharge standard where one period of service under other than honorable conditions would unfairly negate other periods of service that were under conditions other than dishonorable and is in direct conflict with the intent of Congress when it enacted the current character-of-discharge standards.

*Recommendation 5–2* (Chapter 5, Section I.2.B)

Maintain the present definition of line of duty: that servicemembers are on duty 24 hours a day, 7 days a week.

*American Legion Position.* The American Legion fully supports this position and we are hopeful that the Commission's recommendation regarding this issue will end further debate calling for a line of duty (LOD) definition that only covers injuries, diseases, or deaths incurred while performing military duties.

The intent of Congress regarding the LOD definition and the equal treatment of all veterans—no matter how, when or where a service-related condition was incurred—is clearly expressed in the legislative history and current statutory provisions. Previous recommendations to limit the line of duty definition to only those disabilities that are a direct result of performance of military duties have not been acted on by Congress, despite large potential savings touted by the recommending agencies. The American Legion believes that there are very good reasons previous recommendations to limit or restrict the current LOD definition have not been implemented. First, there is the basic question of fairness. Limiting the line of duty definition to only those disabilities, deaths and illnesses incurred while actually performing one's military duties—despite the fact that an active duty servicemember is considered, under the Uniform Code of Military Justice (UCMJ), to be on duty 24/7—is inherently unfair and fundamentally wrong. Additionally, the message such a change would send to current servicemembers and prospective members would undoubtedly have a negative impact on both recruitment and retention. Finally, the additional administrative costs and other burdens resulting from a change in the line of duty definition would offset any projected savings.

*Recommendation 5–3* (Chapter 4, Section I.2.B)

Benefits should be awarded at the same level according to the severity of the disability, regardless of whether the injury was incurred or disease was contracted during combat or training, wartime or peacetime.

*American Legion Position.* The American Legion fully supports this recommendation. An injury, disease or death is just as debilitating and traumatic to an individual and his or her family no matter how the condition was incurred or where the veteran was at the time it was incurred. Making a distinction between combat and non-combat disabilities is fundamentally wrong and demeaning to the honorable service of all veterans. Moreover, implementing such a provision would add another level of complexity to an already overburdened and complex adjudication system.

*Recommendation 5–4* (Chapter 5, Section I.3.B)

Maintain the current reasonable doubt standard.

*American Legion Position.* The reasonable doubt standard is the hallmark of VA's non-adversarial disability compensation program and we fully support this recommendation.

*Recommendation 5–5* (Chapter 5, Section I.4B)

Age should not be a factor for rating service connection or severity of disability, but may be a factor in setting compensation rates.

*American Legion Position.* The American Legion does not support the use of age for establishing entitlement to service connection or for determining severity of disability, nor do we support using age as a factor in setting compensation rates. Although we understand the reasoning behind the Commission's recommendation calling for age to be used as a factor in setting service-connected disability compensa-

tion rates, The American Legion maintains that compensation rates should be based on the severity of disability and should not be applied differently based on the age of the veteran.

*Recommendation 5–6* (Chapter 5, Section I.5B)

Maintain the current standard of an unlimited time limit for filing an original claim for service connection.

*American Legion Position.* The American Legion fully supports this recommendation. Although we recognize that it is prudent for veterans to file service connection disability claims as soon as possible after separating from service, and we strongly encourage such action whenever possible, that option, for various reasons, is not always feasible. Therefore, if sufficient evidence to establish entitlement to service connection is submitted, the benefit sought should be awarded, regardless of how long after service the claim was filed.

*Recommendation 5–7* (Chapter 5, Section I.5B)

DOD should require a mandatory benefits briefing to all separating military personnel, including Reserve and National Guard components, prior to discharge from service.

*American Legion Position.* The American Legion fully supports this recommendation. It is extremely important that separating members receive sufficient information regarding all VA benefits to which they may be entitled after separation from service.

*Recommendations 5–11, 5–12 & 5–14* (Chapter 5, Section II.1)

*Recommendation 5–11*

The goal of the presumptive disability decision-making process should be to ensure compensation for veterans whose diseases are caused by military service and this goal must serve as the foundation for the work of the Science Review Board. The committee recommends that the Science Review Board implement its proposed two-step process. [IOM Rec. 4]

*Recommendation 5–12*

The Science Review Board should use the proposed four-level classification scheme, as follows, in the first step of its evaluation. A standard should be adopted for "causal effect" such that if there is at least as much evidence in favor of the exposure having a causal effect on the severity or frequency of a disease as there is evidence against, then a service-connected presumption will be considered. [IOM Rec. 5]

- Sufficient: The evidence is sufficient to conclude that a causal relationship exists.
- Equipoise and Above: The evidence is sufficient to conclude that a causal relationship is at least as likely as not, but not sufficient to conclude that a causal relationship exits.
- Below Equipoise: The evidence is not sufficient to conclude that a causal relationship is at least as likely as not, or is not sufficient to make a scientifically informed judgment.
- Against: The evidence suggests the lack of a causal relationship.

*Recommendation 5–14*

When the causal evidence is at Equipoise and Above, an estimate also should be made of the size of the causal effect among those exposed. [IOM Rec. 7]

*American Legion Position.* The American Legion does not support these recommendations because the "association" standard currently used in the presumption determination process is consistent with the non-adversarial and liberal nature of the VA disability claims process. Moreover, as is the case of the 1991 Gulf War, there is often a lack of specific or reliable exposure data. Due to improper record keeping, resulting in a lack of reliable exposure data, during Operations Desert Shield/Storm, there is insufficient information to properly determine servicemember exposure to the numerous environmental and other hazards U.S. troops were exposed to in the Southwest Asia theater of operations during the war. A lack of such data would clearly diminish the value and reliability of a "causation" standard as recommended by the IOM. It should also be noted that despite its recommendation, the Commission stated that it was concerned that "causation rather than association may be too stringent" and encouraged further study of the matter.

*Recommendation 7–15* (Chapter 7, Section VIII.2)

Lump sum payments should not be considered to compensate veterans for their disabilities.

*American Legion Position.* The Commission thoroughly studied this issue and we are hopeful that this recommendation will put an end to future proposals in favor of lump sum payments.

CLOSING

Mr. Chairman, that concludes my statement. Thank you again 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 issues discussed here today that are in the best interest of America's veterans and their families.

Chairman AKAKA. Thank you very much, Mr. Smithson.

Senator BURR. Mr. Chairman, if I could ask the Chair's indulgence; I have an 11 o'clock commitment that I would like to get out of, but I can't get out of, and I wanted to share with the witnesses that I would like to have my questions submitted to you in writing and your answers back.

But I also want to take this opportunity to thank all of the organizations that are represented at the table for their thoughtful review of the Commission's report.

Some of us have had individual meetings, so I have a good feel as to where the groups are. I can't disagree with anything that has been said. But, I want to go back to something I said to General Scott.

What we're attempting to do is hard. It will require everybody to give and take if we are to accomplish an overhaul of the system. If the intent is not to overhaul the system, then there will be winners and losers, and everybody in this room and everybody in this country will participate in picking who wins and who loses. I do not think that is why they sent us here and I do not think that is why you do what you do and you represent who you represent.

My hope and my belief is this Committee will, in a very bipartisan and open way, attack and address the recommendations in as expeditious a way as we can. And I hope we do that with the full knowledge of the realities of what this town will throw in its way, keeping us from accomplishing this mission.

So again, I thank you.

Chairman AKAKA. Thank very much, Senator Burr. Thank you for your cooperation in dealing with this as we do in this Committee.

Mr. Bowers.

Mr. BOWERS. Mr. Chairman.

Chairman AKAKA. In your testimony you state that, and I quote, "Along with the recommendations of the Dole-Shalala Commission and the work of the GAO and other government agencies, Congress has been presented with effective solutions to many of the problems facing today's wounded warriors," unquote.

I am very interested in that statement. Can you please elaborate on which Dole-Shalala Commission and GAO recommendations would serve as effective solutions?

Mr. BOWERS. I think, Mr. Chairman, it is a combination of all of them. When we initially reviewed the Dole-Shalala Commission findings, we agreed with many of their topics and found that with the Veterans' Disability Benefits Commission there were items that

overlapped. That is extremely successful because it shows that both Commissions saw eye-to-eye on certain issues—things along the line of levels of disability, addressing Post Traumatic Stress Disorder and TBI ratings.

In regards to the GAO, we have reviewed a tremendous amount of reports in regards to the backlog due to the complexities of the disability rating system. By building off of the GAO and what they have done and what they have seen, in regards to VA's difficulties in processing a tremendous amount of claims, I think that really put things on the radar starting initially three years ago with an initial report that they came out with addressing this issue.

We have since seen the amount of disability ratings grow. I believe it is upwards somewhere of 200,000. And by looking at those numbers and knowing exactly what is at hand—one thing that IAVA strongly endorses is trying to find a way to establish a two-year cap to try to reduce the backlog by 50 percent. That has been something that we recommended in our legislative agenda last year and something that we will again be recommending this year. It is something that we would like to see—that backlog cut down—because as these wars continue, we are going to see a tremendous amount of veterans coming back and the numbers are just going to get greater.

So, all of these resources, we have really been able to sort of pull together.

Chairman AKAKA. Thank you very much.

Mr. Manar, in your written testimony you support the Commission's recommendation that VA temporarily increase compensation levels up to 25 percent to take into account the effects on quality of life until such time as detailed studies can be conducted and adjustments made to reflect the loss of quality of life.

Please share with us your thoughts on how VA could measure loss of quality of life. I would appreciate hearing the comments of others on the panel as well on this after Mr. Manar.

So, Mr. Manar, really share with us your thoughts on how VA could measure loss of quality of life.

Mr. MANAR. Sir, I am a lawyer by training and a 33-year veteran of helping veterans obtain compensation. I am not a scientist or a doctor. It is my belief that, based on our study of recommendations from the Institute of Medicine and the Veterans' Disability Benefits Commission, that a panel—a committee or several committees—would have to be devised to look at the individual disabilities, perhaps system-by-system, to determine what impact there is on quality of life.

Because of the research of the Disability Benefits Commission, we see that compensation today just replaces lost earnings for most veterans. Except for those few disabilities that warrant special monthly compensation, there is no added benefit for most disabilities in terms of compensation for loss of quality of life.

It is our view, and I believe it is supported by the Institute of Medicine, that it would take studies conducted over a number of years to determine what quality of life—first, how to measure it, and then to figure out what it is; what the loss is for each injury or disability; and at different levels.

The Institute of Medicine, if I recall their report correctly, indicated that they do not yet have the tools to do that. So, they would have to be devised. It would not be a simple process. That is why I believe the Commission recommended this interim payment for loss of quality of life, and that is certainly why we support it.

Chairman AKAKA. Would you recommend an across-the-board 25 percent increase for all disabling conditions and all levels of disability?

Mr. MANAR. Oh, no, no.

Chairman AKAKA. If not, what specific increases do you recommend?

Mr. MANAR. I think that it's safe to say that we would support the VDBC recommendation, and that is: that the most severe disabilities would warrant a 25 percent increase as a guesstimate of what it would take to begin to compensate for loss of quality of life.

For someone who is 10 percent disabled or 20 percent, I believe that they suggested, and I certainly heard it in discussions at the Committee hearings, that it would be marginal increases at the lower levels. Basically for every 10 percent you get another 2.5 percent. So, a 10 percent evaluated veteran (a veteran with a 10 percent disability rating), would receive an extra 2.5 percent. Somebody with 20 percent would receive 5 percent and so on, until you gave up to the 25 percent.

Chairman AKAKA. Would you venture any answer to how long this temporary increase should last?

Mr. MANAR. I would suggest that until the tools are devised and the study is completed, or at least well on the way to completion—as the Rating Schedule is adjusted, taking into account the quality of life impacts—then the benefits can be reduced for those individuals who are reevaluated where the evaluations assigned take into account the loss of quality of life.

It's not our belief that the changes to the Rating Schedule should be held off until everything has been reviewed, everything's been revised, everything's been accomplished. It is our belief that as a body system is finally reworked to take into consideration both current medical terminology, levels of disability, appropriate levels of disability and quality of life, the VA, as it does today, can implement that by a change in regulation.

That means that the people who have been receiving 100 percent and a 25 percent quality of life addition—if that is now incorporated into their evaluations—they would be evaluated appropriately under the Rating Schedule and not receive the additional interim benefit.

Chairman AKAKA. I asked for others on the panel to make comments on this. Mr. Smithson.

Mr. SMITHSON. Obviously, I think everybody who has looked at the quality of life issue has determined that it is an extremely hard thing to get a grasp on, and I agree with Mr. Manar that additional studies will be needed to look at it.

The Dole-Shalala Commission recommended separate payments for quality of life. Also, as part of their recommendations, certain conditions would be covered under quality of life and certain conditions would not be covered under quality of life. I think those are issues we need to look at as well. Would it be a separate payment?

Does every condition affect the quality of life? Some would argue, yes. Some would argue, no. Those are things that we would need to look at as well. But I think, obviously, a thorough study of that issue is needed.

Chairman AKAKA. Mr. Bowers.

Mr. BOWERS. I would agree also that it is something that needs to be looked at in depth. One note that I did make here in regards to quality of life is that—something we are finding up at Walter Reed and Bethesda—a lot of people are being rated on what is referred to as ADL, activities of daily living, which is an extremely complex structure, which is very difficult for people to understand.

One of our members lost his left leg and his right foot. He was a police officer in Fairfax County, Virginia. He received sort of the same benefits as people who may not have been a police officer, but it all falls together in a very confusing manner. This is something that we are trying to understand. Maybe because it is so difficult to grasp, it is something that also needs to be reevaluated.

Chairman AKAKA. Thank you.

Mr. Smithson, in your testimony you support the Commission's recommendation that VA follow a holistic approach that links treatment and compensation for PTSD while encouraging wellness. However, you comment that periodic reviews of PTSD disability claims could place undue stress on PTSD service-connected veterans. Without periodic reviews, how would you suggest that VA accomplish a holistic approach?

I would appreciate other comments, as well, on that.

Mr. SMITHSON. I think that our focus was on mandatory periodic reviews and that a lot of veterans would view these reviews as an attempt to reduce or take away their benefits, such as what we saw about three years ago when the VA announced that they were going to look at over 70,000 PTSD claims that were rated a 100 percent, and that caused a lot of concern in the veteran community.

So, I think the approach of these reevaluations—the VA now, periodically, if the condition is not permanent and total, will go back and look at it and possibly reevaluate it.

I think any reevaluation that is conducted needs to be done under the guise that it's not necessarily going to result in an automatic decrease in benefit; and VA needs to separate the health care side it, the treatment side of it, and the compensation side of it. Because, I think if it appears that it is solely being done to reduce benefits, it is going to hamper treatment and actually have a negative impact.

So, I think separating the health care side and the compensation side when you conduct these reviews or reevaluations is important.

Chairman AKAKA. Mr. Bowers, do you have any comments on the holistic approach?

Mr. BOWERS. Yes. When we initially looked at this, we sort of related it to what we are seeing right now with our National Guard and Reserves. Continuous deployments makes things extremely difficult to get your foot back in the door and get used to life.

By having a mandatory set time to be reevaluated and essentially fighting for your benefits is really going to have an impairment on the individual's recovery.

A way to look at this that we think would be beneficial would be: not have a mandatory set time, but a medical examiner would state that they would undergo reevaluation based on what they're finding with that individual. This will not initially be something that will hamper their benefits, but for understanding whether the treatment is being beneficial.

There are many issues that individuals deal with with PTSD where they can get better. They can see that their lives are getting more productive. But, to constantly have them under the microscope on a set timetable is going to make it very difficult for them to come back in.

So, an element of thinking out of the box: we would love to see evaluations done just to get a better understanding of the effectiveness of treatment, and have that separate from the reevaluation of whether their benefits will come under fire.

Chairman AKAKA. Mr. Manar.

Mr. MANAR. The Department of Veterans Affairs has the authority now to conduct review examinations whenever they choose, more or less. The regulation allows review examinations no sooner than two years after a rating decision and no more than five years. The VA stopped doing routine review examinations starting in the mid-1990s because of workload considerations.

Every new examination they requested, or review examination they requested, meant another examination and another rating. So because their workload, even back then, was beginning to climb, they stopped doing them on a regular basis.

The only conditions that we are aware of that they routinely conduct examinations as they are required to do is where the regulations require a follow-up examination: following cessation of treatment for cancer, for instance, an examination to assess residuals is required.

So, the VA has got the authority to do review examinations anytime they want to get back into that business. We are also opposed to creating mandatory periodic on-a-set-schedule examinations for veterans who are undergoing psychiatric treatment, or, for that matter, any other treatment.

It should be done based on the medical evidence that the VA has and the information that they receive. So, the VA has the authority to conduct these examinations. They just need to get into a position with their workload where they can do it and then, at that point, determine what is appropriate for that individual veteran.

Chairman AKAKA. Thank you very much.

This next question is for all of our witnesses. How was your organization involved in the Veterans' Disability Benefits Commission? Mr. Bowers.

Mr. BOWERS. Well, being, per se, the "relatively new kids on the block," we actually were not established here in Washington, DC, until March of this year. So, we came in relatively late in the game.

We were involved with two testimonies with the Commission in regards to veterans' benefits review, and we also had the opportunity to meet with many of the Commissioners to discuss IAVA's point of views based on our 2007 legislative agenda and issues that specifically pertained to the Benefits Commission.

We were very excited, as such a new organization, to be involved, which I think really spoke to the thoroughness that the Commission exhibited in looking at everything. I wish the efforts that we will be showing this year—I wish we had done it last year in regards to a poll that we have recently been working on with 1,000 Iraq and Afghanistan veterans to understand where the need lies for a lot of these issues. I wish we could go back in time a year to be able to present those findings for the Commission.

With that said, what they have done has really involved Iraq and Afghanistan veterans, as a whole, and their correspondence with us really stayed true to their effectiveness and how thorough they were with these issues.

Chairman AKAKA. Since you have been involved with them, do you foresee your organization being involved in the effort to respond to the Veterans' Disability Benefits Commission in the future?

Mr. BOWERS. Yes, I do. I think we will continue to have involvement with them in looking at the way many of their recommendations go forward. It's something that we will be watching very closely.

It is 544 pages of the most thorough work that I have seen in regards to, you know, a review of the veterans benefits. And it is something that we at IAVA will be holding very dear. We would love to be able to be involved with the outlays, understanding what is next to come, how many veterans are going through the system, how many are being affected, and what are we going to see 10, 15, 20 years from now as the Nation's youngest generation of veterans come home. How can we plan for that and be ready for what we may call a surge?

Chairman AKAKA. Mr. Manar.

Mr. MANAR. It has been my privilege, first as a service officer, an appeals manager for the Military Order of the Purple Heart, and over the last several years as Deputy Director for the Veterans of Foreign Wars, to attend virtually every hearing that the Disability Benefits Commission held.

In addition, in my capacity with the Veterans of Foreign Wars, we were able to testify before the Disability Benefits Commission—I personally on at least six occasions, and I know others in our organization several more times—on many topics. And we represented not just ourselves, but, on several occasions, other major service organizations as well.

Our input and our views were welcomed. They were not always adopted or accepted by the Commission. That was to be expected. All we asked for them to do was to listen to our views, our perspective, our experiences, and take those into consideration when they made their decisions and their recommendations. And they did that.

I am personally grateful to have had this experience with them and it is because of that interaction—watching them day-in and day-out in public forum first voice their views and then sometimes change their views based on the evidence, the science, the studies that were conducted. That was the really impressive thing: if they came in with preconceived notions, they made adjustments as the facts dictated that they do. That is the real benefit, I think, that

came out of them spending all this time and energy—to really immerse themselves into this work, unlike some other Commissions.

Chairman AKAKA. Thank you very much for that.

Mr. Smithson.

Mr. SMITHSON. The American Legion attended all of the Veterans' Disability Benefits Commission meetings in Washington, DC. We also had American Legion participation in, I believe, all of the town hall meetings that were conducted in association with their site visits.

We testified on numerous occasions and we also worked closely with staff on a regular basis to provide additional information and input. Our input was accepted in a positive manner, and we feel that, initially—like I mentioned in my written statement—that there was skepticism surrounding the creation of the Commission as a vehicle to make negative changes. But, as the Commission's time span moved on we could see—actually from the very beginning General Scott made it clear that that was not the case, and they were very open to recommendations and input from the veterans community.

Chairman AKAKA. Thank you for that. I expect this to continue and I am glad to know your feeling about your involvement with the Commission.

My next question is that on process. The question is for all of the witnesses. In your opinion, was the process the Commission used to analyze the recommendations of the Institute of Medicine and CNA Corporation adequate?

Mr. Bowers.

Mr. BOWERS. I would start off by saying, yes. One of the elements that we were very impressed with was really getting a solid understanding of the medical intricacies that go along with a lot of these issues. And, by utilizing the Institute of Medicine and their reports, I believe the Commission did the correct thing by stepping back and saying, we are not the complete experts in this field. Let's find who the best people are out there and utilize the information that they provide. So, in those regards, yes, I think they did do a thorough job in utilizing things that were already set forth for them.

Chairman AKAKA. Mr. Manar.

Mr. MANAR. The Commission, in dealing with the Institute of Medicine and the Center for Naval Analysis, really had two different approaches, because the product produced by those two different entities was presented differently.

The Institute of Medicine operated totally independently. Although it would come in on a monthly basis and brief the Commission, it was not on the substance of what the IOM Committees were focusing on, but more on the process itself. How many times did they meet this month; who they took testimony from.

But, once they got into their closed-door deliberations, there was virtually no information coming from the Institute of Medicine as to the substance of what the IOM was considering. So, when they delivered their report, that's what they got. There was no chance to submit questions to the IOM to get clarification. It was just, here it is; this is what we have came up with.

And to some extent, the product was, in our view, not necessarily always as good as it could have been—because we saw in contrast the Commission's interaction with the Center for Naval Analysis. They also came in every month and briefed the Commission on what they were finding.

Initially it was more about process than anything else. But then, VDBC started getting data and they started doing some initial analysis of that data. And it was the questions of the Commission to the folks from the Center for Naval Analysis that caused them to clarify—not change, because the data was what was driving their conclusions, but to clarify—how they presented their statements and modify how they presented things so it was more understandable, and, consequently, more useful to the Commission.

Then, what the Commission did with both reports was to sit down and go through the recommendations item-by-item and decide what it was that they could do with each: whether they were going to accept it, modify it, or reject it outright.

So, it was a fascinating, quite frankly—sometimes a boring process to observe—but it was deliberate, and professional, and it was very helpful to all of us, I think.

Chairman AKAKA. Mr. Smithson.

Mr. SMITHSON. I think the Commission actively reviewed the data they received from both the IOM and CNA, and as General Scott noted in his testimony, they didn't agree with all of the recommendations. They didn't just rubber-stamp the recommendations. And, I think what they did use was well thought out and reasoned in the Commission's report.

Chairman AKAKA. Thank you.

My last question to all of you is, how should Congress prioritize the recommendations made by the Commission? If you have an idea, we certainly would like to hear it. And let me begin with Mr. Bowers.

Mr. BOWERS. Well, rolling dice would not be the best way to do that. I would say, probably the most effective measure would be communication with the veterans service organizations and the outlets to veterans, and what they are dealing with right now.

As we saw the recommendations come out, understanding the depth of each one and what the priority of those would be is something that we would have to take a tremendous amount of time analyzing and that is why, again, I fall back to the poll that we recently conducted of Iraq and Afghanistan veterans—which we will be, I think, officially releasing the second week in February—be able to tie in, directly from the horse's mouth, what Iraq and Afghanistan veterans are saying is their top priority for change. And, I think, by comparing that with what the Commission's recommendations are, would be an extremely valuable resource that we, IAVA, would be able to provide. And then, also working with the other VSOs to communicate with the membership and understand what are the top tier issues.

Ultimately, the veterans that are out there are the ones that are being affected by this, and it is up to them to be able to put these things into prioritization—to understand, you know, what the most important issues are.

Chairman AKAKA. Mr. Manar.

Mr. MANAR. I think it is important to understand what the Commission did not do with regards to the current compensation program and specifically the Rating Schedule: they did not decide to end it.

After two and one-half years of gathering evidence, taking testimony, hearing people from all stripes, from people who wanted to do away with it, to people who wanted to reform it, to people who didn't want any change at all—they decided that there were enough good features in the current compensation program and there were enough good things in the Disability Rating Schedule to work with it—to work to change it, to work to make it better, but not just to throw it out and start all over again.

They realized, I think, that if you throw it out, if you start from scratch, you wind up creating a brand new set of problems. You may fix some things, you may improve benefits, you may get it more correct or better or right, if you will, for some veterans, but you also take the very real chance of harming more veterans than you help by throwing it out.

There is a history here with the current compensation program and the Rating Schedule that cannot be ignored and I think the Commission recognized that there are a lot of good things that come out of it. There are things that need to be fixed; and the reason why we are in this state today is because the VA has neglected to do what it was charged to do.

Now, there are a lot of reasons why that is. You can certainly point to understaffing for decades. You can certainly point to the creation of the Court in 1988 and all its decisions—many of which have required VA to redevelop or re-adjudicate hundreds of thousands of cases. That alone can put you in the hole for years to come.

And then there is the Veterans' Claims Assistance Act, which is a wonderful tool, but it takes time to do all those things that are required and to do them correctly.

So, there are lots of reasons why the VA is in its current situation. I think it is incumbent on Congress and all of us to understand that we did not get into this situation overnight and it cannot be fixed overnight. I think what needs to be done is for Congress to exercise its oversight; Congress to direct that certain things be done, but within the current system.

Chairman AKAKA. Thank you very much.

Mr. Smithson.

Mr. SMITHSON. I think we need to look at the recommendations that would have the greatest effect in fixing major problem areas in the disability compensation system and then prioritize those recommendations based on those that can be done quickly and those that will take more long-term study.

I think there's a lot of things that can be done quickly—some with legislation and some without legislation. And I think we need to prioritize those recommendations, but again, look at all the recommendations and look at those that would provide the greatest positive effect on the compensation system itself.

Chairman AKAKA. I want to thank this panel of witnesses for your responses to the questions and also for your statement. We look forward to working with you, and with other VSOs as well, on

this and look forward to working with VA on these, and, of course, the Commission as well.

This, I think, is an important step in how we are beginning to achieve the changes that are necessary for our veterans. So, again, I want to thank you for being a part of this and for being as helpful as you have.

This hearing is adjourned.

[Whereupon, at 11:32 a.m., the Committee was adjourned.]