

**THE CHALLENGES AND
OPPORTUNITIES FACING DISABILITY
CLAIMS PROCESSING IN 2006**

HEARING

BEFORE THE

**COMMITTEE ON
VETERANS' AFFAIRS**

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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**THE CHALLENGES AND
OPPORTUNITIES FACING DISABILITY CLAIMS
PROCESSING IN 2006**

WEDNESDAY, DECEMBER 7, 2005

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The Committee met, pursuant to call, at 1:10 p.m., in Room 334, Cannon House Office Building, Hon. Steve Buyer [Chairman of the Committee] presiding.

Present: Representatives Buyer, Stearns, Brown, Miller, Evans, Snyder, Michaud, Herseth, Hooley, Berkley, Udall.

THE CHAIRMAN. Good afternoon. The Committee will come to order.

Today we will receive testimony on the challenges and opportunities facing the Veterans Benefit Administration's claims processing system.

In fiscal year 2005, the Department of Veterans Affairs paid monetary benefits to 3.5 million service disabled veterans, eligible survivors, and, in some instances, disabled children of Vietnam era veterans, an obligation of more than \$32 billion. This represents an 83 percent increase in the past ten years. In 1995, the mandatory payments were just shy of \$18 billion.

When you look at it from 1995 to 2005, you have to take into account the increased operational tempo of the United States military, whether it was the post-Gulf War, Somalia, Bosnia, Kosovo, Gulf War II, or Afghanistan; training; or other commitments to regions and countries around the world, the force has experienced a great deal of stress, and there are consequences.

VBA has 8,918 dedicated employees processing disability and pension claims at regional offices across America. As reflected in Admiral Cooper's November 3rd testimony before the Disability Assistance and Memorial Affairs Subcommittee, VBA in 2005 made over 763,000 disability determinations, performed more than two million award actions, handled over 6.3 million phone calls, conducted over a million interviews, and conducted nearly 70,000 hours of outreach

to military members, former prisoners of war, homeless veterans, minorities, female veterans, and other targeted groups.

What we need to know is whether this system is buckling under pressure. As of two days ago, there are more than 370,000 compensation and pension claims pending, with more than 85,000 claims pending over 180 days.

In October, rating-related claims were pending on average 124 days, and it was taking another 155 days to complete a decision.

There are almost 40,000 appeals pending at the Board of Veterans' Appeals and about 32 percent are remanded to the original regional office or the Appeals Management Center for further development. It is no surprise that the backlog is consistently cited as a major concern among the Committee members, among our colleagues, and VBA's stakeholders.

VA estimates that in fiscal year 2006, it will receive more than 725,000 compensation rating-related claims, an increase of three percent over fiscal year 2005. The most time-consuming claims are original, or first-time filings, because the entire record needs to be developed; VA estimates it will receive a little more than 206,000 new claims in fiscal year 2006.

The most common claims, however, are those reopened by veterans filing for an increased rating or a new disability altogether. VA estimates it will receive more than 464,000 reopened claims in fiscal year 2006.

By September of 2003, VBA had significantly reduced the number of pending claims to 253,000 from a high of 450,000 in 2001. The average days pending was reduced to 111 days.

I look forward to today's testimony as we begin to understand what has happened in the last several years that has led us to the vast inventory of claims.

[The statement of Steve Buyer appears on p. 55]

THE CHAIRMAN. I would now like to recognize the Ranking Member, the gentleman from Illinois, Mr. Evans.

MR. EVANS. Thank you, Mr. Chairman.

I also am concerned about the continuing problems with poor quality and large backlogs that are due to VA's insufficient funding for appropriate numbers and type of staff.

Last Spring, Democrats on this Committee urged for additional funding for staff to process claims for veterans and appeals at the Board. That request was rejected by the Budget Committees.

The VA cannot be expected to provide decisions of acceptable quality and timeliness without adequate resources. More veterans are applying for benefits. More veterans who appeal decisions are waiting years for hearings before the Board.

Staff who process claims feel overwhelmed and under-trained. The

results are predictable: longer delays and more errors as well.

The Administration and Congress must work together to provide the resources VA needs to decide claims fairly and accurately in a timely manner.

I want to thank you all. And I want to thank you, Mr. Chairman, and all of our witnesses, and yield back the balance of my time.

[The statement of Mr. Evans appears on p. 57]

THE CHAIRMAN. Thank you, Mr. Evans.

Mr. Brown, you are now recognized, and I understand you have had a significant loss in the State of South Carolina.

MR. BROWN. Yes, Mr. Chairman. Former Congressman Carroll Campbell, former governor of our state, passed away today. And I know we all want to express our sympathies to his family. Thank you for allowing me this privilege.

Mr. Chairman, as a member of this Committee for many years, I have been deeply involved working with VBA to improve the Disability Compensation and Pension Claim Program which our deserving veterans rightfully depend.

I was encouraged in 2003 when we were beginning to see VBA make significant progress in reducing the number of claims pending. However, recent reports are very troubling because they demonstrate the VBA claims process has again taken a turn for the worse, and the number of claims pending are once again on the rise.

In addition to those that have been in the system for some time, I am also extremely concerned about our new generations of war veterans coming home with injuries and disabilities that are not always physical. This was reflected in the dramatic increase in veterans filing for disability compensation for posttraumatic disorder.

It is our duty to see that each and every veteran is given an accurate, appropriate, and timely determination on their disability claims to ensure they receive the benefits they deserve.

Mr. Chairman, I appreciate you holding this very important hearing today to dig deep into how VA's Disability Compensation and Pension Claim Programs are designed, how they are currently operating, and allowing us the opportunity to examine ways to, number one, update the programs to account for development in medicine and technology and change in our job market; number two, to improve the handling of disability claims; and, number three, strengthen administrative oversight.

I look forward to hearing from our expert witnesses, and yield back the balance of my time.

THE CHAIRMAN. Mr. Brown, appreciate your contribution and that of your counterpart, the Ranking Member of the Health Subcommittee.

Mr. Michaud, you are recognized.

MR MICHAUD. Thank you very much, Mr. Chairman. I would like to thank both you and the Ranking Member for having this hearing.

I think it is also extremely important that we deal with these claims and their process in an efficient manner and that we do everything as a Committee in this Congress to make sure that the resources are there so that we can process in an efficient manner.

I yield back to my colleague.

THE CHAIRMAN. Thank the gentleman for his leadership.

Also Mr. Miller is Chairman of the Disability Assistance and Memorial Affairs Subcommittee. You are now recognized for an opening statement.

MR. MILLER. Thank you, Mr. Chairman. I do have a full statement I would like entered into the record, but I would say --

THE CHAIRMAN. It shall be entered into the record.

MR. MILLER. -- that throughout the Second Session of the 109th Congress, our Subcommittee intends to hold a series of hearings on the challenges and issues that face VBA in the 21st century.

We will include a review of the policies and laws that affect claims processing, the impact of the "Veterans Claims Assistance Act," training and performance standards for claims adjudicators, the role of national and county service officers in claims development, and VBA's outreach efforts to veterans and survivors.

We all know that Congress cannot just simply continue to throw money at a problem and expect that problem to go away. As reports, studies, and experience have shown, there are a variety of factors which have a significant impact on the timeliness and quality of the claims process. I believe we -- and by we, I mean Congress, the VSOs, and VA -- must put this all on the table as we work to improve the system.

I look forward to learning more today and working on this issue in the coming year.

[The statement of Mr. Miller appears on p. 58]

THE CHAIRMAN. I thank the gentleman for his continued leadership.

Ms. Herseith, the Ranking Member on Economic Opportunity, is now recognized.

MS. HERSEITH. Thank you, Mr. Chairman, and to Ranking Member Evans for having this important hearing. And I would like to thank in advance all of the witnesses that will be testifying today.

I look forward to hearing about the Veterans' Benefits Administration's effort to reduce the backlog of pending claims and the amount of time it takes to process the claims. And while I understand our focus here today is on the disability claims, I will be posing questions as it relates to pension claims as well.

I would like to thank the VA for the tremendous work they do on

behalf of our nation's veterans; however, I do share the concern of many of my colleagues regarding the extraordinary amount of time it takes to process certain claims and appeals.

We must ensure our veterans receive the benefits they have earned and deserve in a timely manner. The soldiers returning from Iraq and Afghanistan along with service members from previous wars deserve the best available service we can provide.

So, again, I thank you for being here. Thank you, Mr. Chairman. Look forward to hearing the witness testimony and working with you to resolve the claims backlog.

THE CHAIRMAN. I thank the lady for her leadership.

Ms. Hooley, do you have an opening statement?

MS. HOOLEY. No thank you.

THE CHAIRMAN. Ms. Berkley.

MS. BERKLEY. Yes.

THE CHAIRMAN. You are now recognized.

MS. BERKLEY. Thank you, Mr. Chairman.

It is critically important that we explore this issue from the perspective of veterans who have waited years for their VA claims to be resolved.

In fiscal year 2005, the VA received more than 16,000 more claims than in fiscal year 2004, yet the number of staff at regional offices to process these claims is 7,053 on duty as of September 30, 2002.

So, I am particularly concerned that the Reno regional office may not have adequate staffing given the large number of veterans moving to Nevada.

In 2000, there were 3,042 claims and 712 appeals pending in Reno. As of September of 2005, there were 3,677 claims and 1,082 appeals pending in Reno.

Even though these numbers are shocking to me, it appears from the information that I have that Reno is faring better than other regional offices in terms of staffing. However, I am still concerned with the wide variation in the number of staff and the appellate caseload. In fact, Reno has 30 more claims per FTE than the office with the best ratio of pending claims and appeals, which is Salt Lake City.

My Las Vegas office is currently assisting a Gulf War veteran who has numerous medical conditions and has been waiting for a decision on his appeal since 1999. That is the year that I started serving in Congress. For six years, this veteran has been waiting to hear a decision.

However, the national average for appeals decided by the Board in fiscal year 2005 was 983 days, over two and a half years. Many claims are remanded by the Board adding even longer to the time veterans must wait for a decision.

Mr. Chairman, I cannot stress enough the importance of adequate staffing levels to ensure timely and accurate decisions of VA claims.

And I want to thank you for holding this hearing. I look forward to hearing from the witnesses on this very important subject. Thank you.

THE CHAIRMAN. Thank you, Ms. Berkley.

Mr. Stearns, you are recognized for an opening statement.

MR. STEARNS. Thank you, Mr. Chairman, and my other colleagues. I want to thank you for having this hearing.

I will tell my colleague, Ms. Berkley, that she would be interested to know that it is ironic that the original use of the word red tape in the United States began with the Civil War veterans' records. So you can see it goes back that far.

They were bound in red cloth tape and there was great difficulty in accessing them. And so that led to the current term of red tape, going all the way back to the Civil War.

I think we have progressed quite a bit since then, but obviously there remains a lot more red tape and that is why we are having the hearing.

The most time-consuming process would be processing new claims and with the VA anticipating more than 206,000 new claims in the year 2006, we need to consider ways to make the process of developing new records more efficient while retaining thoroughness in the claims review.

And, secondly, Mr. Chairman, filing frequent claims or rating claims, as they are called, takes an average of about 155 days to process. Some of these claims go to 180 days. And with the anticipated growth in rating claims of three percent to over 725,000 claims, I suspect that it will be even higher.

So this represents an incredible administrative burden and probably portends even longer delays. So that is why this hearing is so timely.

And, lastly, I finally would say the appeals process for claimants to the Board of Veterans' Appeal is extraordinarily lengthy. For example, in 2005, an average processing time of over 820 days at regional offices with an additional 160 days of process at the main Board of Veterans' Appeal.

Obviously this means that some veterans are left waiting over two and a half years as a result of their appeal. And this obviously is not satisfactory.

So it is clear that we need streamlining procedures. I think if this Veterans' Affairs Committee can come up with some solution here, it would be monumental. Veterans have suffered under the weight of this bureaucracy, this amount of red tape.

So I thank you, Mr. Chairman, for holding this hearing and I look for a solution.

THE CHAIRMAN. Thank you very much.

Dr. Snyder, you are recognized for opening statement.

MR. SNYDER. Thank you, Mr. Chairman. I looked forward to the witnesses.

THE CHAIRMAN. Thank you very much for your brevity.

Dr. Jones of South Carolina, not Indiana, Henry.

Dr. William B. Jones is a retired Air Force colonel who served as a chief flight surgeon and orthopedic surgeon with over 3,000 hours of flight time. He is here to discuss his own personal experiences with the claims processing system.

Dr. Jones, I am most appreciative that you would travel here from the warmth of South Carolina. I have read your statement and I am familiar with your resume. You, sir, have had a good life.

Every day I am meeting extraordinary people and you have had quite a life. You have given a lot to your service of your country in two wars. And for that, we are appreciative and respectful and we are anticipating your testimony.

You are now recognized.

STATEMENT OF WILLIAM B. JONES, UNITED STATES AIR FORCE (RETIRED)

DR. JONES. Thank you very much, Mr. Chairman.

Ladies and gentlemen of the House Committee on Veterans' Affairs, let me state in the beginning what a privilege it is to be able to be here today and to testify before this august body on a very memorable day, Pearl Harbor Day.

I feel that in this endeavor, I am speaking not just for myself but for the thousands of veterans who have experienced similar or greater frustration and challenges in attempting to deal with the Veterans' Administration.

To no avail, I have spent the last six and a half years in an attempt to have the Veterans' Administration recognize my claims, and it seems we are now at a point where we are getting ready to begin all over again.

The experience I will outline for you today highlights a system that promotes second-class medical care in a bureaucracy that is uninformed about military matters, programmed to procrastinate and inefficiency and non-caring with whom you cannot communicate.

Subsequent to finishing orthopedic residency, I returned to active duty with the Air Force at Keesler Air Force Base in Biloxi, Mississippi, and then spent two years at Hunter Air Force Base in Savannah, Georgia.

Since 1966, I have been practicing orthopedic surgery in Greenville, South Carolina. During these years, I have maintained my affiliation with the Air Force. Tours of active duty, I have served in Japan, Alaska, Germany, Spain, Greenham Commons in the UK. Additionally, I have spent time in Libya, Korea, Vietnam, and my last tour of

active duty was at Andrews Air Force Base here in Washington and Dhahran Air Base in Saudi Arabia during the first Gulf War.

I have logged combat time both in Vietnam and the Persian Gulf War. All tolled, this has amounted to 33 years of Air Force service, concluding as chief flight surgeon and orthopedic surgeon with over 3,000 hours of flying time with the rank of colonel.

Arriving in France in excellent health in 1955 with a completely normal physical exam, by 1957, I had developed a pterygium, which is an overgrowth of the veins of the eye covering portions of the cornea, of each eye, diagnosed to be secondary to irritation of the sun and sandstorms in North Africa.

The worst eye was operated upon not once but twice at the U.S. Air Force Hospital in Wiesbaden, Germany in late 1957. These facts are documented in my physical exam records.

Unfortunately, the growth recurred and over the years, my local ophthalmologist has monitored these growths closely. I have used a variety of drops in attempt to control the irritation, which creates an itching of the eyes with tearing. Sometimes blurring of vision accompanied by diminished visual acuity occurs with reading or night driving.

The Veterans' Administration had requested exams, which have been conducted at a hospital in Columbia, South Carolina, by a resident in training on two occasions. The VA Board has referred to this as no evidence of onset during active duty in the right eye, which is completely false and contrary to the documents, including in my physical exam and all of my records.

Had the evidence presented been appropriately reviewed and accepted, this grossly inaccurate judgment should not have occurred. Both eyes experienced simultaneous trauma in the desert and simultaneously developed a pterygium.

Jet engine noise experienced during flight line operations to which air crews, including the flight surgeon, are exposed can be productive of very serious hazardous noise levels to hearing. At that time, it was not recognized and the measures now in effect to protect one from excessive noise were not utilized.

Also, the seat of the flight deck of the C141 and 124 transport aircraft utilized by the flight surgeon has been noted to be in medical research studies in more recent times to be excessively hazardous noise levels of a high pitch whine with the port inboard engine being the cause of this. This is the seat that I occupied in accumulating in excess of 3,000 hours of flying.

These facts are all corroborated and verified in scientific data that I presented at a board hearing. In the data accumulated for the regional office, I presented a great deal of research material, pointing out the unhealthy nature of this exposure. This was from the medical research publications of many authors and from medical school facul-

ties, textbook authors, and Air Force research labs, especially those at Wright-Patterson Air Base in Ohio, all recognized authorities in their field.

Again, the VA evaluators at the Board of Appeals commented upon this as evidence of minimal exposure to aircraft jet noise. Clearly this statement was contrary to the research of the material that I quoted and presented relating to jet engine noise. Three thousand hours of flight time can hardly be glossed over as minimal exposure.

The substance of my testimony was not given the weight of an expert as prescribed by the regulations and by the Court of Appeals based on my status as a physician and a flight surgeon with special training and expertise in otology, or hearing problems.

Data was also presented relating to my evaluation by Dr. Joseph C. Farmer, Professor and Chief of Otolaryngology, Department of Surgery, Duke University Medical Center. His summarizing statement of September 2001 visit was "bilateral sensory hearing loss secondary to excessive noise exposure during Air Force duty, and I recommend hearing aids."

The Board hearing officer referred to this as minimal exposure. This is a marked contradiction to opinions regarding medical information between a judge and a recognized outstanding scientific authority and medical professors.

Flying cargo from Savannah, Georgia and Charleston, South Carolina to Vietnam frequently required three days to get there and three days to get back home while in the company of bombs, tail fins, Agent Orange, and who knows what else. This was one of the primary missions of the 63rd Airlift Wing at Savannah and 437th Airlift Wing in Charleston.

From 1964 to 1975, I developed an enlarged prostate that eventually produced urethral stenosis and the inability to void. This required a TUR operative procedure of the prostate.

Since then, the prostate has continued to enlarge with multiple surgical biopsies in an attempt to rule out the development of a tumor because of an accompanied considerable elevated PSA, which is a lab study that is indicative of that.

This has also been accompanied by several episodes of extensive urethral bleeding and, on occasion, requiring hospital admissions to control this.

Now the situation has progress to that of urinary incontinence and dysfunction with dribbling, requiring the wearing of absorptive devices. This, you can imagine, is a real problem and bother.

The last urologic evaluation requested by the VA was performed by a very junior general surgical resident in Columbia who told me that he did not care about my post exam grossly bloody urine specimen. As a junior general surgical resident, he is unqualified for evaluating the complex urinary dysfunction and prostate problem.

If the VA desires a valid opinion of a problem, they must have a valid specialist to evaluate the situation. This inadequate treatment is an insult and something that most veterans resent.

The medical issue is thought to be most likely due to Agent Orange exposure, and I am hopeful that this is not an indication of impending prostate cancer development. Medical literature and research studies were also presented to the regional offices and the Appeal Board to support this conclusion.

The comments of the Board was "manifest during RC with no evidence during ADT," which is also false. True, the episode of urinary retention occurred while in Greenville and not in Vietnam, but the enlargement was occurring over the preceding several years, which was noted on digital examinations over a time frame when multiple periods of active duty were served.

Now my internist points out with a blood sugar of approximately 140, he considers me to be a type-2 diabetic. Exercise and diet have so far done very little to accomplish resolution of the problem. I now understand that this has been recognized as a complication of Agent Orange exposure, and Congress has passed a resolution relating to such. This was published in a recent issue of the DAV magazine.

While on active duty in Charleston and during Desert Storm, it was recognized that my cholesterol and lipids were elevated and increasing on routine physical exam and lab studies. I was placed on cholesterol lowering medications in Charleston probably during the early 1980s, obtaining my medicine at the Charleston Air Force Base pharmacy.

This has controlled the elevation of these harmful levels to some degree as long as I remain on medications, though the VA will not provide me with the most recently developed and most effective medications prescribed by my internist.

It seems that veterans were good enough to go to war with the best equipment, but not to get the best medication for promotion of good health once they get home.

Because of the elevated cholesterol, I have developed considerable plaque formation and narrowing of the carotid arteries. These arteries are in the neck on either side. These are now requiring frequent monitoring with ultrasound screening.

Should these continue to progress, cerebral ischemic episodes or strokes are likely. Dizziness and vertigo with instability are provoked by transient and brief episodes of ischemia and risk prone surgical intervention is a possible consideration.

Working with the system for consideration of these medical problems beginning at the regional office in the spring of 1999, through the Veterans' Board of Appeals and the Court of Appeals, has gotten significantly nothing accomplished.

At the regional office, it is impossible to talk with the director or

any of the evaluators. Apparently, this is a hard and fast rule. You present yourself at the office. Someone is called down from upstairs to talk to you, but cannot answer any questions or take down any new information.

It is impossible to find out what is going on or if they have the correct or most recent data in your chart. This recently has been improved with the addition of a receptionist who can at least tell you if they have the records, but nothing else.

After a period of six to twelve months, you receive a letter that you must reply to or report for an additional physical exam that in my case was performed by a surgical resident in training status without regard to training in the applicable specialty.

Finally, a judge was provided in October of 2002 who the Disabled American Veterans' representative and I appeared before and presented my case. The judge insisted that all duty -- if I might have just a few more minutes to conclude. Thank you.

The judge insisted that all duty conducted while a reservist was considered inactive duty status. As most military personnel are aware, I tried to explain to her that reservists were called to active duty for periods of time from a few days to several months.

Crews flew all overseas missions, which were numerous, on an active duty status, which was a requirement by NATO. Active duty was also required on any mission when possible exposure to hostile fire or flying in the combat zone, such as Vietnam and the Persian Gulf, was required.

This information was never accepted as a fact by the judge. Due to the lack of the judge's understanding of these facts, the nature of my medical problem was not addressed and the hearing wound up accomplishing nothing.

I was directed to contact the Air Force Personnel Center at Randolph for further confirmation of my facts. With the lack of understanding by the judge of the facts presented, what faith can one have in the fairness of the system or accuracy of the judgment?

When the matter after appeal finally got to the Board of Appeals some six months later, I had a very well-prepared slide and document representation. Judge Joy McDonald dismissed this and I was allowed only a hurried verbal presentation.

I had documents and medical research treatise from the literature as well as copies of my physical exams supporting my case. Again, the medical facts and authoritative research evidence was treated with casual disregard. Judge McDonald did not consider my testimony that of an expert as required by regulations and as directed by the court. I do not understand how the judge could ignore the VA regulations and the direction of the Court of Appeals.

As a chief flight surgeon, a physician has special training in aerospace medicine, emphasizing ear, eye, and cardiopulmonary physiolo-

ogy. It would appear self-evident that she was dealing with a veteran with some medical knowledge.

The judge also recently requested a cardiologist review my case involving the carotid arteries. Again lacking medical expertise, she obviously is not aware of the difference between the coronary artery and the carotid artery.

The coronary arteries are in the heart and the carotid arteries are in the head. A cardiologist is not a physician to make determinations on the carotid artery, but should require a neurologist. This certainly does not reflect with credit upon the Board nor give one a sense of security that they know what they are doing and one can be judged correctly and fairly.

This case was then appealed to the Court of Veterans' Appeal. There I had the good fortune of having an attorney representing me who pointed out the unfairness of the Board and glaring error on their part in not properly considering my testimony. With his assistance in pointing out this mistake, the court referred my case back to the Board of Appeals.

This remand has now taken two and a half years, from March 19th of 2003, to October 11th of 2005, for my records to go from the location of the Board of Appeals to the Court of Appeals and then back to the Board of Appeals, about five blocks across the city of Washington.

I was at the Board of Appeals' office in D.C. on the 11th of October and met with the DAV representative who was most knowledgeable and helpful. He was able to locate my records in the office almost immediately. He pointed out that as a patient over age 75, they should expedite my case and mark the records accordingly.

Feeling that we would be given prompt attention by the Board of Appeals as directed by the court, upon returning to Greenville, I underwent a reevaluation by my internist of my cholesterol and vascular stenosis status.

I also had a reevaluation by my urologist of my renal dysfunction and prostate status, and had copies of these sent to the Board. Here are copies of each one of these reports right now, which I understand should be in my records.

Unfortunately, on 11/23/05, I was informed that the case had been referred back to the RO, regional office, for further development of data.

THE CHAIRMAN. Dr. Jones, you are going to have to speed it up, please. We have three votes pending.

DR. JONES. All right.

THE CHAIRMAN. Your written statement will be submitted for the record. If you can summarize your conclusion.

DR. JONES. Can I just read through the conclusion?

THE CHAIRMAN. Yes, sir.

DR. JONES. Okay. Thank you.

In conclusion, I feel manipulated by a system of bureaucratic maneuvers. As described by my testimony, my case has gone from the regional office to the Board of Appeals, to the court over the course of six and a half years only to be returned to the regional office.

I am appealing to you today to hold this system accountable for ensuring that veterans who have fought for our freedom have an adequate and efficient means of resolving these problems in a timely manner.

Soldiers, sailors, marines, and airmen in harms way in Afghanistan and Iraq and other far-flung parts of the globe and their families are enduring a great deal of hardship and grief in various areas of conflict. They have been led to believe that our country will stand behind them and take care of them when they return home, many with broken bodies and mangled minds, and are not able to care for themselves.

In conclusion, I would just like to say that I have not received any funds from any government agency, federal grant, or contract from the government relative to this subject matter and the testimony during the current year or previous other years.

Before departing, I would like to share with you one brief but very pointed passage from the literature inscribed on a plaque at Parris Island which is very appropriate with the current calls for quitting before we finish the job in Iraq.

War is an ugly thing, but not the ugliest of things. The decay and degraded status of moral and patriotic feelings which thinks that nothing is worth war is much worse. A man who has nothing for which he is willing to fight, nothing he cares more about than his own personal safety is a miserable creature who has no chance of being free unless made and kept so by exertion of better men than himself.

I thank you for your attention.

[The statement of William B. Jones appears on p. 68]

THE CHAIRMAN. Dr. Jones, we have asked you to come here and testify because you have had a very unique life. Graduate of the Citadel, and Duke University for your medical degree and your residency. You have had an extraordinary career and you are in a unique place to give testimony and answer the members' questions because you also have these experiences with your military service. And you understand your body.

And so we are interested in that frustration and the challenges you have as you go through an appellate process, a claims process, when people who are looking at them may not be as qualified.

The Committee will stand at recess. We have three votes.

[Recess.]

THE CHAIRMAN. The Committee will come back to order.

Dr. Jones, would you please come back to the table. I apologize to you. Sometimes when we have votes and hearings are extended, my colleagues get pulled in many different directions. We had a good attendance and then the votes disturbed that.

I want to thank you for coming and giving your testimony. Just before we broke, I tried to share with you one of the reasons we asked you to come here is because you are providing a voice for many veterans who do not have your medical expertise.

How challenging it must be for you to have an understanding regarding your human physiology, and make a claim also based on your military experiences and then to have that claim sent to someone of whom you have no idea about their background, expertise, and begin to make judgments on that.

Will you share some of that with me, what are your thoughts about having gone through that?

DR. JONES. Well, you get certainly provoked when you find that your claim is being referred back down to the regional office to evaluate what is printed or the examiner calls the coronary arteries when, in effect, the arteries in question are the carotid, one being in the chest, the other in the head.

And it makes you wonder if they are that uninformed about the human body or they do not seek some assistance to bring them up to speed or how fair are they going to really be able to judge your claim. And that is most frustrating.

And then to be sent to the hospital for a detailed and comprehensive urologic examination and you find that the examiner is a very junior surgical resident who is in training.

And really most general surgical programs, there is very little emphasis on urology. It is certainly a separate and apart specialty of the field. So they are really not in any position to form an adequate judgment.

And, of course, I am afraid in so many cases a veteran who is not medically oriented might not realize that he is not really being offered a fair and adequate evaluation and winds up with an opinion from somebody who is not capable really of evaluating the situation.

THE CHAIRMAN. When you filed your disability claim in February of 2000, a decision was then made on August 31 of 2000. Was anybody from VA in touch with you during that time period?

DR. JONES. I'm sorry.

THE CHAIRMAN. You submitted your claim and then a decision was made. Were they in touch with you during that process and, if so, what communication took place?

DR. JONES. Very little. I really initially -- and I realize those dates are in the records there -- but initially I started this process in the spring of '99. And, yes, I would periodically have a request for more information on this, that, or the other, or a request to come down for

another hearing evaluation and so forth.

And during that period of time that you were talking about, perhaps I was communicated with maybe three times.

THE CHAIRMAN. Did you have bi-directional communication or was it, "here is what I want," you send it and you do not talk to anybody?

DR. JONES. No. That was it. They give you an 800 number, but you would call it and you never could get anybody on the phone to talk to.

And you felt like in many cases if you could just talk to the person evaluating your claim, you could clear up some misunderstandings which might involve referring it back and forth to two or three different people in their agency. And if you could talk with them just to answer their questions, you feel like it would certainly be a big help to moving the claim along.

And for that reason, I really think that in many cases if the VA could employ veterans or retirees who had service in the system and really understand that all people on reserve category or National Guard category are not always on reserve training duty. They certainly in many cases are called to active duty as they are quite frequently now. And I think that is going to be more the case in the future. And when they are on active duty and called up, they are placed on active duty and should be treated just as anyone else on active duty.

THE CHAIRMAN. Earlier you used the words "fair evaluation." Often that is defined subjectively.

As you examine your own experience going through this process and how long it has taken you, what are your recommendations to us about objectivity and how we make this a more fair process in evaluating disability claims?

DR. JONES. Well, that generally, I think, is a case where it involves someone evaluating the situation and making the decision. For instance, how in the world could they categorize one eye as being acquired as a result of military service and not the other? Both eyes were two inches apart and what trauma to one eye can do, the other did.

And I think the mechanism there is to try to get people more familiar with the military system and I think just more attentiveness on the part of the person evaluating the claim should rectify such things as that. And such things as confusing the coronary and carotid artery, I think there, they just need to try to educate themselves a little bit better as to what those were.

But they certainly need to have some emphasis on trying to push a claim along because in my case, six and a half years to start out and now it is going back down to the regional office again. You wonder if it is ever going to reach a final conclusion.

THE CHAIRMAN. It is a challenging process whereby, you know, is one eye considered one, or are both eyes considered together?

DR. JONES. The wind was blowing primarily from the left side and that is why you got all the sun and sand in that eye.

But I realize the Veterans' Administration is an expensive program and certainly with these days, you like to conserve as much of the government funds as you can.

But at the same time, if we are going to be involved in these conflicts and having people get their bodies bent up and mangled, we need to fully stand behind them so that when they come back home, they will be hopefully productive citizens again and at least adequately taken care of.

THE CHAIRMAN. May I surmise then from your statement that training of evaluators is key? That we should examine that in greater detail?

DR. JONES. I think that would be an excellent policy.

THE CHAIRMAN. I have some further questions, but at this moment, I will yield.

Mr. Udall.

MR. UDALL. Thank you, Mr. Chairman, and I apologize for not being here earlier. I had another commitment. I move to put my statement in the record.

THE CHAIRMAN. No objection.

[The statement of Tom Udall appears at p. 63]

MR. UDALL. Dr. Jones, thank you for your testimony.

I hear the same story from veterans in my district whenever we meet with them. It appears that many of the measures used to measure productivity are not designed from the perspective of veterans who spend years waiting for hearings and decisions.

Do you believe that the system would work better if only board certified physicians conducted compensation and pension examinations?

DR. JONES. Yes. I very definitely feel that that would speed the process up.

MR. UDALL. Why do you think that?

DR. JONES. Well, I think they would be more confident in making a conclusive or definite decision when they perform an evaluation as opposed to a resident in training. He is a little uncertain and unsecure in his position. And with the responsibility of making such an important decision, he may be hesitant just like in the case of the young man who evaluated me.

He had done his evaluation and examination and he really did not want to get involved with the fact that there is blood in the urine after the evaluation. So I think more qualified people in performing these medical examinations would certainly be of benefit.

MR. UDALL. Should the VA pay to obtain private medical records for disability claims as the Social Security Administration does?

DR. JONES. I do not think really it should require that. I mean, most doctors' offices formerly would have all the records on pieces of paper which could be sent through a duplicating machine or fax now. And now the big emphasis to switch over from paper records to paperless records.

Most offices are going to a computer program now where you just dictate into the computer. So it should only be a matter of pressing a few buttons to send the records to the VA. So I do not think that they should really in fairness charge them for that.

MR. UDALL. We hope that is how it works.

We appreciate, Dr. Jones, your testimony very much and hope that your efforts here today help many other veterans.

Thank you, Mr. Chairman. Yield back.

DR. JONES. Thank you.

THE CHAIRMAN. Dr. Jones, I understand your appeal at the Board has been expedited based on your age.

Has anyone at BVA given you any indication as to when a decision could be made?

DR. JONES. No. As a matter of fact, the Board had the remand clearly marked for it to be expedited. But then I got a couple of letters from the agency that facilitates the appeal process and it has a return address of Veterans' Administration but had no telephone number, no address or anything on there.

But they indicated in their correspondence that they had a heavy workload and it would be addressed in due time, but did not indicate that they were aware of or going to be in a position to in any manner expedite the process in spite of the fact I have got ten evaluations already of a recent nature from the urologist as well as an internist.

And more recently, I guess the last evaluation I had of my eyes, they made colored photographs of the pterygiums and those should now be incorporated in the record.

So really I do not see where there should be a need for any more referral evaluations. I would be happy to participate in those if they need them, but the chart and records should be in a situation now so they could make an informed decision with what is there.

THE CHAIRMAN. You testified that you believe that this process is programmed to procrastinate. Why?

DR. JONES. Well, I do not think there is any urgency shown by any of the people that get involved to push the process along. For it to take months to go through the regional office, it must sit in some in basket or out basket for a considerable period of time. And I do not think anybody really is concerned about that and nothing seems to be a stimulus to move it along.

And that may be one of the reasons that you cannot communicate with them, just the fact, I guess, it would take some of their time in communicating. But at the same time, it might very well facilitate

the process more than it would consume their time in talking with the clients.

THE CHAIRMAN. Do you have any further recommendations for us on how to change the process?

DR. JONES. Well, perhaps a bit more education of those people involved in terms of medical terms and some diseases and how they expect it to turn out and so forth might be helpful. And if more attention could be directed to getting people with previous background in the field of medicine and the military would be helpful.

THE CHAIRMAN. You also used the word "attitude" in your testimony. It is pretty important. It can move mountains. And you believe that they need an attitude change? This is sort of your synopsis of having gone through all this so long?

DR. JONES. Well, I think so, because when a veteran goes to the regional office, he is not really going to talk to anybody. The first time there, he fills out the application. He has a little assistance with that.

But any other time that he is there, perhaps to bring information of a new physical exam that has been done or perhaps to just check on the progress of the case, the attitude is, you know, we are all too busy. We cannot spend any time talking with you.

And if you call up, you cannot really get anybody on the phone. You talk to an answering machine. And you are very frustrated. What can I do to help the situation. Well, you cannot do anything. You cannot even talk to anybody about it. I think that is a bad attitude.

I think anything involving medicine -- and I think in these evaluations, it does involve medicine -- that a caring attitude does a lot to reassure the patient or the person involved that he is really talking with someone who is concerned about his situation and attempting to try to move it forward to a successful, favorable conclusion.

THE CHAIRMAN. Well, at the end of your statement, you were hopeful that your presence here, while it may not eliminate your frustration, that you hope that it would be helpful. And I would submit, sir, that it is.

DR. JONES. Well, thank you.

THE CHAIRMAN. Congress has chartered a Disability Commission and its charter has great latitude in its recommendations to Congress. We are most hopeful that we can come up with a claims system that treats people the way they deserve to be treated.

I mean, they did not ask for much in the service of their country and we in turn as a country owe them more than a great deal of gratitude. It is to try to make them as whole as possible and to give them every opportunity to live full and complete lives. And we seek to do that.

I appreciate you being here; your testimony is valuable and important. Thank you, Dr. Jones.

DR. JONES. Thank you very much. I believe I read just the other day about the Commission. I think this was in an article from an Air Force magazine that it has taken them much longer than anticipated, though, to come up with a recommendation, has it not, to 2007 or 2008 before they feel like they will be finished?

THE CHAIRMAN. Well, you are right on the edge. I have met with the Chairman and he has expressed some concerns. And we are going to address those issues. That charter that we have given him, Dr. Jones, is very broad.

And we want to give this Commission support. The individuals who are serving on this Commission are highly decorated -- several are Medal of Honor winners. There are criteria with regard to their military status, but they are also very unique individuals in their own right.

We have given them a pretty expansive charter. Not often in Washington, D.C., do we move in bold strokes. We are hopeful that they are going to come to us with some pretty significant recommendations on how to improve this process.

DR. JONES. Well, that is most encouraging, and certainly they need the time to do a thorough job.

THE CHAIRMAN. I think so too.

Thank you, Dr. Jones, for your testimony.

DR. JONES. Thank you very much.

THE CHAIRMAN. You are now excused.

DR. JONES. My privilege.

THE CHAIRMAN. If the second panel will please come forward. We are pleased to have Mr. Ronald R. Aument, the Deputy Under Secretary for Benefits from the Veterans Benefits Administration, and the Honorable James Terry, Chairman of the Board of Veterans' Appeals, with us today as our second panel.

Mr. Aument serves as second in command at the Veterans Benefits Administration, the branch of the Department of Veterans Affairs responsible for administering benefits programs for veterans, including education, home loan guaranty, compensation, pension, vocational rehabilitation, employment, and insurance.

Mr. James P. Terry was nominated to serve as Chairman of the Board of Veterans' Appeals by President Bush on April 26, 2005. He was confirmed by the Senate on July 29, 2005.

A former Marine Corps infantry officer in Vietnam, his final four years of active duty were as the Marine Corps judge advocate, serving as legal counsel to the Joint Chiefs of Staff, and he retired as colonel in 1995.

Mr. Terry's military awards included the Bronze Star Medal, the Purple Heart, Defense Superior Service Medal, Legion of Merit, et cetera. I should say et al.

Did you forget the Good Conduct Medal in there?

Mr. Aument, will you please begin.

STATEMENTS OF RONALD R. AUMENT, DEPUTY UNDER SECRETARY FOR BENEFITS, VETERANS BENEFITS ADMINISTRATION; AND JAMES P. TERRY, CHAIRMAN, BOARD OF VETERANS' APPEALS

STATEMENT OF RONALD R. AUMENT

MR. AUMENT. Thank you, Mr. Chairman, and members of the Committee. It is my pleasure to be here today to discuss the Disability Compensation Program.

The Veterans Benefits Administration, VBA, is responsible for administering a wide range of benefits and services for veterans, their families, and their survivors. The heart of our mission is the Disability Compensation Program.

In 2005, we produced over 763,000 disability determinations. We also performed more than two million decision actions of all types to address new claims and to maintain those already on the rolls.

Additionally, we handled over 6.3 million phone calls, conducted more than a million interviews, briefed more than 330,000 service members, and conducted nearly 70,000 hours of outreach.

Today I will discuss the challenges we face in providing timely, accurate, and consistent determinations on veterans' claims for disability compensation.

These challenges include the growth of the disability claims workload, the increasingly complex nature of the claims processing workload, the rise in appellate processing, and the continuing need to produce accurate benefit determinations.

I will also discuss some of the actions we are taking to improve claims processing. We view these efforts as opportunities to provide more timely and accurate disability compensation determinations for veterans.

The number of veterans filing initial disability compensation claims and claims for increased benefits has increased every year since fiscal year 2000. Disability claims from veterans returning from Operations Iraqi Freedom and Enduring Freedom, as well as veterans from earlier periods of war, have increased from 578,000 in fiscal year 2000 to more than 788,000 in fiscal year 2005. This increase represents more than 200,000 claims or 36 percent over the 2000 base year.

The increase in claims receipts is not the only change affecting the claims processing environment. The greater number of disabilities veterans now claim, the increasing complexity of the disabilities being claimed, and changes in law and processes pose additional challenges to the claims processing workload. The trend towards increasingly complex and difficult to rate claims is expected to continue.

A significant portion of VBA's workload comes from the appeals of regional office decisions, remands by the Board of Veterans' Appeals and the courts, and from account maintenance activities for beneficiaries already receiving benefits. As overall claim determinations increase, so do appellate and nonrating related workloads.

The compelling requirement to produce accurate benefit decisions represents both a challenge and an opportunity. VBA has established an aggressive and comprehensive program of quality assurance and oversight to assess compliance with VBA claims processing policy and procedures, and to assure consistent application.

VBA is engaged in numerous initiatives aimed at better managing the disability claims workload and improving benefits processing. The efforts include changes to the organization and structure of the Veteran Service Center operations, the delivery of training for claims processors, the consolidation of specialized operations, and the redistribution of the rating workload.

A product of the VA Claims Processing Task Force was the implementation of the Claims Processing Improvement or CPI model. CPI was implemented in 2002 and established a consistent organizational structure and work processes across all regional offices.

The changing workload and workforce have necessitated a review of the model to outline the most effective method of organizing work and resources to maximize performance.

During fiscal year 2006, we will conduct a high level review of CPI and identify modifications that will further augment efficiencies in claims processing.

VBA has deployed new training tools and centralized training programs that support accurate and consistent decision making. New hires receive comprehensive training and a consistent foundation in claims processing principles through a national centralized training program. And local training is provided thereafter utilizing the standard curriculum.

Standardized computer-based training tools have been developed and training letters and satellite broadcasts are provided to the field on the proper approach to rating complex issues.

We are currently developing a mandatory cycle of training for all C&P business line staff consisting of an 80-hour curriculum annually.

The consolidation of specialized processing operations for certain types of claims has been implemented to provide better and more consistent decisions. Some of our efforts include the establishment of the Pension Maintenance Centers, the Tiger Team, the Appeals Management Center, and the Casualty Assistant Unit.

Most recently, VBA has consolidated the rating aspects of our Benefits Delivery at Discharge initiatives, which will bring greater consistency on decisions on claims filed by newly-separated veterans.

Additionally, we are exploring the centralization of all pension adjudication to the Pension Maintenance Centers.

Through these initiatives, VBA is prepared to address the challenges facing our organization and improve claims processing. We will continue to assess our policies, processes, and approaches to take advantage of improvement opportunities and to ensure we are achieving the desired performance outcomes.

Mr. Chairman, this concludes my testimony. I greatly appreciate being here today and look forward to answering your questions.

[The statement of Ronald R. Aument appears on p. 74]

THE CHAIRMAN. Thank you very much.

Mr. Terry, you are now recognized.

STATEMENT OF JAMES P. TERRY

MR. TERRY. Thank you, Mr. Chairman, and good afternoon. Good afternoon, Mr. Udall. And thank you for the opportunity to discuss the operations of the Board of Veterans' Appeals with you, the members of the Committee, and your staff.

When the Board last presented testimony before the Subcommittee on Disability Assistance and Memorial Affairs on May 5th of this year, we contrasted our performance with that of past years, notably when we appeared before the Committee in February of 1994 and June of 1998.

This comparison continues, sir, to be instructive in demonstrating where we are heading and how we will meet the challenges that the future may bring.

In fiscal year 1994, the Board issued about 22,000 decisions. Our pending caseload stood at 47,000 and was on its way to 60,000 cases. Our measure of timeliness then used, average response time, was 781 days. By fiscal year 1998, we had significantly improved our timeliness and productivity.

With 483 FTE, we issued 38,886 decisions, held 4,875 hearings, and our appeals resolution time, the time from the date a veteran files a Notice of Disagreement until he or she receives a final decision on appeal either at the Board or in the field, was 686 days.

In fiscal year 2005, this past year, the Board issued 34,175 decisions and conducted 8,576 hearings, a substantial increase in hearings from 1998.

Appeals resolution time stood at 622 days. Our cycle time, the time that it actually takes the Board to issue a decision, excluding the time the case is with his veteran service organization, was 104 days. It was 159 days if you included the time the VSO had the case.

Significantly, we accomplished these results with 434 authorized FTE or 49 fewer FTE than we had in 1998 and 58 fewer than we had

in 1997. Despite our efforts, we continue to receive more appeals than we are deciding.

Case receipts at the Board for fiscal year 2005 were 41,816 and the number pending at the end of fiscal year 2005 stood at 37,539. That is 19,900 in backlog, 10,930 in working inventory, and a number of appeals in the field on their way to the Board.

Our most significant challenge for the future is how to eliminate the growing backlog within available resources.

Mr. Chairman, we are fortunate to have received much help in achieving our success this past year and in future years as a result of the unqualified support that this Committee and your Senate colleagues have provided.

And certainly we are mindful of the assistance of the veteran service organizations which represent about 85 percent of our appellants.

We are also mindful of the strong support from VA's leadership and certainly the Board of Veterans' Appeals law judges and our support staff.

Two of the most significant and persistent challenges, sir, we face are eliminating avoidable remands and increasing our productivity to contain and reduce the appeals backlog.

In regard to remands, we know that certainly veterans want timely and correct decisions on claims for benefits. For the Board to do that and to improve our performance, we must have all evidence necessary to decide the claim and show that all necessary due process has been provided. If the record does not meet these requirements and the benefits sought cannot be granted, then a remand for further development is necessary.

Remands, of course, lengthen the time of appeal. One remand, for example, adds about a year to the process. Remands also divert resources from processing other claims and appeals. And we are mindful that about 75 percent of the cases remanded are returned to the Board, so we have to see them twice and this doubles our workload.

Hence, eliminating avoidable remands is a goal that will provide better service to veterans and their families and ultimately help to diminish the growing backlog.

We are working with VBA, the Office of General Counsel, and the Veterans Health Administration to identify and track the root causes of remands, provide training, ultimately to eliminate these avoidable remands. In this regard, our training efforts have been considerable.

We have had several direct training sessions during the past year for all our VLJs and staff counsel on aspects of remand avoidance. We have held joint training sessions with the Veterans Benefit Administration, including a video broadcast on avoidable remands and on evidence development.

We conducted numerous sessions on a variety of medical and legal

subjects within our jurisdiction and are planning new interdepartmental training initiatives, all designed to reduce remands and improve quality.

In addition, we are working with VHA and VBA on the CPEP. That is the Compensation and Pension Examination Project which, by improving the quality of VA compensation examinations, will ameliorate a major cause of remands.

We think these results are encouraging. We have a long way to go. But in the past year, our remand rate has dropped to 38.6 percent as compared to 56.8 percent in fiscal year 2004. So far this year in fiscal year 2006, the first two months, the remand rate stands at 32 percent.

Now, if nothing had been done, certainly our backlog was projected to grow to unacceptable levels. And although we have made many improvements, sir, we have a long way to go.

Within existing resources, through incentives and sound management, we will continue to improve by doing a number of things.

First, we will eliminate, as I mentioned, avoidable remands.

Second, we will strengthen our intra-agency partnerships. Our joint training efforts with VBA, the Office of General Counsel, and the Veterans' Health Administration will improve decision quality and reduce these remands.

We have asked our judges and counsel in their preparation to write shorter, clearer, and more concise decisions. We are training our veterans law judges and counsel to write shorter and more concise decisions so that we can get more productivity out of each of them.

We are utilizing employee incentives and mentoring and training programs. And these programs certainly are designed to increase productivity and decision quality.

And we are making judicious use of overtime in our shop. We will use overtime within existing resources to enhance productivity.

We are also increasing the use of paralegals to do those things that some of our attorneys are doing now to ensure that they are freed up for work that is absolutely necessary to the Board.

We are also providing improved on-line legal research tools and an analytical framework to aid timely and correct decision production.

We believe these measures will work to reduce the backlog and shorten the time it takes for a veteran to receive a fair, well-reasoned Board decision. This reduction in time is important and it is even more significant in light of the fact that 61.4 percent of the decisions issued in fiscal year 2005 were final decisions as opposed to 58.7 percent of the decisions in fiscal year 1998.

While our decision quality has modestly improved to 89 percent in fiscal year 2005, the complexity that comes from drafting more final decisions, addressing the merits of the claim as opposed to remands for more development, is significant. Notably, the Board's own time-

liness, our cycle time, stands at a little over three months.

I wish to assure you that we will continue to work together with our partners in and outside the department to develop new and creative solutions to the challenges we face in order to fulfill our statutory mission to hold hearings and provide timely, high-quality decisions to our nation's veterans and their families.

I look forward to answering any of your questions.

[The statement of James P. Terry appears on p. 86]

THE CHAIRMAN. Thank you very much, Mr. Terry, for your testimony.

Secretary Aument, what is the time frame for addressing the quality of your ratings, the accuracy of the ratings, and the accountability at the regional office level?

MR. AUMENT. Would you repeat the question, Mr. Chairman.

THE CHAIRMAN. What is your time frame for addressing these issues on quality of the ratings, the accuracy of the ratings, and the accountability at the regional office level?

MR. AUMENT. I believe our time is immediate, Mr. Chairman. We have established quality performance standards for each of our directors and it is one of the driving forces of judging station performance, whether or not they are capable of hitting the challenging quality targets that we put out there for them.

THE CHAIRMAN. Well, you gentlemen were in here when the first panel testified. And Dr. Jones' testimony is very similar to that which I have heard from others going through this process.

Over the years, veterans have expressed that there have been - they just want to be treated well. I mean, they already gave for their country. They recognize that something is not right with their health. They might be in an economic plight when they are making the claim. And how they get treated in that process by their own country is pretty important.

There are so many things that the VA does right that when you do things wrong like this, you should not be surprised at all when someone of Dr. Jones' esteem says this is all a matter of attitude. Not all, but, you know, it is pretty important.

This issue about quality. My opening statement was based on numbers that you gave at the Subcommittee hearing, and you gave numbers. And pretty soon everybody is talking about all these big numbers and then it is a quantity push.

As I listened to Dr. Jones' testimony, it is about quality. Here is a doctor who knows what happened to his body. He gets evaluated by someone who is not making right medical decisions.

It would be pretty challenging, would it not, Mr. Secretary?

MR. AUMENT. Indeed it is, Mr. Chairman. And I was struck by Dr. Jones' testimony as well. It troubles me when anyone comes away

from our system feeling as though they have been treated unfairly and that they perceive that there is an attitude problem.

I also heard Dr. Jones saying how he thought it could be made better and that the fact that we need to have more veterans and people who have the same experiences that Dr. Jones has gone through involved in the process.

You know, I am proud to say that over half of the employees in our service centers are indeed veterans and among the recent hires that we have made is over 60 percent are veterans.

I was also struck by Dr. Jones' testimony in that it was very illustrative of just how complex this system has actually become. If it is difficult for an educated and seasoned individual like Dr. Jones to navigate through the system, we just know how difficult it is for veterans who do not have that same level of experience. It is very challenging for us, Mr. Chairman.

THE CHAIRMAN. Complexities create inherent limitations, do they not?

MR. AUMENT. Indeed they do.

THE CHAIRMAN. What would they be?

MR. AUMENT. The complexity imposed again demands that we pay more attention to each and every claim that we produce. There are many forms of complexity.

For example, the number of issues that are involved in an individual claim. Many of the claims that we are seeing from recently discharged service members come through the Benefits Delivery at Discharge Program. We have been seeing typically -- and it is somewhat anecdotal, the data -- but we have been seeing these with an average of ten or more issues per claim.

And that places an enormous burden on those who are actually trying to develop those claims. It poses not only an issue for the Veterans Benefits Administration to develop those claims, but those typically translate into different types of medical exams that have to be separately addressed.

So complexity is an enormous challenge for us.

THE CHAIRMAN. How about you, Chairman Terry?

MR. TERRY. I feel exactly the same way. I find that the case that Dr. Jones described to be one of very great concern for us.

In his particular case, he had five different major issues, a hearing issue and a bilateral issue that was quickly taken care of. But he had other issues that were not properly developed and had to be returned for their development, one involving a very significant prostate issue.

And it is that type of thing that it is very, very important that we get right. And while I am distressed by what he described because he described the situation where we did not get it right and --

THE CHAIRMAN. Getting the stuff right the first time saves a lot of

anxiety, a lot of work, man hours.

MR. TERRY. I know that the judge that heard his case, Joy McDonald, who is the daughter of Admiral McDonald, who is probably someone the doctor knows, is greatly concerned about ensuring that we get it right. And that is why she sent it back so that there would be sufficient evidence so she could give a fair hearing on his problem.

And while I regret that it took longer than any of us would have hoped or expected, we can only hope that we can do better in the future.

I have been on board now about four months and I have been looking at each of the things that we do well and those that we do not do as well as we should in the Board. And when I see a case like Dr. Jones, my heart goes out because I served a long time myself, and I know that those individuals in the Marine Corps who served with me and who were not given the kind of service we would all hope they would get when they came into our system should have been treated well. And in my view, we have not treated Dr. Jones as well as he should have expected. And we are going to try to do better.

THE CHAIRMAN. Are there doctors on staff at the regional offices, both your regional offices and at the Board?

MR. AUMENT. We have none, Mr. Chairman. Incidentally, we employ a handful of doctors that are working in the Compensation and Pension Service to provide some professional guidance and direction within the Compensation and Pension Service. But at a typical regional office, you will not find a doctor, a physician.

THE CHAIRMAN. Those are here in D.C., the advisors?

MR. AUMENT. They are either here in D.C. or out-stationed, but they are connected to our central office component, yes.

THE CHAIRMAN. Who do they advise?

MR. AUMENT. They advise the Director of Compensation and Pension Service in the development of regulation changes. They work together in developing some of the requirements for medical exams, those types of advisory activities.

THE CHAIRMAN. Chairman Terry, do you have any --

MR. TERRY. Whenever an individual is being seen for a specific issue that they have brought forward, of course our medical centers are available and our veterans are referred to the medical centers for their evaluation and for an examination which addresses each specific concern they might have.

It is our hope that we have the kind of expertise that can render the kind of decisions which allow us to look fairly at a specific issue or a specific problem and render a decision which is fair.

As Dr. Jones described, apparently his experience was such that the person or persons who examined him were not in his view qualified to do so. I do not have that information before me, but I will certainly look into it, I assure you.

THE CHAIRMAN. I have one more question, Mr. Udall, and then I will yield to you.

We look at this from a Congressional standpoint as we do our oversight of the executive function. Sometimes it could even be simply, and say, well, if you have this backlog and you have these kind of problems, do we either need to throw more money at it or more people or both. We often do that.

You pick any agency, your department, for example. We have done that over the years, even on our budgetary processes on this Committee, do we increase your FTE or not, or what do we give you in your budget? Do we add back in what you took away?

So in your testimony, you say since 2000, you have had a 36 percent increase in your claims, but have you increased your staffing, your FTE at the same time?

MR. AUMENT. We have not increased staffing in absolute terms, Mr. Chairman. But, I believe, part of the challenge to us as managers and leaders in the organization is to make sure that we are using the resources that you provide us as wisely as possible.

We have directed over the course of that time interval more staffing to the direct work done by the people at the regional office working in our staffing centers. In some cases, we have done this by reducing management overhead staff and, in some cases, trying to balance the staffing that is applied to some of the other business lines that VBA is responsible for administering.

But I agree with you that there is no simple answer by just throwing money at the problem. If you were to tell me today to go out and hire an additional thousand staff throughout the system, we would not see results that are going to immediately change things around because, again, we have to have competent, skilled, trained staff in the right positions.

And I think the key for us is making sure that we provide them the right training, the right tools, and provide the right oversight on the system to make sure that things are being done uniformly and accurately across the system.

THE CHAIRMAN. Chairman Terry, when we submit our budgetary estimates, adding additional, for example, on FTE, it is dependent on the appropriators following suit.

Would that help you? Is that something we should be looking at?

MR. TERRY. More resources are helpful to every organization. There is no question about that. We are looking at the many efficiencies we can utilize this year to accomplish the mission within our budget that has been provided by the administration.

Certainly we are mindful that every department, every organization needs more resources. And we are also mindful, and I especially have been in government 38 years, sir, I know that when our secretary advocates strongly before OMB and OMB gives us what they

give us, that is what happens. And we will work within that budget. We will do the very best we can, sir. We are mindful that it takes people to manage the system.

We are also mindful, though, that eliminating avoidable remands, better training for our people, working more closely with VBA, working very closely with the Veterans Health Administration, and setting up better programs to examine our folks with protocols that actually are consistent each time so that, for example, in PTSD, we have the type of examination that allows us to be consistent.

These are the kinds of things that will make a great difference for us. And we will certainly do that. I commit to you that we are. We are doing that right as we speak.

THE CHAIRMAN. As you formulated your budget, did you make a request for increases in your FTE?

MR. TERRY. Sir, I can just tell you that our authorization for 2007 is going to be 444, we believe. We are at 434 right now. We are certainly appreciative of whatever support we receive. And we are certainly aware that the administration is supporting us to the extent certainly that they can with the other priorities we have in this government.

We are mindful of our responsibilities. We are trying to write shorter and more concise decisions. We are trying to get our people to do more with what we have and we will continue to do that.

THE CHAIRMAN. Secretary Aument.

MR. AUMENT. As far as 2007, as the Chairman knows right now, we are still in the predecisional phases of the 2007 budget process. I am not really at liberty to discuss what we have requested either from OMB or from the administration.

I can tell you that we have committed this year to trying to make sure that we honestly and accurately tell the decision makers on the budget what we believe a certain level of resources is going to buy in the way of performance. And we have shown an array of options as to what performance to expect given the resource levels that are ultimately approved.

Frankly, we would probably be happy. We believe that we can put a considerable dent into the backlog and into the current pending volume of claims if we sustain ourselves at the resource level that we have been given for the 2006 budget year.

THE CHAIRMAN. Let me try it this way. Do you anticipate an increase in your FTE or a decrease in your FTE in 2007?

MR. AUMENT. I don't know what to anticipate, Mr. Chairman. As I said before, the --

THE CHAIRMAN. All right. It is Christmas. What are you looking for in your Christmas package?

MR. AUMENT. Well, we would always use some additional staff under the tree under those scenarios, Mr. Chairman.

THE CHAIRMAN. Getting comfort with that.

MR. UDALL.

MR. UDALL. Thank you, Mr. Chairman. That is one way to approach it, I guess.

Secretary Aument, you point out in your testimony that the workload for original claims has increased by 25 percent over the last two years and reopened claims increased by two to three percent each year.

Staffing has not increased as the Chairman has just pointed out. It has not increased by the same amount. And as of September 30th, the VA had 173 fewer employees in regional offices to handle compensation and pension claims than on September 30th, 2002.

The VA Inspector General reported earlier this year that regional office staff felt that they were not adequately staffed to provide accurate and timely decisions on claims. Unfortunately, the recently approved budget does not include a recommendation for an increase to meet the need.

Isn't the rising claims and appellate backlog due in part to insufficient staffing to make quality decisions? Since the average number of claims per case has increased, should VA revise its production standards?

MR. AUMENT. I see no reason at this point to revise our production standards. It is certainly our expectation, and I would assume it is the expectation of this Committee as well, that we expect our staff to become more productive, that I think it is a reasonable expectation that we provide training and tools to make staff gain productivity each and every year.

With the 2006 budget that the Congress has given us, we are going to be able to put between 300 and 350 more staff into the compensation and pension claims process throughout the system in our regional offices.

So we are confident that we are going to be able to increase the staffing levels in 2006. And we believe that with those additional resources we are going to make some real inroads on the backlog.

MR. UDALL. So your answer to the question on rising claims and appellate backlog due in part to insufficient staffing, you would say yes or no on that?

MR. AUMENT. Well, I would say right now that the rising workload speaks for itself, that the workload from 2003 to 2004 increased by five percent, from 2004 to 2005 by an additional three percent.

We do not have the best way of looking at that and making future predictions, but it is certainly our hope and expectation that that workload is going to level off.

But, again, we have more resources at our disposal this year. We believe that we can make some inroads on the backlog.

MR. UDALL. I am also very concerned about the ratio of employees

at regional offices to the pending workload. It appears that some offices, such as Salt Lake City, have twice as many employees as other offices, such as New York City, to handle a comparable caseload.

Is the VBA's policy of starving poor performing offices and feeding better performing offices contributing to the degradation of services in some parts of the country?

MR. AUMENT. I do not believe so, Congressman. You are absolutely correct that we have been utilizing a resource model over the last several years that tends to push resources out to those offices that have proved to be most productive in using those resources. And quite often that has resulted in some downsizing of some of the offices in our larger urban areas.

We have tried to counterbalance that impact because we do believe that is the best use of those resources, sending them where they are likely to be most productive. We have tried to counterbalance that by making sure that we make workload adjustments as well and move workload around so as not to penalize the veterans in those offices' jurisdiction. But we do believe it makes the most sense to send the resources where they are going to be best used.

MR. UDALL. Chairman Terry, veterans who requested a hearing before the Board waited an average of 607 days in 2005. I find that waiting time unconscionable. We need to look at the time line from the perspective of veterans like Dr. Jones who are waiting for a decision.

Mr. Chairman, I would like to include a copy of the elapsed processing time for fiscal year 2005 into the record, two sheets here.

Chairman Terry, are you familiar with this document?

MR. TERRY. I am, sir.

THE CHAIRMAN. All right. This will be entered into the record. No objection.

MR. UDALL. Thank you.

[The attachment appears on p. 65]

MR. UDALL. And during a Subcommittee hearing earlier this year, Acting Chairman Garvin testified that the Board had adequate staff to do its job. Now it appears that veterans who seek Travel Board hearings or video hearings may be waiting almost two years for a hearing. For decisions made last year for claims from the New York regional office, veterans waited over five years for a Board decision.

How many additional staff and travel funding would be needed to provide veterans with a hearing within three months after the claim is certified to the Board as ready?

MR. TERRY. Thank you for the question, Mr. Udall.

Let me tell you how the Travel Board system works and it will help explain what we are trying to do to ameliorate the problem.

As soon as a case is prepared and in VACOLS, which is our track-

ing system, we learn that this individual is awaiting a hearing, we arrange for a Travel Board to go to one of our 57 ROs. We have 106 Travel Boards scheduled for this coming year. On Travel Boards, each judge on that Board will hear 43 cases a week.

And so consequently, if you have two judges or three judges, it will be 43 times three or times two, whatever it is, but we will make allowances for additional Travel Boards as the cases become ready. As soon as a case is posted in our VACOLS system as being ready, we arrange for a Travel Board to take care of that particular docket.

So while I agree that the system takes far too long from the standpoint of our Board when a docket is ready to go and when the VSOs have gotten their clients ready and have provided the representation of the clients and are ready to go, then that case is listed as ready on the docket. When we have 43 cases ready, that provides a docket for one judge to go out and handle those cases.

We do it on a continuing basis, sir. I recognize those times are extremely long.

In the preparation of a case in our system, which is open until the final decision is made, any new evidence can come in at any time. This causes some delays and raises new issues. It may require new examination. It may require that we reinvestigate or get additional documents or data from the different medical facilities where the individual was previously treated or it may involve records from years before.

Dr. Jones testified that he first applied in 1999. This is an individual who came into the service in 1950. We are dealing with records that are extremely old. We are trying to get everything we can to make decisions which really are helpful to the individual and that represent the complete database which represents his case.

I admit when we look at these figures, we are distressed as well and we are trying to shorten them to the extent we can.

From the Board's perspective, when we get a docket that is ready to go, we get a team out there to hear it. And we are very concerned about that.

MR. UDALL. Now, you have given a good explanation in terms of how you handle it. But what I am trying to get at is if you have years that people are waiting, veterans are waiting, can you give me any idea today how many additional staff and travel funding would be needed to provide veterans with a hearing within three months after the claim is certified? Rather than waiting five years as the example I gave or the two years, in three months, do you have any idea?

MR. TERRY. Sir, I can only tell you that when a docket is ready to go, we have the people available now to get out and hear those dockets and provide a hearing for these individuals. And we will continue to do that.

As I pointed out to you earlier, sir, we are part of an administration

and the administration produces a budget each year. And we are determined to do within the resources that we have the very best job for each of our veterans that we can. And I make that commitment to you as Chairman of the Board.

MR. UDALL. I do not understand why it is taking five years --

MR. TERRY. I don't believe --

MR. UDALL. -- in the New York regional office.

MR. TERRY. In most cases, sir, it is not. I can tell you that. It really is not.

For example, in Dr. Jones' case, he filed his claim in late 1999. As I recall, he had a hearing that he requested after the rating decision was made and after the Notice of Disagreement was filed. He had a hearing, I believe, in 2002, but I do not believe that was too long after the Form 9 was filed. So we will have to take a look.

MR. UDALL. Well, I believe the record that has been put into the file shows the significant amount of time that is occurring. And I still do not understand it.

But I yield back, Mr. Chairman.

THE CHAIRMAN. Ms. Herseth, you are recognized.

MS. HERSETH. Thank you, Mr. Chairman. I apologize to you and to the witnesses for not being here earlier. We had a markup in another Committee on which I sit. I know our witnesses are familiar with how that goes as are other Members of the Committee.

And I look forward to reviewing your responses to the questions that my colleagues I am sure posed here in the last hour or so addressing the issues, some of which were raised by Dr. Jones, and trying to find the way that we work together to alleviate the backlog, make this more timely for our veterans.

And I know that the hearing is focused today on disability claims, but if I might, Mr. Aument, talk a little bit about the pensions.

As you know, the pension services have been consolidated from the 57 regional offices to three of the Pension Maintenance Centers.

Now, I am starting to hear complaints from my constituents that the quality of the work at the PMCs is not nearly as good as the work done at the regional office. Part of this trend that we have seen today, that we have seen in the past, that the further away you get from the local level, the less responsible perhaps the service that is being provided.

The turnaround for awarding claims at the regional office was 30 to 60 days and the turnaround for awarding claims at the PMCs in St. Paul is more than six months.

In addition, my constituents are too often asked to resend pension claim information to the PMC or, worse yet, the original correspondence is simply lost. Now, these are problems that occurred much less frequently when the work was done by the regional office.

So I am wondering first why have the pension services been con-

solidated and is there a benefit to the consolidation of the pension services besides reducing cost, if that indeed has actually been realized, and have you heard any similar complaints from other parts of the country?

MR. AUMENT. Congresswoman, I understand that some of the veterans in your state have voiced those concerns. I have seen some of the letter traffic on that and I do understand that there are concerns.

Sioux Falls happens to be a very good office. And we find that we have some of our best offices out in the heartlands of the country where they have some of the most stable workforces. Those are some of the best performing offices in the country.

Now, having said that, I do believe that the consolidation of our pension operations is the right thing to do. The intention here is to achieve both qualitative and quantitative benefits of productivity and improved quality.

Our pension claims are some of the most complex claims and some of the most error-prone claims in our system. And some of the expected benefits that we believe that we are realizing from the consolidation of these pension efforts will accrue not only to the pension program, but to the disability compensation program as well.

This type of consolidation effort relieves us of some of the training that we would otherwise have to conduct for new staff coming into the system at the 57 different offices.

So we believe that it is the right thing to do in order to make the best use of the resources.

MS. HERSETH. But if I might, what are some of the benefits that you think have been realized or will be realized with consolidation other than saving cost?

MR. AUMENT. We believe it is going to be improving quality as well at a national level.

MS. HERSETH. And you mentioned that you saw some of the letter traffic coming from my constituents who it seems are being penalized because they have got great folks out of the regional office who have done a great job for them.

And you just responded to Mr. Udall's questions about getting resources to those areas that are efficiently using those resources. And I know that there are some differences there.

Have you seen letter traffic in other parts of the country, in other districts where it suggests that veterans themselves are realizing the benefits from the consolidation?

MR. AUMENT. Not really. This concern with the pension consolidation is largely confined to the Sioux Falls area from what we have been hearing.

MS. HERSETH. But my question is, have you seen letter traffic suggesting that veterans feel in other parts of the country that they are being better served by the consolidation?

MR. AUMENT. Well, we rarely see that type of traffic where people are writing to us --

MS. HERSETH. Thanking for --

MR. AUMENT. Yes.

MS. HERSETH. I have seen the correspondence thanking them for the timely handling --

MR. AUMENT. What I am saying pertains to the pension maintenance operations, which is the part of the pension program that today has been consolidated.

MS. HERSETH. Okay. And you have not seen any other letter traffic in any --

MR. AUMENT. No, I have not.

MS. HERSETH. -- other district like that that you have seen in South Dakota with folks that used to get timely service, but now are realizing significant delays?

MR. AUMENT. No, we have not, Congresswoman.

MS. HERSETH. Okay. Thank you.

I yield back, Mr. Chairman.

THE CHAIRMAN. I am going to turn to the Social Security Administration for a second.

All of the members here in the House and in the Senate have caseworkers who deal with our constituents on Social Security Disability claims. We do everything we are supposed to do to help them in that process. The Social Security Administration stays in touch with our offices via computer, lets them know how the claim is going, and what is happening. You do not do that with any of our offices.

Would you consider taking a look at what the Social Security Administration does with regard to how they interact with all of our congressional and senatorial offices to help our staff as they also assist these veterans on appeals? Would you please consider looking at that?

MR. AUMENT. Absolutely, Mr. Chairman. We certainly will. We will take that one on.

THE CHAIRMAN. All right. Thank you.

Over the last ten years, the department has spent at least 600 million on VetsNet. What measurable outcomes have resulted from this investment, what other IT initiatives are underway at VBA, and at what projected cost?

MR. AUMENT. Okay. The \$600 million figure having been spent on VetsNet covers quite a bit of territory, Mr. Chairman. It includes not only money spent on the development of the application for Vets Net, but the purchase of desk top computers throughout the system, e-mail systems, local area networks, actually putting any of the equipment it needed in place to facilitate day-to-day operations.

It includes the amounts that have been spent in support of the Loan Guarantee Program, which is probably one of our most highly

evolved technological business lines in VBA. So it covers quite a bit of territory.

The VetsNet, if I could focus more particularly on the application of VetsNet, I will talk about that just for a moment.

Really the heart and core of the VetsNet endeavor is to get ourselves off of the old Legacy payment system and better poise ourselves to become more modern in the future and adopt some of the practices such as Social Security and some other organizations have today.

There are four primary applications that constitute the VetsNet suite of applications for the disability compensation and pension process.

The first is the application used in support of development activities called Map D. That is currently in use at every office throughout the country, 57 regional offices.

The second application component is the RBA 2000 application. That supports the rating activity. That as well is in use at every office around the system.

The last two components that are needed to get off of the Legacy system are the award component where they actually put the award made by the raters into place and the back office finance and accounting system component. Those are still in some stage of development, but are being tested at both our Lincoln and our Nashville offices.

We believe that there have been good benefits that have accrued from the first two components and we expect to see benefits from the third. Productivity benefits are expected, for example, from the award piece.

Right now, as you are probably aware, many of our awards include some type of a retroactive component where a veteran has filed a claim and the effective date may go back to some years in the past. It often requires some very complex calculations that can take an experienced authorizer some hours to compute.

The VetsNet Award component will compute that automatically and it is going to be considerably more accurate as well. It is going to eliminate opportunities for errors.

We have some built-in security features that will go along with Award that are going to be putting some computerized controls in place for large awards of over \$25,000, that we believe are going to be reducing our vulnerability to any type of fraud.

And we believe that there have been productivity achievements associated with the first two applications as well.

The RBA 2000 application is going to give us a wealth of data that we can use to learn more about the nature of our claims, help us discover where we most need training, and discover errors. So we believe there are considerable benefits associated with it.

THE CHAIRMAN. Let me ask a question of Chairman Terry with regard to this new evidence issue.

You know, when you think about how we practice law out there and if the appellate courts on appeal, something comes up, obviously they remand it back for a new trial if the new evidence is substantial and material to the findings.

We are going through an administrative process and if there is one piece of paper missing, you have got to remand the whole thing back.

Have you ever considered whether or not we should change that at all or these are judgments that we can go ahead and make at the appellate level or --

MR. TERRY. We are trying very hard to do just what you have indicated. We have a waiver process which we put in place through a Chairman's memorandum earlier this year --

THE CHAIRMAN. Good.

MR. TERRY. -- which basically provides us the opportunity to go to the veteran and say your case is in hearing. You provided this new information. Would you let us handle it and consider it during the litigation of the case rather than sending it back to the agency of original jurisdiction.

Normally under our regulations, unless waived, it would have had to have gone back and start the process all over again, having the regional office take another look at it.

This gives the veteran an opportunity to give us the chance to consider it at the appellate level and handle a claim. It is a very successful program.

THE CHAIRMAN. That is great.

MR. TERRY. And it is just one way we are looking at the program and the process to try to make it more streamlined and give the veteran a better shake.

THE CHAIRMAN. Can you share with us a copy of that decision of what you have made?

MR. TERRY. I will provide a copy of that memorandum, sir.

[The information is found on p. 167]

THE CHAIRMAN. Yes. I would like to see that.

What impact has that had on your remand rate?

MR. TERRY. I think it certainly has helped. As you know, we went down from last year 56.8 percent to 36 or -- I think it is 38 percent last year. And the first two months of this year, we are down to 32.1 percent, sir. So we are looking at a lot of different things to help the process. This is one of those.

THE CHAIRMAN. All right. Congratulations, Chairman. That is very good.

Any other questions of the panel?

[No response.]

THE CHAIRMAN. All right. Gentlemen, thank you very much for your testimony.

The second panel is now excused.

THE CHAIRMAN. Mr. Secretary, Mr. Chairman, I know you are really anxious to leave and get out of here. Would you mind listening to the oral testimony of the VSOs and then take off? Would that be okay? Our next panel is comprised of veteran service organizations. They have spent thousands of hours out there helping a lot of our veterans. And if you hear something that might be helpful to you -- okay? I appreciate you staying.

If panel three will please come to the table.

Representing The American Legion today is Mr. Donald Mooney. Mr. Mooney is the Assistant Director for Resource Development, Veterans' Affairs and Rehabilitation Commission at The American Legion.

Prior to his current position, he served as the 9th appeals representative team leader at the Board of Veterans' Appeals in Washington, D.C.

Mr. Mooney entered the United States Air Force in 1967 and as a result of his military service, he received the Air Force Commendation Medal, the Air Force Good Conduct Medal, Presidential Unit Citation, Outstanding Unit Ribbon, National Defense Service Ribbon, and the Vietnam Service Medal.

Representing AMVETS today is Mr. James Doran, the National Service Director of AMVETS. He joined AMVETS as the National Service Director on March 10, 2003. As the National Service Director, he oversees the operation of 44 AMVETS service offices located in 30 states and the District of Columbia.

His staff of 61 provides assistance to veterans in filing claims for benefits with the Department of Veterans Affairs. He also coordinates with many state departments, Veterans Affairs, and county veterans service offices nationally.

He served in the United States Navy from January 1963 to 1983. His military awards include the Navy Commendation Medal for Heroism, the Combat Action Ribbon, the Navy Achievement Medal, and a number of other awards and decorations.

Representing the Disabled American Veterans is Mr. Brian Lawrence, the Assistant National Legislative Director. Mr. Lawrence is a service-connected disabled veteran of the Persian Gulf War. He was appointed the Assistant National Legislative Director of the million-plus Disabled American Veterans in August of 2000. He is employed at the DAV National Service and Legislative Headquarters in Washington, D.C.

We also have Mr. Blake Ortner representing the Paralyzed Veterans of America. Mr. Ortner is the Associate Legislative Director of

PVA's national office in Washington, D.C.

A native of Moreland, Minnesota, he attended the University of Minnesota in Minneapolis on an Army Reserve Officer Training Corps Scholarship. He graduated in 1983 with a degree in International Relations, commissioned as a regular Army infantry second lieutenant.

While stationed at Ft. Lewis, Washington, he served with the 9th Infantry Division in the Army's elite Second Ranger Battalion. He left active duty in September of 1987, and continues his military service as an infantry lieutenant colonel in the Virginia National Guard.

In 2001, he served a nine-month deployment as part of S4-10 peace keeping mission to Bosnia and Slavenia. He returned in July of 2005 after a year of commanding the Infantry Battalion Task Force in Afghanistan.

Finally, representing the Veterans of Foreign Wars we have Mr. Kinderman, the Deputy Director of the National Legislative Service. Mr. Kinderman served in the United States Army during the Vietnam War, including 13 months with the 25th Infantry Division in Vietnam.

Well, I thought there was going to be some more, but that is it.

MR. KINDERMAN. That is enough, sir.

THE CHAIRMAN. Is that enough? I am sure there has got to be a lot more good stuff there.

I appreciate the Deputy Secretary and Chairman for staying. They are going to be here for your testimony. And then, gentlemen, if you have to leave, I understand. But they represent organizations who have put in a lot of time and effort on behalf of a lot of our comrades. And I appreciate you being here to listen to their testimony.

With that, Mr. Lawrence, you are now recognized.

STATEMENTS OF BRIAN E. LAWRENCE, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; DONALD L. MOONEY, ASSISTANT DIRECTOR FOR RESOURCE DEVELOPMENT, VETERANS' AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION; JAMES DORAN, NATIONAL SERVICE DIRECTOR, AMVETS; BLAKE ORTNER, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; AND QUENTIN KINDERMAN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS

STATEMENT OF BRIAN E. LAWRENCE

MR. LAWRENCE. Thank you, sir.

Mr. Chairman, and members of the Committee, on behalf of the 1.3 million members of the DAV, thank you for the opportunity to submit

our views on the challenges and opportunities facing the VA disability claims processing system.

As mentioned in my written statement, my perspective of the claims system is based on my tenure as a DAV NSO and also as a medical retired veteran with a service-connected claim.

I saw a news article this morning that I thought was somewhat analogous to one of the problems I described in my testimony. The news story was about an emergency call to 911 that led to a tragedy. The tragedy occurred because the 911 operator took it upon herself to decide that the situation the caller described was not a true emergency. She refused to notify the police and a woman was murdered as a result of the operator's complacency.

Though the operator probably deals with dozens of calls in which circumstances have been overblown, personal judgment should not override protocol. As frustrating and irresponsible as useless calls to 911 may be, the greater outrage occurs when a legitimate call is disregarded by a bureaucrat who acts as a self-appointed judge.

There are some VA employees who are also self-appointed judges. In some instances, I knew of situations where VA adjudicators would deliberately deny disability compensation claims, both increases and the establishment of service connection, based on their misperceptions rather than the evidence available or the controlling regulations.

Never once was I aware of such an individual losing his or her job despite repeated blatant denials in the face of qualifying evidence. Rather, justice usually had to be sought at the next higher level, the BVA.

Though the claims backlog does not exist solely because of it, elimination of this type of attitude would eliminate a lot of duplicated work. This can be accomplished through training and accountability.

Competent quality reviewers should review a random sample of work from each adjudicator and remedial training should be imposed when deficiencies are revealed.

VA leadership must enforce accountability through a willingness to replace individuals who are not succeeding.

An effective training program requires knowledgeable and experienced instructors who have the time necessary to devote to their jobs.

Accomplishing these objectives will require adequate resources which are essential to an efficient and effective benefits delivery system. Adequate resources will allow the VA to develop a training program to increase proficiency of existing adjudicators and bolster staff to levels that allow for a reasonable amount of time to thoroughly develop and deliberate on compensation claims.

The VA cannot overcome the problems it is facing without these adequate resources. Therefore, sir, we urge the Committee to consider

the recommendations and funding levels presented in the Independent Budget.

Mr. Chairman, this is the gist of my written statement, and I will be happy to answer any questions that are more specific.

THE CHAIRMAN. Mr. Lawrence, do you offer your written statement for the record?

MR. LAWRENCE. Pardon me?

THE CHAIRMAN. Do you offer your written statement for the record?

MR. LAWRENCE. Yes, sir.

THE CHAIRMAN. Hearing no objections, so entered.

[The statement of Brian E. Lawrence appears on p. 102]

THE CHAIRMAN. Mr. Mooney.

Actually, all of you, if you have written statements to submit, do all of you?

Everyone answers in the affirmative. Therefore, your written statement will be offered into the record. And you may present a five-minute oral summary.

Mr. Mooney, you are now recognized.

STATEMENT OF DONALD L. MOONEY

MR. MOONEY. Mr. Chairman, thank you for this opportunity to present The American Legion's views on the challenges and opportunities facing VA disability claims processing in 2006.

VA has the responsibility to ensure the welfare of the nation's veterans, their families, and survivors. Providing quality decisions in a timely manner will continue to be one of VA's most daunting challenges in 2006 and beyond.

I also have a litany of statistics which I will forego for the sake of brevity. But of the 763,000 determinations in fiscal year 2005, VA is expecting three and four percent increases in 2006 and 2007 respectively, amounting to 826,000 claims in 2006 and 842,000 in 2007. If this trend continues, and there is no reason to believe it won't given the ongoing war on terror, VBA will be swamped by over a million claims by fiscal year 2009.

It is clear to The American Legion that current staffing and proficiency levels, VA backlog and processing time will only worsen.

Additionally, following much media attention, a report by VA's Inspector General, a provision in the "Enacted Military Quality of Life and Veterans' Affairs Appropriations Act" for 2006, requires VA to conduct outreach to veterans in states with average annual disability compensation payments at less than \$7,300.

While we agree that it was necessary to cure inequities in the system, this, too, will add to VBA's backlog.

Whether simple or complex, VA regional offices are expected to consistently develop and adjudicate claims in a fair, legally proper, and timely manner. The challenges that BVA faces in 2006 in meeting these workloads are in staffing levels, training, and quality of decision making.

The adequacy of regional office staffing has as much to do with the actual number of personnel as it does with the training and competency of the staff.

VBA has lost much of its institutional knowledge base over the past four years because of the retirement of many of its 30 plus year employees. As a result, staffing in most regional offices is now made up largely of trainees or employees with less than five years of experience.

Concern over adequate staffing in VBA was addressed by the VA IG in the same report, specifically recommending in view of growing demand the need for quality and timely decisions and the ongoing training requirements that VBA reevaluate human resources and ensure that their field organization is adequately staffed and equipped.

Additionally, the Chairman of the Veterans' Disability Benefits Commission questioned the Under Secretary for Benefits about the adequacy of current staffing levels at a meeting this past July. The Under Secretary conceded that the number of claims' workers has decreased over the past three years.

The American Legion believes it is an extreme disservice to veterans, not to mention unrealistic, to expect VA to continue to process an ever-increasing workload while maintaining quality and timeliness with fewer staff.

Over the past few years, The American Legion's quality review team has visited almost 40 VA regional offices to assess overall operations, including reviews of recently adjudicated claims where The American Legion held Power of Attorney.

Our site visits found that frequently there are too few supervisors or inexperienced supervisors to provide trainees mentoring, training, and quality assurance. At many stations, ongoing training for new hires as well as more experienced staff was suspended to focus maximum effort on production.

That being said, we are encouraged by the Under Secretary's public commitment to improve the training of VBA personnel, and we look forward to improvements in this area in 2006.

For years, The American Legion has stated that the imperative in VA claims processing has been to process as many claims as possible as quickly as possible. The IG acknowledged that because the VA often does not take the time to obtain all relevant evidence, there is a good chance that these claims are not properly developed, leading to premature adjudications, improper denials, under-evaluation of disabilities, and inconsistent decisions.

The pressure on VA leadership to reduce a growing claims backlog and provide timely decision is often at odds with efforts to maintain or improve the quality of decision. Setting realistic production goals that take into consideration the number of cases and increasing complexity must be accomplished if VA is ever to reach a balance between production and quality.

That concludes my statement, Mr. Chairman. I will be glad to answer any questions.

[The statement of Donald L. Mooney appears on p. 91]

THE CHAIRMAN. Thank you, Mr. Mooney.
Mr. Doran.

STATEMENT OF JAMES W. DORAN

MR. DORAN. Mr. Chairman, Mr. Udall, on behalf of AMVETS National Commander, Edward W. Kemp, I would like to thank you for the opportunity to present testimony to this Committee.

For almost 60 years, AMVETS has represented the needs of the American veteran, working with this Committee and the Department of Veterans' Affairs to ensure that those needs are met.

It is my unfortunate duty to report to you that in our opinion, those needs are not being met, not by the Department of Veterans' Affairs, not by the Congress, and not by this Committee.

As of 26 November, the Veterans' Benefits Administration reports that 117,766 claims have been pending for more than 180 days. That is almost 20,000 more claims pending than at this same time last year.

There are, of course, reasons for that: Budgets that cannot stretch to meet the needs of the VBA; experienced employees retiring and being replaced by novices requiring years of training; and the Global War on Terrorism.

However, none of these reasons are pertinent. General of the Army Bradley summed it up in 1947 when he said "we are dealing with veterans, not procedures, with their problems, not ours." That has not changed.

The Department of Veterans' Affairs is tasked with dealing with the problems our veterans have, physical, emotional, financial, and educational. Everything else is secondary in nature.

The key issues that you are interested in are the challenges and the opportunities facing disabilities claims processing. The challenge is simple. How can VA adequately process disability claims with the funds they have been given? The answer is, they cannot.

If you, the members of Congress having oversight over the department, cannot get them the funding they need to fully staff all VBA benefits offices and regional offices, then VA will never be able to do

its job to the best of its ability.

If VBA is going to reduce the claims backlog to zero, if VBA is going to have to process over three-quarters of a million claims per year, if VBA is going to deal with veterans and their problems, you need to do your part. You need to get them the funds they need to hire additional full-time employees.

The opportunities are heavily keyed into the challenges. The funding for and creation of additional full-time equivalent employees for the VBA should provide additional employment opportunities for our veterans.

Unfortunately, as of the most recent data published on the VA web site, only 27 percent of all DVA employees are veterans preference eligible. That is not something to be proud of. This is the United States Department of Veteran Affairs. The majority of all of their employees should be veteran preference eligible.

An even more important issue within the veteran community hinges on partisan politics and trust. No one asked us which party we belonged to when you sent us off to war. Playing partisan politics with our lives now is inexcusable.

This Committee needs to go on the floor with one face, not split into party factions. As members of the House, you represent Congressional districts and political parties. As members of this Committee, you represent all American veterans.

On Veteran's Day, the Secretary announced that a pending review of 72,000 approved disability claims for PTSD had been cancelled. This announcement was highly publicized and joyfully received by the veteran community.

On 27 November, we found out that less than a week later, the Secretary requested that the Institute of Medicine conduct a review of posttraumatic stress disorder diagnosis and treatment within the DVA.

Is the IOM a recognized authority on posttraumatic stress disorder? Looking at the members of their Committee that may be assigned this task, I find there are no military physicians, no DVA physicians, no individuals with any apparent background in combat-related PTSD.

One member of the Committee did serve on the task force that wrote the DSM-IV. However, he specialized in eating disorders.

A 27-member task force worked five years to develop the DSM-IV in a process that involved more than 1,000 psychiatrists and other mental health professionals. Now Secretary Nicholson wants IOM to reexamine and repudiate the validity of this publication. Why?

A second Committee will review, among other items, the compensation practices for PTSD and the criteria for establishing the severity of PTSD as published in the VA Schedule for Rating Disabilities. Again, I ask why? Isn't this part of the mandate you have given the Veterans' Disability Benefits Commission?

If the goal is to find ways to reduce the amount of money spent on veterans' disability compensation, all you need to do is ask us. I can tell you without reservation that the only way to effectively reduce that expense is to stop committing our young men and women to combat.

In the meantime, you as members of the Congress of the United States have a constitutional duty to raise and support armies, to provide and maintain a Navy, to provide for calling out the militia. We, the veterans you created, are a part of that cost, and the bill is fast becoming past due.

That concludes my statement, Mr. Chairman.

[The statement of James W. Doran appears on p. 99]

The Chairman. Mr. Ortner, you are recognized.

STATEMENT OF BLAKE C. ORTNER

MR. ORTNER. Mr. Buyer, Mr. Udall, on behalf of Paralyzed Veterans of America, I would like to thank you for the opportunity to testify today on the challenges and opportunities facing the Department of Veterans' Affairs as it processes disability claims in 2006.

PVA maintains a Veterans' Benefits Department with offices across the country which provides assistance and representation at no cost to veterans seeking health care and benefits for which they are eligible.

Our service officers undergo extensive training, including on-the-job training, prior to being released to assist PVA members, their families, and other veterans.

To properly address the issues today, we contacted our national service officers and asked for comments. Their responses focus on four themes. Timeliness and accuracy of ratings decisions and training and accountability of VA claims adjudication personnel. These are not new issues and we find it disconcerting that the same problems are continuing.

The most important concern voiced by our service officers was accuracy of ratings decisions. This problem is not new.

Following the VA Claims Processing Task Force recommendations in October 2001, VA placed added emphasis on reducing the claims backlog.

PVA believes that the accuracy of decisions was negatively impacted by the race to cut the pending workload. Our NSO's stated that VA is concentrating more on the backlog and not on the quality of the decisions.

Furthermore, the VA continues to recognize effectiveness of regional offices through the workload that it completes and not through quality decisions. Some service officers believe that it is less punish-

able to make a wrong denial than to make a wrong award of benefits. And this is unacceptable.

However, this is not a universal theme. Some of our officers explained their offices seemed to be operating slower than others because of an effort to ensure that a veteran receives more accurate decisions. Quality decisions should trump expediency. But this cannot be used as an excuse for a large backlog.

Timeliness continues to be a challenge. As you indicated in your opening statement, Mr. Chairman, a large percentage of claims have been pending for over 180 days. It is unacceptable for veterans to wait so long to receive benefits they have earned.

And, in fact, our service officers indicated that the time it takes to develop claims seems to be getting longer. They recommended that VA create a fast track for claims that have the information necessary for a rapid ratings decision.

Another issue is the time it takes in many locations processing claims regarding simple issues. These issues include adding or removal of a dependent from a claims file, approving a housing or automobile grant, or reducing a veteran's aid and attendance benefits when the veteran remains hospitalized.

Service officers voiced great frustration with a VA regional office staff who do not take action quickly on simple decisions and that addressing these simple issues can take up to a year.

A bright spot was generally favorable reviews regarding handling of claims for disability benefits of veterans injured in Iraq or Afghanistan. VA is putting its best foot forward to help these young men and women. However, we must reiterate the need for the VA to provide this type of service universally.

VBA needs to continue to improve its training program and follow up the activities of its personnel through adequate accountability of ratings staff at all levels.

One of the immediate problems facing VBA is the impending retirement of many of its staff. VBA believes the VA is addressing this problem in a way that is adversely affecting ratings decisions. New ratings personnel are being rushed through training and then plugged into staff holes to begin immediately rating claims.

We believe these individuals should be required to undergo more extensive training before being released to make decisions.

PVA believes that accountability may be one of the most important aspects in the claims adjudication process. We are concerned that VBA distorts accountability by basing performance on processing workload with little or no focus placed on making quality decisions. Regional office managers will continue to do business in this fashion as long as there are no repercussions for bad decisions.

The Claims Processing Task Force addressed this concern in a report by recommending that funding of regional offices be tied to the

performance of those offices with greater resources allocated to the highest performers. The poorest performing offices would receive no additional staff or increase in resources. This seems to be a backwards approach to the problem and represents continued acceptance of failures in the management structure of those offices.

The VA should focus more of its energy and resources on improving the operations as well as the quality of decisions of under-performing regional offices. Sanctioning these offices in this manner only punishes veterans who live in the jurisdiction of the offices.

Our service officers also made a recommendation regarding the role of the Veterans' Health Administration in the claims process. Specifically they emphasized the need for a universal link between VBA and VHA facilities. This would allow VBA to have instant access to health records and information for a veteran who files a claim. It would ensure that accurate information is available for compensation and pension examinations.

These are specific observations from our field service personnel, dedicated individuals who deal with these issues on an ongoing basis.

We look forward to working with the Committee to ensure that veterans' claims are processed in a timely manner and that they receive the most accurate rating decision possible.

Thank you again for the opportunity to testify, and I would be happy to answer any of your questions.

[Statement of Blake C. Ortner appears on p. 106]

THE CHAIRMAN. Thank you.
Mr. Kinderman.

STATEMENT OF QUENTIN KINDERMAN

MR. KINDERMAN. Thank you, Mr. Chairman, Mr. Udall. The Veterans of Foreign Wars appreciates this opportunity to present our views on claims processing in VBA.

I think it will come as no surprise to you that we think the basic problem is poor quality decision making. The VFW supports providing adequate resources to the VBA to provide highly accurate and timely benefits decisions.

We think the resources should be linked to the improvement of quality of claims decisions, a strong commitment by VA leadership, and an effective improvement plan.

The emphasis from the top of the VA has persistently been on just moving the cases along to reduce the overall count and to bring down the backlog.

Productivity increases are mandated by OMB. This is a euphemism for arbitrary cuts. This is not conducive to either better than

mediocre performance or risk taking by the VA leadership to improve the situation.

We cannot understand the logic of cuts in discretionary GOE resources that result in poor decision quality in the much larger compensation entitlement program. These cuts discourage competent administration of the entitlement program which requires much better quality control than they have now.

Compared to the compensation program of a decade or more ago, the work is much more complicated. The system assumes that unless something different is justified that what is done is adequate. VBA may set goals to improve quality above a 15 percent error rate, but they lack a plan to get there. This is not adequate.

Until VBA has an overall plan to improve the situation and ask for the resources to fix things, little will change for the better.

VBA operates a quality monitoring system, acronym for which is STAR, which finds on a sampling basis that about 15 percent of the cases have a significant error. STAR looks at only 100 cases per office. VBA knows things are wrong, but lacks the specifics to act on them.

Very few other cases are reviewed, and with the exception of the very small STAR centralized reviews, the reviews are tempered by a higher priority to move the workload.

We think 15 percent is a very high error rate. It suggests that every VBA decision maker makes a significant error approximately every other day. Veterans and their survivors after waiting many months or even years may receive a decision that is significantly flawed.

Out of 700,000 or more cases done per year, 100,000 are flawed. Issues aren't all addressed, VCAA is violated, the decision is wrong or the payment is wrong. Nothing trivial is counted as an error.

The IG found higher average compensation payments with representation by veteran service organizations. This may reflect the VSO's success in identifying rating decision makers' errors and insisting on their correction either locally or on appeal. We have serious concerns for those veterans who file claims with VA without our assistance.

It seems clear that the VBA has no plan or methodology to eliminate or even accurately identify the serious errors that plague one out of every seven or eight claims. VBA must find the courage to request the resources and commit to the goals that a get-well plan would require.

Faulty decision making cannot be fixed by improved information technology or program "reform" and its attendant complexity and duplication. It needs the commitment from the top down to do every claim properly, consistent with the letter and the spirit of the law, and the resources and tools necessary to ensure that that happens.

Reform of this magnitude is only possible when all concerned are

truly interested in improvement and not just putting a positive spin on the latest bad news.

We think that VBA is capable of this kind of improvement and has the honesty necessary to accomplish it. We also think that there is no more deserving population of beneficiaries for this improvement than the current generation of veterans who are returning from Iraq, Afghanistan, and elsewhere in the Global War on Terrorism.

Thank you. I would be pleased to respond to any questions, Mr. Chairman.

[Statement of Quentin Kinderman appears on p. 116]

THE CHAIRMAN. Thank you very much.

Thank you, Mr. Secretary and Mr. Chairman, for sticking around. You may be excused if you like.

Before I move to questions, I would like to ask Mr. Doran, so I can get a better understanding, are you setting forth a public objection of the VA to do this study with IOM so that we may better understand diagnosis, treatment, compensation? I mean, I do not understand what the objection is.

MR. DORAN. Mr. Chairman, I am setting forth a public objection of VA spending over a million dollars to duplicate an effort that you have directed the Veterans' Disability Benefit Commission to do and that the Committee that wrote the DSM-IV spent five years using over 1,000 professionals to write this publication. And VA is asking to repudiate it using 19 people who have no idea what PTSD is all about.

I do not want my million dollars of tax money being spent on that when VA has other places they could use it more appropriately.

THE CHAIRMAN. All right. That might be a pretty strong statement

--

MR. DORAN. Yes, sir, it is.

THE CHAIRMAN. -- to say that IOM knows nothing about -- I will give you an opportunity to restate.

MR. DORAN. I am looking at the list of members of their Mental Health Committee, which I am assuming is the Committee that will be investigating PTSD. There are no military physicians. There are no DVA physicians. There is nobody with any knowledge of combat-related PTSD according to their own biographies.

THE CHAIRMAN. The more we conduct an introspection to obtain the greater understanding of physiologic, psychologic, psychosocial effects of stress is pretty doggone important, Mr. Doran, I believe.

Now, you may disagree with that, and I respect the position that you are taking with AMVETS that perhaps we should just lock ourselves into present knowledge, but I disagree.

MR. DORAN. I am not saying lock ourselves in the present knowledge, Mr. Chairman. I am saying use the professionals that have the

knowledge. The people that make up this IOM Mental Health Committee do not apparently have that knowledge.

THE CHAIRMAN. All right. You are correct about the charter to the Commission. We also recognize that that charter was so broad that they are questioning whether or not they can hit their deadline and whether we are going to have to extend.

And there will be cooperation between the Commission and the VA with regard to the study and so it will not be duplicitous. So I want you to know that. Okay?

MR. DORAN. Oh, I understand that. I just do not -- no. I just do not think we should --

THE CHAIRMAN. I did not know if you understood that based on your statement.

MR. DORAN. No, no. We are talking apples and oranges here.

THE CHAIRMAN. You just said they are being duplicative.

MR. DORAN. I am talking about the second section of Mr. Nicholson's commitment to the IOM of rewriting the veterans rating schedules on PTSD. That is something you have got the VDBC looking at.

THE CHAIRMAN. Right. I am not interested in being multiplicitous at all either. There is something out there for us that we need to have a greater understanding of.

I embrace boldly any effort to understand it much better because we are all dealing with our comrades who have some very difficult stressors that also then have a physiological effect. The more we can understand that the better, I think.

Each of you in your testimony referenced staffing issues at VBA and I just want to make sure we get this consensus.

Do you see additional staff right now a primary solution to attacking part of this workload? Am I hearing that as pretty congruent?

MR. DORAN. Yes, sir.

MR. MOONEY. Yes, sir.

THE CHAIRMAN. All of you?

MR. ORTNER. Yes, sir. But that is only the case if they are -- I mean, if they are properly trained. You can throw any number of staff at it.

THE CHAIRMAN. Yeah. I get that from your testimony also about the supervision because obviously, even if we were to increase the FTE going into next year, it is far much greater than that because if you have supervisors out there, too, who are not as qualified -- I mean, this is going to take some time here, right?

MR. KINDERMAN. Mr. Chairman --

THE CHAIRMAN. Yes.

MR. KINDERMAN. -- I think we also would like to see management direction toward a better quality product rather than a rather myopic view that they just want to get the backlogs down.

I think the day when we can solve the problem with just getting the

backlogs down is over. I think we need to focus for the future and for now on getting these claims done right.

THE CHAIRMAN. When it takes two years to train a ratings officer, doesn't that sort of speak about the complexity of what we are dealing with?

MR. KINDERMAN. I think that speaks to the complexity. But I think when you have that kind of complexity, you cannot simply turn someone loose without any kind of controls on the quality of the product they are doing.

If they are going off on their own and they are doing something wrong and you are only picking it up in 100 cases a year in that regional office, the damage is done. And the damage has obviously a big number associated with it.

A lot of those veterans will accept the decision. They will not appeal. They will go on. And what might seem like a small decision today can have massive effects on their lifetime later. I do not think there are any trivial decisions.

THE CHAIRMAN. I want to take a moment for you to tell a good story. Each of you represent organizations that do a lot of work out there on behalf of our comrades in the assistance and the filing of claims.

Could you speak to -- let us go right down the line -- the number of man hours that is and what type of training programs that each of you have to make sure that they are helpful with regard to the claims process.

Mr. Lawrence.

MR. LAWRENCE. DAV has 260 national service officers and approximately 30 transition service officers. Our TSOs are situated primarily at Benefits Delivery at Discharge sites, which I would also like to add we think are very efficient and also produce a higher quality of decision. And that could hold a key to future problems to this increase in the number of BDDs.

THE CHAIRMAN. Okay.

MR. LAWRENCE. But with regard to the training is for a national service officers, they undergo a 16-month training, a year of which is OJT.

THE CHAIRMAN. Are these paid positions?

MR. LAWRENCE. Yes, sir.

MR. MOONEY. Mr. Chairman, The American Legion has accredited to it by the VA IG over 750 service officers. Some of them work directly for The American Legion. Some work for state and county veteran service agencies. But they are all accredited through The American Legion.

While our training program is not as regimented or rigorous as DAV's, we do take care to see that we have competent people out there. We also have a staff at the Board of Veterans' Appeals. And from my own experience, it takes about two and a half years to be-

come proficient in representing veterans in appeals at the Board.

I would like to make one other comment and I am drawing on my prior career in the electrical construction business around the Washington area. And, you know, when you get behind on a construction contract, you are subject to liquidated damages, you know, meaning money. And what you do in that case is you go down to the union hall and you get more electricians and you bring them on the job. And you get caught up.

And, you know, I understand federal hiring procedures and civil service regs are a lot more complicated than just going down to the union hall. But when you get in a hole like VA is about to get into with these annual increases in claims, they will collapse under their own weight after a while.

And something has to be done to head that off even if it is temporary measures to bring down the workload because in the veterans' business, the liquidated damages do not accrue to the contractor. They accrue to the veteran because, you know, while they are waiting for their benefits to come around to be paid, you know, things happen. They lose their houses. They lose their families. And it is a situation that has to be dealt with.

THE CHAIRMAN. Thank you.

Mr. Doran.

MR. DORAN. Mr. Chairman, AMVETS as the Legion uses our own national service offices, department service officers, county service officers, and state employees of Veterans' Affairs. We have accredited through us about 385 individuals.

Our own training program, which I can, unfortunately, only enforce on my own staff of national service officers, includes three days of hands-on, one-on-one training with the regional director before they are allowed to be turned loose with the public.

Now that the program is out, they have been going through the Challenge Program that the VA has on the computer system and we have them go through four days a year of continuing education.

In addition to that, a few of the folks do attend the National Association of County Veteran Service Officers Training Course, wherever they hold it from year to year. They go there at their own option, but we pay for them to do that.

And I would like to make a quick comment about the BDD as well. You know, we talked about the staffing, and I agree with the DAV that BDD working at the transition sites is outstanding. But VA has divided the country in the middle and all benefits due on delivery claims this side of the Mississippi River go to Winston Salem. On the west side, they go to Salt Lake City.

There are staffing problems in both of those areas. And I am not quite sure myself whether they are sending them to two sites for a centralized adjudication center or because the sites in Seattle and

Los Angeles and Bay Pines and so on are so overwhelmed that they cannot keep up with the local military folks getting out.

I do know that it really makes it tough when the service officer is in Seattle and the veteran is Puget Sound and the claim is in Salt Lake City. It is kind of tough to work out on this guy's behalf.

MR. ORTNER. Mr. Chairman, PVA is similar with DAV. A large number of service officers across the country, they are paid employees. They also go through a 16-month training program, which includes on-the-job training.

In addition to that, they are trained in medical evaluations, trained on regulations and VA procedures. So they can tell what is going on and they can see when there is a problem.

But in addition to that, they have ongoing evaluations to make sure they remain competent in the field as well as testing for any promotions as they move to a higher level of NSO positions.

MR. KINDERMAN. Mr. Chairman, unfortunately, I am from the legislative side of the House and I am relatively new. I do not really have the specific information you are looking for on our service officers. But I would be pleased to get that for the record for you. [The information provided is found on p. 162]

THE CHAIRMAN. NSOs, are they all veterans?

MR. DORAN. Mine are mostly service-connected disabled, mostly military retirees. A few of them are VA retirees. And we have stolen some of them from DAV.

MR. MOONEY. With The American Legion, it is a condition of employment if you are going to work directly with the veteran population.

THE CHAIRMAN. All the NSOs are veterans. All right. Thank you very much.

MR. UDALL.

MR. UDALL. Thank you, Mr. Chairman.

Does the testimony of Dr. Jones reflect the experience of veterans your organizations serve in seeking to obtain service-connected compensation benefits from the VA?

MR. UDALL. All of you indicating yes.

And some of you are here that participate in the Independent Budget process and you heard the testimony earlier about the staffing problems. You have very passionately, I think, talked about additional staffing.

Are you in a position at this point to talk about what you think is needed in terms of additional staffing?

MR. DORAN. Not really. Not without spending a little bit more time sitting down with the books and the paperwork. But off the top of my head, the OMB had a lot more claims adjudicators and a lot less administrators.

MR. UDALL. A lot more claims adjudicators and a lot less -- okay.

Thank you very much. We very much appreciate your testimony today and we are greatly appreciative of your advocacy for veterans. Thank you for being here.

Thank you, Mr. Chairman.

THE CHAIRMAN. You know what we have in front of us is sort of this bridge in time. We have the Disability Commission and we have present problems in how we get to whatever the result is going to be. Okay?

And when I look at that, if they are asking for an extension, we have got a two- to three-year window. What is the ramp-up? What is the training? How much are they going to change the system? You see what is in front of us?

And I am challenged at the moment because I think there is going to have to be a consensus here between -- I think everyone on this Committee will go to an increase in FTE but at what number, I do not know. But my sense is that we are going to move in that direction, Mr. Secretary, Mr. Chairman.

As I continue -- not just myself -- as all members of this Committee continue our work as we go into the 2007 budget process, it would probably be very prudent -- I will have a good conversation with Mr. Evans and we are going to explore this further.

And if we need some more input from you gentlemen, please be responsive. I know you will be. I think this is one we are going to need to tackle. Okay?

Thank you very much for your time and your testimony today. It is very important. Thank you.

The hearing is now concluded.

[Whereupon, at 4:25 p.m. the Committee was adjourned.]

APPENDIX

Honorable Steve Buyer
Full Committee Hearing

Challenges and Opportunities facing VA claims processing

December 7, 2005

Good afternoon. The Committee will come to order.

Today we will receive testimony on the challenges and opportunities facing the Veterans Benefits Administration's claims processing system.

In fiscal year 2005, the Department of Veterans Affairs paid monetary benefits to 3.5 million service disabled veterans, eligible survivors, and in some instances, disabled children of Vietnam era veterans – an obligation of more than \$32 billion. This represents an 83 percent increase in the past 10 years; in 1995, mandatory payments totaled just shy of \$18 billion.

VBA has 8,918 dedicated employees processing disability and pension claims at regional offices across America. As reflected in Admiral Cooper's November 3 testimony before the Disability Assistance and Memorial Affairs Subcommittee, VBA in 2005 made over 763,000 disability determinations, performed more than two million award actions, handled over 6.3 million phone calls, conducted over a million interviews, and conducted nearly 70,000 hours of outreach to military members, former prisoners of war, homeless veterans, minorities, female veterans, and other targeted groups.

That said, there are a number of factors which indicate the system is buckling under pressure: as of two days ago, there are more than 370,000 compensation and pension claims pending, with more than 85,000 claims pending over 180 days. In October, rating related claims were pending on average 124 days, and it was taking another 155 days to complete file a decision. There are almost 40,000 appeals pending at the Board of Veterans' Appeals, and about 32 percent are remanded to the original regional office or the Appeals Management Center for further development. It is no surprise that the backlog is consistently cited as a major concern among committee members and VBA's stakeholders.

VA estimates that in fiscal year 2006, it will receive more than 725,000 compensation rating-related claims, an increase of 3 percent over fiscal year 2005. The most time consuming claims are "original" or first time filings because the entire record needs to be developed. VA estimates it will receive a little more than 206,000 new claims in fiscal year 2006. The most common claims, however, are those "reopened" by veterans filing for an increased rating or a new disability altogether. VA estimates it will receive more than 464,000 reopened claims in fiscal year 2006.

By September 2003, VBA had significantly reduced the number of pending claims to 253,000 -- from a high of 450,000 in 2001 -- and the average days pending was reduced to 111. I look forward to today's testimony as we begin to understand what has happened in the last several years that leads us to such a vast inventory of claims.

CLOSING

The Subcommittee on Disability Assistance and Memorial Affairs, led by Chairman Miller, will hold a series of hearings next year on the myriad issues facing the claims process. However, it does not make sense to hold hearings that merely list VBA's faults while providing no solutions.

The waiting time in many instances is unreasonable. We must be open to considering new ideas, and not be bound by the past or narrow biases.

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

Hearing no objection, a statement by the Government Accountability Office will be submitted for the record.

With nothing further, this hearing is adjourned.

Statement of Ranking Member Lane Evans
Oversight hearing on the challenges and opportunities facing disability claims
process at the Veterans Benefits Administration
December 7, 2005

Thank you, Chairman Buyer.

I am concerned the continuing problems with poor quality and large backlogs are due to VA's insufficient funding for appropriate numbers and type of staff. Last spring, Democrats on this Committee urged additional funding for staff to process claims for veterans and appeals at the Board. That request was rejected by the Budget Committees.

VA can not be expected to provide decisions of acceptable quality and timeliness without adequate resources. More veterans are applying for benefits. Veterans who appeal decisions are waiting years for hearings before the Board. Staff who process claims feel overwhelmed and untrained. The result is predictable: longer delays and more errors.

The Administration and Congress must work together to provide the resources VA needs to decide claims fairly and accurately in a timely manner.

I thank all of the witnesses and look forward to your testimony.

Thank you, Mr. Chairman.

Honorable Jeff Miller

Opening Statement

Full Committee oversight hearing on the challenges and opportunities facing VA's disability claims process in 2006

December 7, 2005

Throughout the 2nd Session of the 109th Congress, my Subcommittee intends to hold a series of hearings on the challenges and issues facing VBA in the 21st Century, to include a review of policies and laws that affect claims processing; the impact of the Veterans Claims Assistance Act; training and performance standards for claims adjudicators; the role national and county service officers play in claims development; and VBA's outreach efforts to veterans and survivors.

A recurring complaint among veterans is that it takes VA too long to adjudicate a claim. On November 3 of this year, the Subcommittee held an oversight hearing on the development of the Veterans Benefits Administrations' (VBA) annual budget. When I asked Admiral Cooper whether VBA was meeting its production goals his response was a clear "no." This concerns me. If VBA is not meeting its production goals then the backlog will continue to increase, timeliness will suffer, and veterans will continue to feel that they are not being served.

I do not believe there is a single answer to improving the claims processing system. Congress cannot simply throw more money at the problem and expect it to go away. As reports, studies, and experience have shown, there are a variety of factors which have a significant impact on timeliness and quality; I believe we – and by "we" I mean Congress, VSOs, and VA – must put them all on the table as we work to improve the system.

This will require some difficult decisions – ones that I believe will enable VBA to become a world-class organization. Our disabled veterans and their survivors deserve no less.

I hope today's hearing can provide members with a better understanding of the issues and challenges facing the system.

I look forward to your testimony and to working with all of you next year as the Subcommittee embarks on an ambitious schedule of hearings to identify areas for improvement in claims processing services.

Statement of Congresswoman Shelley Berkley
Committee on Veterans Affairs Hearing
December 7, 2005

Thank you, Mr. Chairman. It is critically important that we explore this issue from the perspective of veterans who have waited years for their VA claims to be resolved. In fiscal year 2005, the VA received more than 16,000 more claims than in fiscal year 2004. Yet the number of staff at regional offices to process these claims has risen at a slower pace, and is still less than the 7,053 on duty as of September 30, 2002.

I am particularly concerned that the Reno Regional Office may not have adequate staffing given the large number of veterans moving to Nevada. In 2000 there were 3,042 claims and 712 appeals pending in Reno. As of September 2005, there were 3,677 claims and 1,082 appeals pending in Reno. Reno appears to be faring better than other regional offices in terms of staffing; however, I am concerned with the wide variations in the number of staff per pending and appellate caseload. In fact, Reno has 30 more claims per FTEE than the office with the best ratio of pending claims and appeals per FTEE—Salt Lake City.

My Las Vegas office is currently assisting a Gulf War veteran who has numerous medical conditions and has been waiting for a decision on his appeal since 1999. For 6 years, this veteran has waited to hear a decision. Veterans deserve to have their claims decided in a fair and consistent manner. However, the national average for appeals decided by the Board in fiscal year 2005 was 983.3 days —over 2 1/2 years! Many claims are remanded by the Board adding even longer to the time veterans must wait for a decision.

I cannot stress enough the importance of adequate staffing levels to ensure timely and **accurate** decisions on VA claims. Thank you, and I look forward to hearing from the witnesses on this important subject.

**OPENING STATEMENT OF
LUIS V. GUTIERREZ
HOUSE COMMITTEE ON VETERANS' AFFAIRS
"Oversight Hearing on the Challenges and Opportunities
Facing Disability Claims Processing in 2006"
Wednesday, December 7, 2005 1:00pm**

Mr. Chairman, thank you for holding this hearing today. This hearing is especially important for veterans in my home state of Illinois. After a *Chicago Sun-Times* investigation in late 2004 revealed that Illinois veterans have consistently ranked lowest for their disability compensation, the Illinois Congressional Delegation, led by Ranking Member Evans, Senators Durbin and Obama, and myself, has urged the Department of Veterans Affairs (VA) to step up its efforts to ensure that Illinois veterans receive equitable and fair treatment.

After several requests, then-Secretary Principi requested the VA Inspector General to investigate the issue. The IG released its report in May 2005. The report validated the charges many Illinois veterans have been making for years: that they were unfairly compensated by the VA.

It is unconscionable that brave men and women from Illinois who are fighting for our freedoms abroad are being shortchanged by bureaucracy when they return home. When these men and women come home, they should not have to fight a government agency for disability benefits as hard as they had to fight our enemies abroad. They should be treated as heroes and as patriots. They should get the best services, ample compensation for their sacrifice and the proper appreciation for their courage.

I am pleased that Senators Durbin and Obama were successful in inserting a provision into the FY 2006 Military Quality of Life and Veterans Affairs Appropriations bill that requires the VA to provide individual notice to service-connected disabled veterans in Illinois concerning review of their VA claims.

This task will fall squarely on the shoulders of the VA Chicago Regional Office. Since the investigation, I believe the Chicago Regional Office has

improved its outreach to Illinois veterans and has instituted measures to ensure that Illinois veterans will no longer find themselves with huge disparities in their benefits compensation relative to other states.

However, that task will require vigorous oversight and proper funding. Today's hearing is a first step toward ensuring that the VA is following through on its promises to Illinois veterans. But those promises will be difficult to keep if the VA finds themselves in the fiscal restraints they have been placed in by the Administration.

I am looking forward to hearing from the witnesses today about how much funding they will need to ensure that our veterans are compensated fairly and without the long waits that we will surely hear about today. I am also interested in hearing from the VA about how they intend to follow the provisions included in this year's FY 2006 VA Appropriation bill.

Lastly, I would like to thank the panelists for being here and look forward to working with you in the future.

Congressman Tom Udall (NM-3)
House Veterans Affairs Committee
Hearing on the VBA Claims Processing
December 7, 2005

Mr. Chairman,

Thank you to the witnesses testifying for being here today.

It seems that every year this committee holds a hearing on the VBA and we lament the amount of time our veterans wait for their benefit claims to be processed. Yet, the wait and the frustration being endured by veterans continue to grow. Hundreds of thousands of cases sit and wait for decisions, some of them for years at a time, leaving the veteran with uncertainty of what can, or will, be done.

I want to ask the VBA to outline concrete, substantial action that is being taken. It is understandable for claims to take some time to process, but taking months or years on end is unacceptable. Many veterans in New Mexico are waiting for decisions on their claims, and like all other veterans, the rest of their lives remain on hold until that decision is made.

In the coming year, the VBA is predicting 206,000 original claims will be made, the most time-consuming type of case the VBA handles. On average, 564 original claims will be opened every single day. I hope to hear how the VBA is preparing to ensure these new cases are not simply added to the growing pile, forcing new veterans to get in line behind those who have already been waiting and waiting.

I would strongly encourage the VBA to devise and implement a plan for eliminating the backlog of claims, and putting into place a new system for handling original claims. I would also strongly encourage the VBA to share any needs or assistance they can gain from our committee. We are all here for one reason: to serve veterans as they served our nation, and that means we must work together. Otherwise, like the budgetary problems now plaguing the VA, the VBA claims processing issue will only continue to worsen.

Thank again to the witnesses here today for their time.

Thank you, Mr. Chairman.

Board of Veterans' Appeals - VACOLS											Page 1 of 5
Field Station Elapsed Processing Days											VCL 6
10/1/2005 To: 10/31/2005											11/7/2005
F I E L D					B V A						
Regional Office	Total	Avg Field	NOD to	SOC to	Appeal	BVA Days	Non-Orig	BVA Days	Total BVA	Average	
Regional Office	Orig Decs	Days	SOC	Appeal	to BVA	Orig Dec	Decs	Non-Orig Dec	Decisions	BVA Days	
301 - Boston	11	624.6	158.3	55.1	411.3	270.1	29	121.6	40	162.4	
402 - Togus	6	775.0	359.2	42.3	373.5	165.7	6	126.8	12	146.3	
304 - Providence	13	1,775.9	343.2	20.2	1,412.5	121.7	5	47.0	18	100.9	
405 - White River Jct	3	1,211.3	221.7	28.0	961.7	219.7	0	0	3	219.7	
306 - New York	31	2,067.3	195.5	39.8	1,832.0	97.8	32	111.3	63	104.7	
307 - Buffalo	14	578.4	260.8	30.9	286.8	386.5	21	125.1	35	229.7	
308 - Hartford	13	710.1	206.7	34.9	468.5	158.8	10	63.2	23	117.3	
309 - Newark	29	910.1	247.4	50.7	612.0	130.4	23	78.7	52	107.6	
310 - Philadelphia	23	1,083.6	248.5	54.3	780.7	148.3	23	93.9	46	121.1	
311 - Pittsburgh	14	675.9	79.0	24.6	572.3	137.1	44	103.2	58	111.4	
313 - Baltimore	11	890.9	215.1	33.1	642.7	255.3	11	96.7	22	176.0	
314 - Roanoke	19	677.5	112.7	51.6	513.2	264.3	22	106.8	41	179.8	
315 - Huntington	6	606.2	143.2	22.8	440.2	305.5	19	107.6	25	155.1	
316 - Atlanta	31	871.6	228.8	62.7	580.1	214.7	35	85.5	66	146.2	
317 - St. Petersburg	73	1,103.1	351.2	42.6	709.3	144.0	75	76.2	148	109.6	
318 - Winston-Salem	33	790.5	189.4	58.0	543.1	189.1	35	164.8	68	176.6	
319 - Columbia	47	678.6	91.5	58.6	528.5	176.4	46	118.1	93	147.5	
320 - Nashville	28	820.4	216.3	37.2	566.9	94.2	24	97.0	52	95.5	
321 - New Orleans	10	838.9	252.5	69.5	516.9	159.1	27	126.9	37	135.6	
322 - Montgomery	27	1,027.6	220.0	37.2	770.4	139.0	48	72.1	75	96.2	
323 - Jackson	14	830.8	175.2	52.0	603.6	240.5	25	110.7	39	157.3	
325 - Cleveland	42	664.1	158.2	42.9	483.0	213.8	37	94.9	79	158.1	
326 - Indianapolis	25	631.6	260.6	57.6	313.4	202.4	19	153.2	44	181.2	
327 - Louisville	13	860.9	279.2	32.3	549.5	180.3	18	158.6	31	167.7	
328 - Chicago	25	825.0	187.3	80.5	557.2	187.4	43	77.3	68	117.8	
329 - Detroit	45	634.8	115.3	44.9	474.6	194.8	29	106.1	74	160.1	
330 - Milwaukee	8	1,285.5	189.1	53.5	1,042.9	285.9	4	71.3	12	214.3	
331 - St. Louis	44	609.4	284.1	30.4	294.9	284.3	30	76.9	74	200.2	
333 - Des Moines	5	907.4	327.8	28.0	551.6	47.0	6	91.5	11	71.3	
334 - Lincoln	29	328.8	109.8	26.1	192.8	252.6	14	127.9	43	212.0	
335 - St. Paul	12	628.4	160.8	55.8	411.8	256.6	8	62.1	20	175.2	
436 - Ft. Harrison	5	936.6	226.6	64.8	645.2	125.8	4	108.5	9	118.1	
437 - Fargo	3	425.0	100.7	36.7	287.7	144.7	3	150.3	6	147.5	
438 - Sioux Falls	4	382.0	86.3	118.0	177.8	280.5	2	60.0	6	207.0	
339 - Denver	2	826.5	172.0	19.0	635.5	166.0	13	103.8	15	112.1	
340 - Albuquerque	12	591.3	126.1	41.2	424.0	273.1	6	113.5	18	219.9	
341 - Salt Lake City	6	358.0	30.0	47.7	280.3	301.7	2	165.0	8	267.5	
442 - Cheyenne	1	400.0	293.0	55.0	52.0	483.0	0	0	1	483.0	
343 - Oakland	15	1,288.3	171.3	56.4	1,040.5	193.7	19	89.6	34	135.5	
344 - Los Angeles	23	801.2	311.3	38.2	451.7	259.5	35	95.2	58	160.3	
345 - Phoenix	4	740.3	109.5	36.8	594.0	191.3	17	103.2	21	120.0	
346 - Seattle	8	1,011.0	167.6	38.1	805.3	152.1	5	104.0	13	133.6	
347 - Boise	4	793.3	297.0	49.5	446.8	171.0	4	66.5	8	118.8	

348 - Portland	17	874.6	278.7	48.9	547.1	222.6	18	127.0	35	173.4
349 - Waco	71	1,053.9	181.7	31.5	840.7	163.7	47	63.4	118	123.8
350 - Little Rock	27	948.7	191.9	35.9	720.9	184.9	43	121.9	70	146.2
351 - Muskogee	29	521.3	136.0	41.7	340.6	228.4	20	71.0	49	164.1
452 - Wichita	17	413.3	195.9	27.5	189.8	324.9	18	96.6	35	207.5
354 - Reno	17	694.9	162.6	52.1	480.1	268.7	12	90.8	29	195.1
355 - San Juan	26	920.9	223.1	36.5	661.9	377.2	73	144.8	99	205.9
356 - Manila	20	706.3	134.3	34.3	537.7	170.1	29	71.9	49	112.0
459 - Honolulu	3	1,258.7	454.3	74.0	730.3	51.7	6	130.3	9	104.1
460 - Wilmington	6	1,034.0	544.7	19.3	470.0	210.0	0	0	6	210.0
362 - Houston	6	951.8	154.5	48.2	749.2	141.5	23	72.8	29	87.0
363 - Anchorage	5	734.0	350.2	29.2	354.6	140.6	1	65.0	6	128.0
RO71	5	486.2	131.4	48.4	306.4	372.4	1	36.0	6	316.3
372 - Washington DC	6	1,038.0	220.2	35.0	782.8	228.5	6	71.5	12	150.0
373 - Manchester	7	673.9	200.4	18.6	454.9	344.3	6	48.3	13	207.7
377 - San Diego	9	1,447.9	193.0	37.9	1,217.0	46.7	13	59.3	22	54.1
RO80	0	0	0	0	0	0	1	163.0	1	163.0
RO83	2	407.0	231.0	49.0	127.0	354.0	0	0	2	354.0
RO91	2	946.0	718.0	41.0	187.0	272.5	1	155.0	3	233.3
RO92	1	570.0	253.0	58.0	259.0	239.0	0	0	1	239.0
RO93	12	158.9	34.0	59.3	65.6	388.3	1	64.0	13	363.3
RO99	4	350.0	91.8	45.3	213.0	114.5	9	81.8	13	91.8
Grand Totals:	1,083	845.7	205.0	43.7	597.0	202.5	1,206	101.0	2,289	149.0

**Veterans of Foreign Wars of the United States
Service Officer Program**

Number of VFW Service Officers:

Department Service Officers (DSO) 59
Assistant Department Service Officers (ADSO) 75
Claims Representatives 35
Staff (Which covers BVA/BDD/BVA/CAVA) 34

How they are paid:

The DSO/ADSO/Claims Reps are paid by their respective VFW State Departments, except for in 11 states in which the DSO's are state employees, and paid by the state*, but accept VFW Power of Attorney cases. Staff (Which covers BVA/BDD/BVA/CAVA) are paid by the VFW national organization.

How they are trained:

There are four primary components to the VFW's training strategy for the National Veterans Service (NVS). This strategy reinforces the principles of veterans' representation through accreditation by the VA General Counsel as outlined in Title 38 CFR. The training strategy is a subset of the overall VFW NVS Strategic Plan. Training is the first "Critical Issue" in that strategic plan.

A Training Division, led by the Manager, Training/Quality Assurance, was established to implement this training strategy.

Our training is divided into four phases:

Phase I (Beginning Training –two segments)
Phase II (Intermediate/Advanced Training – four segments)
Phase III (Proficiency Training/Testing – three segments)
Phase IV (Professional Development – two segments)
Each segment is approximately one week.

Finally, the NVS Staff is composed of BDD, BVA, WRO and Court of Veterans' Appeals Service Officers. The training is the same for them as well.

All personnel who represent claims before the VA must also meet the VA's qualifications for Training, Responsibility, Involvement and Preparation of Claims (TRIP Program). All of our DSO's, ADSO's, Claims Representatives and Staff have been TRIP trained and certified by the VA, with the exception of a few new employees, who are still in training.

In addition, VFW accredits additional State and County Service Officers to assist VFW POA constituents. Accreditation requirements for these officers usually require VA TRIP certification, evaluation of experience, VFW training, and testing. We may share these people with other VSOs who may also accredit them to handle their cases. There are about 256 State Service Officers and about 223 County Service Officers in this category.

*Arkansas, Georgia, Idaho, Kansas, Louisiana, Mississippi, Nebraska, South Dakota, Tennessee, Virginia, and West Virginia

Statement of William B. Jones, M.D.
United States Air Force (Ret.)
Before the
House Committee on Veterans' Affairs

December 7, 2005

Congressmen of the Committee on Veterans' Affairs

Let me begin by stating what a privilege it is to be able to testify before this august body on this very memorable day, Pearl Harbor Day. I feel that in this endeavor I am speaking not just for myself but all the thousands of veterans who have experienced similar or greater frustrations and challenges in attempting to deal with the Veterans Administration. To no significant avail, I have spent the past 6 ½ in an attempt to have the Veteran's Administration recognize my claims, and it seems that we are now at a point where we are beginning the process all over again. The experience that I will outline for you today, highlights a system that promotes second-class medical care in a bureaucracy that is uninformed about military matters, programmed to procrastinate and inefficient and non-caring with whom you cannot communicate.

A brief comment about myself – I was born in 1928 in Florida, and raised there. I graduated from the Citadel ("the Military College of South Carolina") in 1950 with a regular commission in the U. S. Air Force. That summer, the onset of the Korean War, I was on active duty working in the hospital at Shaw Air Force Base, SC. In the fall of 1950, I began my studies at the Duke University School of Medicine in Durham, NC, and graduated in June 1954 as a Doctor of Medicine. Then followed internship and Orthopedic Surgical Residency at Duke Hospital, where I concluded my residency in June of 1962 at the Shriners Hospital for Crippled Children in Greenville, SC. Interspersed during that timeframe, I also sailed as a merchant seaman during two summers and accomplished a three year tour of active duty with the Air Force, serving with the 50th FBW of F86 and F100 fighter aircraft at Toul Air Base in France.

Subsequent to finishing orthopedic residency, I returned to active duty with the Air Force at Keesler USAF Hospital in Biloxi, MS, and then spent two years at Hunter Air Force Base in Savannah, GA. Since 1966, I have been practicing orthopedic surgery in Greenville, SC. During these years, I have maintained my affiliation with the air force. Tours of active duty I served were in Japan; Alaska; Wiesbaden, Germany; Madrid, Spain; and Greenham Commons in the UK. Additionally, I have spent time in Libya, Korea, Vietnam, and on my last tour of active duty at Andrews Air Force Base in Washington, DC, and at Dhahran Air Base in Saudi Arabia during the first Gulf War. I have logged combat time both in Vietnam and the first Persian Gulf War. All toll, this has amounted to 33 years of Air Force service, concluding as a Chief Flight Surgeon and Orthopedic Surgeon with over 3000 hours of flight time with the rank of full Colonel.

Upon commissioning as an Air Force Officer in 1950, statements were made to the effect that one who served until retirement in the military could expect to be rewarded with a retirement income and medical care at military facilities for the remainder of his life.

In France from 1955 through 1958, our aircraft and flight personnel, including the Flight Surgeon, spent considerable time in the deserts of Libya and North Africa for gunnery and bombing training. There, we experienced frequent exposure to devastating sand storms, at times closing down all flight operations and blasting all personnel with coats of sand in the eyes, ears, and mouth, as well as blowing into Quonset hut quarters around the doors and windows.

Arriving in France in excellent health in 1955 with a completely normal physical exam, by 1957 I had developed a pterygium (overgrowth of veins of the eye covering portions of the cornea) of each eye, diagnosed to be secondary to the irritation of the sun and sand storms in North Africa. The worst eye was operated upon not once, but twice at the U. S. Air Force Hospital in Germany in late 1957. These facts are documented in my physical examination records. Unfortunately, the growth recurred and over the years my local ophthalmologist has monitored these growths closely. I have used a variety of drops to attempt to control the irritation, which creates an itching of the eyes with tearing. Sometimes blurring of vision accompanied by diminished visual acuity occurs with reading or night driving.

The Veteran Administration has requested exams, which have been conducted at the hospital in Columbia, SC, by a resident in training on two occasions. The V. A. board has referred to it as "no evidence of onset during active duty," in the right eye, which is completely false and contrary to the documents, including my physical exams in all of my records. Had the evidence presented been appropriately reviewed and accepted this grossly incorrect judgment should not have occurred. Both eyes experienced simultaneous trauma in the desert and simultaneously developed pterygium.

Jet engine noise levels experienced during flight line operations to which aircrews, including the Flight Surgeon, are exposed can be of levels very hazardous to hearing. At that time, this was not recognized and the measures now used for protection were not in effect. Also, the seat on the flight deck of the C141 and C124 transport aircraft utilized by the flight surgeon has been noted in medical research studies in more recent years to be exposed to especially hazardous noise levels of a high pitch whine of the port inboard engine. This is the seat that I occupied in accumulating in excess of 3000 hours of flight time. These facts are all corroborated and verified by scientific research data I presented at the hearing. In the data accumulated for the Regional Office, I presented a great deal of research material pointing out the unhealthy nature of this exposure. This was from the medical research publications of many authors from medical school faculties, textbook authors, and air force research labs, especially those at Wright-Patterson Air Force Base. All recognized authorities in their field. Again, the V.A. evaluators at the Board of Appeals commented upon this as "Evidence of minimal exposure to aircraft engine noise." Clearly the statement was contrary to the research material and data I quoted and presented relating to jet engine noise. Three thousand (3000) hours of flight time can hardly be glossed over as minimal exposure. The substance of my testimony was not given the weight of an expert witness as prescribed by regulations and the Court of Veterans Appeals based on my status as a physician and Flight Surgeon with special training and expertise in otology, or hearing problems. Data was also presented relating to my evaluations by Dr. Joseph C. Farmer, Professor and Chief of the Otolaryngology Department at Duke University Medical Center. His summarizing statement of September 2001 visit was, "Bilateral sensory hearing loss secondary to excessive noise exposure during air force duty, and I recommend hearing aids." The board-hearing officer referenced this as "minimal exposure." This is a marked contradiction of the opinions regarding medical information between a judge and recognized outstanding scientific authorities and medical professors.

Flying cargo from Savannah, GA, and Charleston, SC, to Vietnam frequently required three days to get there and three days back while in the company of bombs, tail fins, and Agent Orange. This was one of the primary missions of the 63rd Military Airlift Wing at Savannah as well as the 437th Airlift Wing in Charleston. From 1964 to 1975, I developed an enlarged prostate that eventually produced urethral stenosis and the inability to void. This required a TUR operative procedure of the prostate. Since then, the prostate has continued to enlarge with multiple surgical biopsies in an attempt to rule out a tumor because of an accompanied considerably elevated PSA. This has also been accompanied by several episodes of extensive urethral bleeding and, on occasions, requiring hospital admissions to control. Now, the situation has progressed to that of urinary incontinence and dysfunction with dribbling requiring the wearing of absorptive devices. This, you can imagine, is a real problem and bother. The last urologic evaluation requested by the VA was performed by a junior general surgical resident who told me that he did not care about my post exam grossly bloody urine specimen. As a junior general surgical resident he is unqualified for evaluating the complex urinary dysfunction and prostate problem. If the VA desires a valid opinion of a problem they must have a qualified specialist evaluate the situation. This inadequate treatment is an insult and something that most veterans resent. This medical issue is thought to be most likely due to Agent Orange exposure, and I am hopeful that it is not an indication of an impending prostate cancer development. Medical literature and research studies were also presented to the Regional Office and the Appeal Board supporting this conclusion. The comments of the board was, "manifest during R.C. with no evidence during ADT," which is also false. True, the episode of urinary retention occurred while in Germany and not in Vietnam, but the enlargement was occurring over the preceding several years, which was noted on digital examinations over a timeframe when multiple periods of active duty were served.

Now, my internist points out with a blood sugar approximately 140, he considers me a type-2 diabetic. Exercise and diet have so far not accomplished any resolution of the problem. I now understand that this has been recognized as a complication of Agent Orange exposure, and Congress has passed a resolution relating to such. This was published in a recent issue of the DAV magazine.

While on active duty in Charleston and during Desert Storm, it was recognized that my cholesterol and lipids were elevated and increasing on routine physical examination lab studies. I was placed on cholesterol lowering medications in Charleston, probably during the early 1980s, obtaining my medication at the Charleston AFB pharmacy. This has controlled the elevation of these harmful levels to some degree as long as I remain on the medications, though the V.A. will not provide me with the most recently developed and most effective medication prescribed by my internist. It seems that veterans were good enough to go to war with the best equipment, but not to get the best medications for the promotion of good health.

Because of the elevated cholesterol, I have developed considerable plaque formation and narrowing of the carotid arteries and these now require frequent monitoring with ultrasound screening. Should these continue to progress, cerebral ischemic episodes or strokes are likely. Dizziness and vertigo with instability are provoked by transient and brief episodes of ischemia and risk prone surgical intervention is a consideration.

Working with the system for consideration of these medical problems beginning with the Regional Office in 1999, through the Veteran's Board of Appeals and the Court of Appeals, has gotten nothing accomplished.

At the Regional Office, it is impossible to talk with the Director or any of the evaluators. Apparently, this is the hard and fast rule. You present yourself at the office and someone is called to come down from "upstairs" to talk with you, but cannot answer any questions or take any new information. It is impossible to find out what is going on or if they have the correct or most recent data and information. This recently has been improved with the addition of a receptionist who can at least tell you if they have the records but nothing else.

After a period of six to twelve months, you receive a letter that you must reply to or report for an additional examination that in my case was performed by a surgical resident in a training status, without regard to training in the applicable specialty.

Finally, a "judge" was provided in October 2002 that the Disabled American Veteran's (DAV) representative and I appeared before and presented my case. The judge insisted that all duty conducted while a reservist was inactive duty status. As most military personnel are aware, I tried to explain to her that reservists could be called to active duty for periods of time from a few days to several months or years. Crews flew all our overseas missions, which were numerous, on active duty, which was a requirement by NATO. Active duty was also required on any mission when possible exposure to hostile fire or flying in the combat zone, such as in Vietnam and the Persian Gulf was required. This information was never accepted as fact by the judge. Due to the lack of the judge's understanding of the facts, the nature of my medical problems was not addressed and the hearing wound up accomplishing nothing. I was directed to contact the Air Force Personnel Center at Randolph for further confirmation of my facts. With the lack of understanding of the facts presented, what faith can one have in the fairness of the system or the accuracy of the judgment?

When the matter, after appeal finally got to the Board of Appeals some six months later, I had a very well prepared slide and document presentation. Judge Joy McDonald dismissed this and I was allowed only a hurried verbal presentation. I had documents and medical research treatise from literature as well as copies of my physical exams supporting my case. Again, the medical facts and the authoritative research evidence were treated with casual disregard. Judge McDonald did not consider my testimony that of an expert as required by V.A. regulations and as directed by the Court of Veteran's Appeals. I do not understand how Judge McDonald could ignore the VA regulations and the direction of the Court of Veteran's Appeals. A Chief Flight Surgeon is a physician with special training in aerospace medicine, emphasizing ear, eye, and cardiopulmonary physiology. It would appear self evident that she was dealing with a veteran with medical expertise.

The judge also requested that a cardiologist review my case involving the carotid arteries. Again lacking medical expertise, she obviously is not aware of the difference between coronary and carotid arteries. The coronary arteries are in the heart and the carotid arteries are in the head. A cardiologist is not a physician to make a determination on a carotid artery but should require a neurologist. This certainly does not reflect with credit upon the board nor give one any sense of security that they know what they are doing and one can be judged correctly and fairly.

The case was then appealed to the Court of Veteran's Appeals. There, I had the good fortune of having an attorney representing me who pointed out the unfairness of the board and glaring error on their part in not properly considering my testimony. With his assistance in pointing out this mistake, the court referred my case back to the Board of Appeals. This remand has now taken 2 ½ years (03/19/03 to 10/11/05) for my records to go from the location of the Board of Appeal to the Court of Appeals and then back to the Board of Appeals, about five blocks across the city of Washington, DC.

I was at the Board of Appeal's office in DC on 10/11/05, and met with the DAV representative who was most knowledgeable and helpful. He was able to locate my records in the offices of the board almost immediately. He pointed out that as a patient over age 75, they should expedite my case and marked the records accordingly. Feeling that we would be given prompt attention by the Board of Appeals as directed by the Court of Appeals, upon returning to Greenville, I underwent a re-evaluation by my internist of my cholesterol and vascular stenosis status. I also had a re-evaluation by my urologist of my renal dysfunction and prostate status, and had copies of each sent to the Board of Appeals. Here are copies of my internist's 11/2002 report and copies of my urologist's re-evaluation, which the board should have in my case file.

Unfortunately on 11/23/05 I was informed that the case has been referred back to the R.O. for further development of data. Having previously spent 3 ½ years in its initial development, this appears as a measure designed to further delay resolution of the situation. On November 28th, I was at the Regional Office in Columbia and the records had not arrived there. Recent correspondence indicates no evidence of the R.O.'s intent to expedite the claim as indicated in the October 11 visit to the Board of Appeals. Perhaps it may also deflect attention from the Board's initial severe mishandling of the case. Additionally, a process of such a prolonged and inefficient nature may prevent a Veteran from receiving the appropriate resolution prior to his demise.

Furthermore, in the board's comments and decision to remand the case to the Regional Office, the judge refers to inactive duty, indicating the lack of understanding of the fact that of all duty the reservist performs is not inactive duty. I am certain the 100,000 reserve and guard troops who have served or are currently serving in Iraq would have a serious objections to the judge's incorrect and inappropriate comments.

In conclusion, I feel manipulated by a system of bureaucratic maneuvers. As described in my testimony, my case has gone from the Regional Office to the Board of Appeals and the Court of Veteran Appeals over the course of 6-1/2 years, only to be returned from to the Regional Office. I am appealing to you today to hold this system accountable for ensuring that the Veterans who have fought for our freedoms have an adequate and efficient means to resolve these problems in a timely manner. Soldiers, sailors, marines and airmen in harms way in Afghanistan and Iraq, and other far flung parts of the globe and their families are enduring a great deal of hardship and grief in the various areas of conflict. They have been led to believe that our country will stand behind them and take care of them when they return home many with broken bodies and mangled minds and are not able to take care of themselves.

The V. A. needs a change of attitude. It would very definitely be a great step forward if V.A. employees and especially those in high positions should be chosen from the ranks of those who have had military and combat experience. Their attitude, judgment, compassion and understanding in dealing with such matters could not help but be improved. The employment of greater numbers of military retirees who understand the military system and are more knowledgeable in intricacies of military operations and procedures would enhance the accuracy and efficiency of the system. They need to understand that communications, accurate analysis and interpretation of data and efficient processes are most important.

My presence here today and testimony is likely to do little to advance my case or eliminate my justifiable frustration, but if it improves the inadequate system presently in place for our veterans then my objective has been accomplished.

I have not received any funds from any government agency, federal grant, or contract from the government relative to the subject matter of this testimony during the current year or any other previous physical year.

William B. Jones, M.D.

WBJ/ss/mds

**STATEMENT OF
RONALD R. AUMENT
DEPUTY UNDER SECRETARY FOR BENEFITS
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS**

December 7, 2005

Mr. Chairman and members of the committee, it is my pleasure to be here today to discuss the Disability Compensation Program.

The Veterans Benefits Administration (VBA) is responsible for administering a wide range of benefits and services for veterans, their families, and their survivors. We manage a life insurance program that consistently ranks among the best in the nation. We promote home ownership through the loan guaranty program and help veterans and their dependents seek greater education and economic opportunities through the highly successful Montgomery GI Bill program and other educational programs. For qualifying veterans with disabilities, our Vocational Rehabilitation and Employment Program provides both rehabilitation and training and assists them in reentering the civilian work force. We are proud of our achievements in all these vital areas.

The heart of our mission is the Disability Compensation Program. As Under Secretary Cooper testified recently before the Subcommittee on Disability Assistance and Memorial Affairs, in 2005 we produced over 763,000 disability determinations. We also performed more than two million decision actions of all types to address new claims and to maintain those already on the rolls. Additionally we handled over 6.3 million phone calls; conducted over a million interviews; briefed more than 330,000 service persons; and conducted nearly 70,000 hours of outreach to military members, former prisoners of war, homeless, minorities, women, and other targeted groups.

Today I will discuss the challenges we face in providing timely, accurate, and consistent determinations on veterans' claims for disability compensation. We have provided testimony on some of these challenges before this Committee and the Senate Veterans' Affairs Committee in recent months. These challenges include the growth of the disability claims workload, the increasingly complex nature of the claims processing workload, the rise in appellate processing, and the continuing need to produce accurate benefit decisions.

I will also discuss some of the actions we are taking to improve claims processing. We view these efforts as opportunities to achieve greater processing efficiencies and enhance service to veterans.

Growth of Disability Claims Workload

The number of veterans filing initial disability compensation claims and claims for increased benefits has increased every year since fiscal year (FY) 2000. Disability claims from returning Afghanistan and Iraq war veterans as well as from veterans of earlier periods of war increased from 578,773 in FY 2000 to 788,298 in FY 2005. For FY 2005 alone, this represents an increase of more than 209,000 claims or 36 percent over the 2000 base year. It is expected that these increases will continue over the next five years.

The most important factors leading to the sustained high levels of claims activity are: Operations Iraqi and Enduring Freedom; more beneficiaries on the rolls, with resulting additional claims for increased benefits; improved and expanded outreach to active-duty servicemembers, guard and reserve personnel, survivors, and veterans of earlier conflicts; and implementation of Combat Related Special Compensation (CRSC) and Concurrent Disability and Retired Pay (CDRP) programs by the Department of Defense (DoD).

Ongoing hostilities in Afghanistan and Iraq are expected to continue to increase the VA compensation workload. Studies by VA indicate that the most

significant indicator of new claims activity is the size of the active force. Over 1.2 million active-duty servicemembers, members of the National Guard, and reservists have thus far been deployed to Afghanistan and Iraq. Over 400,000 have returned and been discharged.

Whether deployed to foreign-duty stations or maintaining security in the United States, the authorized size of the active force as well as the mobilization of thousands of citizen soldiers means that the size of the force on active duty has significantly increased. The claims rate for Gulf War Era veterans, which began in 1991 and includes veterans who are currently serving in Operations Enduring Freedom and Iraqi Freedom, is significant. Veterans and survivors of the Gulf War Era currently comprise the second largest population of veterans receiving benefits after Vietnam Era veterans.

The number of veterans receiving compensation has increased by almost 300,000 since 2000 – from just over 2.3 million veterans to over 2.6 million in 2005. This increased number of compensation recipients, many of whom suffer from chronic progressive disabilities such as diabetes, mental illness, and cardiovascular disabilities, will continue to drive more claims for increased benefits in the coming years as these veterans age and their conditions worsen.

Reopened disability compensation claims comprise nearly 60% of VBA's disability claims receipts and increase 2 to 3 percent each year. Additionally, an increase in claimants and beneficiaries on the rolls has a direct relationship to the workload in the public contact area of telephone interviews, personal interviews, and correspondence, including electronic correspondence. Compensation & Pension (C & P) employees in the regional offices annually conduct over 6 million telephone interviews and 1 million personal interviews.

VA has committed to increased outreach efforts to active-duty personnel, and we must continue to expand our efforts. These outreach efforts result in

significantly higher claims rates. Last year, the greatest increase in rating receipts was in original claims – an increase of 17%. The increase in original claims this year is an additional 8% over last year's high rate, which combines to a 25% increase over the last 2 years. We believe these increases are directly related to our aggressive outreach programs, and that the increases will continue.

Separating military personnel also receive enhanced services through the Benefits Delivery at Discharge (BDD) Program. On either a permanent or itinerant basis, VBA staff members are stationed at 140 military discharge points around the nation and in Korea and Germany. Additionally, VBA employees conduct transition assistance briefings in Germany, Italy, Korea, England, Japan, Okinawa, and Spain, and, to a limited degree, aboard ship as servicemembers return to the United States.

Combat-Related Special Compensation (CRSC), a benefit available from DoD for certain military retirees with certain qualifying combat-related disabilities defined by statute became effective July 1, 2003, and was later expanded effective January 1, 2004. Today more than 43,000 military retirees receive this benefit. This benefit and Concurrent Retired and Disability Pay (CRDP), another DoD program that permits partial to total restoration of retired pay previously waived to receive VA compensation, further contributes to increased claims activity for VBA.

It is now potentially advantageous for military retirees, even those with relatively minor disabilities, to file claims with VA and receive VA disability compensation because their waived retired pay may be restored and may not be subject to waiver in the future. More than 170,000 retirees are in receipt of CRDP. The number of military retirees in receipt of VA compensation has increased since the advent of these programs to over 800,000. There is also now significant incentive for retirees receiving compensation to file claims for

increased VA benefits, as the increased amounts may no longer be subject to offset. Additionally, the total number of retirees as of the end of FY 2005 was 1,800,000, meaning that 45 percent of military retirees now receive VA benefits, and there are 1,000,000 who may decide to file VA claims in the future due to CRSC and CRDP.

Complexity of Claims Processing Workload

The increase in claims receipts is not the only change affecting the claims processing environment. The greater number of disabilities veterans now claim, the increasing complexity of the disabilities being claimed, and changes in law and processes pose additional challenges to the claims processing workload. The trend toward increasingly complex and difficult-to-rate claims is expected to continue for the foreseeable future.

A claim is more complex as the number of directly claimed conditions increases because of the number of variables that must be considered and addressed. Multiple regulations, multiple sources of evidence, multiple potential effective dates and presumptive periods, preparation of adequate and comprehensive Veterans Claims Assistance Act of 2000 (VCAA) notice and rating decisions, increase proportionately and sometimes exponentially as the number of claimed conditions increases. Additionally, as the number of claimed conditions increases, the potential for additional unclaimed but secondary, aggravated, and inferred issues increases as well. Since veterans are able to appeal decisions on specific disabilities to the Board of Veterans' Appeals (Board) and courts, the increasing number of claimed conditions significantly increases the potential for appeal.

VA's experience since 2000 demonstrates that the trend of increasing numbers of conditions claimed is system-wide, not just at special intake locations such as BDD sites. The number of cases with eight or more disabilities claimed increased from 21,814 in FY 2000 to 43,655 in FY 2005, representing a 100

percent increase over the 2000 base year and a 20 percent increase over FY 2004.

Combat and deployment of U.S. forces to under-developed regions of the world have resulted in new and complex disability claims based on environmental and infectious risks, traumatic brain injuries, complex combat injuries involving multiple body systems, concerns about vaccinations, and other conditions.

In addition, the aging of the veteran population that is service connected for diabetes adds to the complexity of claimed disabilities. More than 213,000 veterans are service connected for diabetes with more than 183,000 of these awards based upon herbicide exposure in Vietnam. As veterans with diabetes reach and move past the 10-year point since initial diagnosis, additional secondary conditions tend to become manifest. VA has already begun seeing increasingly complex medical cases involving neuropathies, vision problems, cardio-vascular problems, and other issues directly related to diabetes. If secondary conditions are not claimed by a veteran, the rating specialist must be alert to identify them. This increasing complexity of the disabilities adds to the increased complexity of our workload and the resources needed to process it.

The number of veterans submitting claims for post-traumatic stress disorder (PTSD) has also grown dramatically and contributed to increased complexity in claims processing. From FY 1999 through FY 2005, the number of veterans receiving compensation for PTSD has increased from 120,000 to nearly 245,000. These cases present unique processing complexities because of the evidentiary requirements to substantiate the event causing the stress disorder.

VCAA has significantly increased both the length and complexity of claims development. VA's notification and development duties increased as a result of the VCAA, adding more steps to the claims process and lengthening the time it takes to develop and decide a claim. We are also now required to review the

claims at more points in the decision process. Mistakes due to failure to address all issues or incomplete understanding of the claim when initially developed have resulted in significant rework and remands from the Board and the United States Court of Appeals for Veterans Claims. Additionally, positions advanced by some advocates, if sustained in court, will further aggravate the current situation.

VCAA requires VA to provide written notice to claimants of the evidence required to substantiate a claim and notification of which party (VA or the claimant) is responsible for acquiring the evidence. Under VCAA, VA's duty to assist the claimant in perfecting and successfully prosecuting his or her claim extends to obtaining government records, assisting with getting private records, and obtaining all necessary medical examinations and medical opinions. As a claim progresses, additional notifications to the veteran may be required.

Appellate and Non-Rating Workload

A significant portion of VBA's workload comes from appeals of regional office decisions, remands by the Board and courts, and account maintenance activities for beneficiaries already receiving benefits. As overall claim receipts increase, so do appellate and non-rating related workloads.

As VBA renders more disability decisions, a natural outcome of that process is more appeals filed by veterans and survivors who disagree with some or various parts of the decision made in their case. Veterans can appeal decisions denying service connection for any conditions claimed and disposed of by a denial. They may also appeal the effective date of an award and the evaluation assigned to a disability.

Appeals of regional office decisions and remands by the Board and courts following appeal are some of the most challenging types of cases to process because of their complexity and the growing body of evidence necessary to process these claims. In recent years, the appeal rate on disability

determinations has climbed from an historical rate of approximately 7 percent of all disability decisions being appealed to a current rate that varies from 11 to 14 percent. Currently there are more than 130,000 appeals pending in field stations and the Appeals Management Center. This number includes cases requiring processing prior to transfer of the appeal to the Board and cases remanded by the Board and the courts following an appeal. There are over 30,000 additional pending appeals located at the Board of Veterans' Appeals.

In 2005, VA completed over 2 million award actions of all types. Of that number, over 700,000 were award actions in connection with disability rating decisions, and the remaining were associated with account maintenance (dependency adjustments, death pension awards, income adjustments, etc.). The number of veterans on our rolls has increased by more than 300,000 in recent years, and the total number of veterans and survivors on our rolls is now 3.5 million. The combination of the higher number of beneficiaries on our rolls and the sustained and projected high levels of new claims activity will result in continued growth in account maintenance activities.

Claims Processing Accuracy

The compelling requirement to produce accurate benefit decisions represents both a challenge and an opportunity for VBA. Given the increases in volume and complexity of the workload, we have remained vigilant about the quality of the claims processing results. VBA has established an aggressive and comprehensive program of quality assurance and oversight to assess compliance with VBA claims processing policy and procedures and assure consistent application.

The Systematic Technical Accuracy Review (STAR) program includes review of work in three areas: rating accuracy, authorization accuracy, and fiduciary program accuracy. Overall station accuracy averages for these three areas are included in the regional office director's performance standard and the

station's performance measures. STAR results are readily available to facilitate analysis and to allow for the delivery of targeted training at the regional office level. The C & P Service is conducting satellite broadcast training sessions based on an analysis of national STAR error trends. The first of these broadcasts, which aired in October 2005, focused on rating errors involving VA's duty to assist and effective dates. Future broadcasts are planned and will focus on common errors found in authorization cases.

In addition to the STAR program, the C & P Service has begun a process of identifying unusual patterns of variance in claims adjudication by diagnostic code, and then reviewing selected disabilities to assess the level of decision consistency among and between regional offices. The outcome of these studies will be used to identify where additional guidance and training are needed to improve consistency and accuracy, as well as to drive procedural or regulatory changes.

Site surveys of regional offices address compliance with procedures, both from a management perspective in the operation of the service center and from a program administration perspective, with particular emphasis on current consistency issues. Training is provided, when appropriate, to address gaps identified as part of the site survey.

VBA is engaged in numerous initiatives aimed at better managing the disability claims workload and improving benefits processing. The efforts include changes to the organization and structure of the Veterans Service Center, the delivery of training for claims processors, the consolidation of specialized operations, and the redistribution of the rating workload.

Claims Processing Improvement (CPI) Model

A product of the VA Claims Processing Task Force, established by former Secretary of Veterans Affairs Anthony J. Principi and chaired by Admiral Cooper,

was the implementation of the Claims Processing Improvement (CPI) model. The CPI implementation, which was completed in September 2002, established a consistent organizational structure and work processes across all regional offices. Work processes were reengineered and specialized teams established to reduce the number of tasks performed by decision-makers, establish consistent work processes, and incorporate a triage approach to incoming claims.

We continue to look at the CPI model based upon feedback from field stations, the needs of the organization, and the timeliness and quality improvements we seek from it. The changing workload and workforce have necessitated a review of the model to outline the most effective method of organizing work and resources to maximize performance. During FY 2006 a team will be formed to conduct a high-level review of CPI. The team will focus on defining the strengths of the current model as well as identifying its weaknesses. The product from this group will be recommendations on modifications to the model to further augment efficiencies in claims processing.

Training

It is critical that our employees receive the essential guidance, materials, and tools to meet the ever-changing and increasingly complex demands of their decision-making responsibilities. To that end VBA has deployed new training tools and centralized training programs that support accurate and consistent decision making.

New hires receive comprehensive training and a consistent foundation in claims processing principles through a national centralized training program called "Challenge." After the initial centralized training, employees follow a national standardized training curriculum (full lesson plans, handouts, student guides, instructor guides, and slides for classroom instruction) available to all regional offices. Standardized computer-based tools have been developed for

training decision-makers (53 modules completed and an additional 38 in development). Training letters and satellite broadcasts on the proper approach to rating complex issues are provided to the field stations. In addition, a mandatory cycle of training for all C&P business line staff is being developed, consisting of an 80-hour curriculum annually.

Consolidation of Specialized Operations

The consolidation of specialized processing operations for certain types of claims has been implemented to provide better and more consistent decisions. Three Pension Maintenance Centers were established to consolidate the complex and labor-intensive work involved in ensuring the continued eligibility and appropriateness of benefit amounts for pension recipients. We are exploring the centralization of all pension adjudications in these Centers.

In November 2001, the Tiger Team was established at the Cleveland Regional Office to adjudicate the claims of veterans age 70 and older. VBA has also established an Appeals Management Center to consolidate expertise in processing remands from the Board of Veterans' Appeals. In a similar manner, a centralized Casualty Assistance Unit was established to process all in-service death claims. Most recently, VBA has consolidated the rating aspects of our BDD initiatives, which will bring greater consistency of decisions on claims filed by newly-separated veterans.

Distribution of Rating Workload

To balance the inventory of disability claims across regional offices, VBA implemented a "brokering" strategy in which rating cases are sent from stations with high inventories to other stations with the capacity to process additional rating work. Brokering allows the organization to address simultaneously the local and national inventory by maximizing use of available resources.

Brokering plans are developed on a monthly basis. Stations are selected for brokering based on the percentage gap between their current inventory of pending claims and their established end-of-year inventory target. Stations with the greatest percentage gap are asked to send ready-to-rate cases to other stations for rating decisions. The stations participating in brokering changes over time as stations are able to bring the pending inventory in line with established targets.

Through these initiatives VBA is prepared to address the challenges facing our organization and improve claims processing. We will continue to assess our policies, processes, and approaches to take advantage of improvement opportunities and to ensure we are achieving the desired performance outcomes.

Mr. Chairman, this concludes my testimony. I greatly appreciate being here today and look forward to answering your questions.

**STATEMENT OF JAMES P. TERRY
CHAIRMAN, BOARD OF VETERANS' APPEALS**

BEFORE THE

**COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

December 7, 2005

Good morning, Mr. Chairman. Thank you for the opportunity to discuss the operations of the Board of Veterans' Appeals (Board) with you, the members of the Committee, and your staff.

When the Board last presented testimony before the Subcommittee on Disability Assistance and Memorial Affairs on May 5th of this year, we contrasted our performance with that of past years, notably when we appeared before the Committee in February 1994 and June 1998. This comparison continues to be instructive in demonstrating where we are heading and how we will meet the challenges that the future will bring.

In Fiscal Year (FY) 1994, the Board issued about 22,000 decisions. Our pending caseload stood at 47,000, and was on its way to 60,000. Our measure of timeliness then used—average response time—was 781 days.

By FY 1998, we had significantly improved our timeliness and productivity. With 483 full-time employees (FTE), we issued 38,886 decisions, and held 4,875 hearings. Appeals resolution time—the time from the date a veteran files a Notice of Disagreement until he or she receives a final decision on appeal—was 686 days.

In FY 2005, the Board issued 34,175 decisions and conducted 8,576 hearings, a substantial increase from 1998. Appeals resolution time stood at 622 days. Our cycle time—the time that it actually takes the Board to issue a decision (excluding the time the case is with the service organization representative)—was 104 days. Significantly, we accomplished these results with 434 authorized FTE, or 49 fewer FTE than we had in 1998. Despite our efforts, we continue to receive more appeals than we are deciding. Case receipts for FY 2005 were 41,816, and the number pending at the end of FY 2005 stood at 37,539. Our most significant challenge for the future is how to eliminate the growing backlog with available resources.

We are fortunate to have received much help in achieving our successes and in meeting future challenges. I would like to thank:

- The Congress for its unqualified support for the appellate rights of veterans and their families.
- The assistance of the veterans service organizations, which represent about 85% of our appellants.
- Strong support from VA's leadership to enable us to ensure that veterans receive timely, fair, high quality decisions.
- The Board's Veterans Law Judges (VLJs), counsel, and administrative support staff, whose efforts have thus far increased average productivity by 20% for staff counsel, and by 25% for the VLJs over historic levels, and who have enabled us to nearly double the number of hearings held.

Two of the most significant and persistent challenges we face are:

- Eliminating avoidable remands to VA regional offices, and
- Increasing productivity to contain and reduce the appeals backlog.

In regard to remands, we know that:

- Veterans want timely and correct decisions on claims for benefits. For the Board to do that, the record must contain all evidence necessary to decide the claim and show that all necessary due process has been provided. If the record does not meet these requirements, and the benefits sought cannot be granted, a remand for further development is necessary.
- Remands lengthen appeals resolution time. One remand adds about a year to the process.
- Remands also divert resources from processing other claims and appeals.
- About 75% of cases remanded by the Board are subsequently returned to the Board, which increases our workload and degrades timeliness.

- Hence, eliminating avoidable remands is a goal that will provide better service to veterans and their families and, ultimately, help to diminish the growing backlog.
- We are working with the Veterans Benefits Administration (VBA), Office of General Counsel (OGC), and Veterans Health Administration (VHA) to identify and track root causes of remands, to provide training, and, ultimately, to eliminate avoidable remands. In this regard, our training efforts have been considerable. We held several direct training sessions during the past year for all VLJs and staff counsel on aspects of remand avoidance, as well as on how to draft clearer and more efficient remand orders. We held joint training sessions with VBA (including a video broadcast), on avoidable remands and on evidence development. We conducted numerous sessions on a variety of medical and legal subjects within our jurisdiction and are planning two new intra-Departmental training initiatives—all designed to reduce remands and improve quality. In addition we are working with VHA and VBA on the Compensation and Pension Examination Project (CPEP), to improve the quality of VA compensation examinations so that remands to obtain sufficient examinations can be reduced.
- The results so far are encouraging. The remand rate for FY 2005 has dropped to 38.6% as compared to 56.8% in FY 2004. For FY 2006, the remand rate stands at 32.1%. We expect further improvement once we begin reaching cases on our docket that have been subject to VBA's efforts to avoid remands.

If nothing had been done, our backlog was projected to grow to unacceptable levels. The Board's backlog disposition time—the projected time it would take the Board, working at its current rate and devoting all its resources to eliminate the backlog—would increase from 284 days in FY 2005, to 361 days in FY 2006, and to 603 days in 2008.

Although we have made many improvements, we have a way to go. Within existing resources, through incentives and sound management, we will continue to improve by:

- **Eliminating avoidable remands:** The ongoing reduction in remands in FY 2005 and 2006 will contribute to reduce the growth of the backlog and improve appeals resolution time.

- **Strengthening our intra-agency partnerships:** Our joint training efforts with VBA, OGC, and VHA, will improve decision quality and reduce remands.
- **Writing shorter, clearer and more concise decisions:** We are training our VLJs and counsel to write shorter and more concise decisions.
- **Utilizing employee incentive, mentoring and training programs:** A number of new programs have been introduced to increase employee motivation and satisfaction, as well as to increase productivity and decision quality.
- **Making use of overtime:** We will use overtime within existing resources to enhance productivity.
- **Increasing our use of paralegals:** We will increase the use of our paralegals for non-decisional support activities, freeing up our legal staff to decide appeals.
- **Providing improved on-line legal research tools and analytical frameworks** to aid timely and correct decision production.
- **VLJs will draft decisions,** in addition to reviewing decisions drafted by staff counsel, as time permits.

We believe these measures will work to reduce the backlog and shorten the time it takes for a veteran to receive a fair, well-reasoned Board decision. We have reduced the time it takes for an appeal to be finally resolved from 686 days in FY 1998, to 622 days in FY 2005. While this reduction is important, it is even more significant in light of the fact that 71.4% of the decisions issued in FY 2005 were final decisions, as compared to 58.7% of decisions in FY 1998. Our decision quality was at 89% in FY 2005, which reflects the complexity involved in drafting more final decisions, addressing the merits of a claim, as opposed to remands for more development. Notably, the Board's own timeliness -- our cycle time -- stands at a little over three months.

I wish to assure you that that we will continue working together with our partners in and outside the Department to develop new and creative solutions to the challenges we face in order to fulfill our statutory mission to hold hearings and provide timely, high quality decisions to our Nation's veterans and their families.

I would be pleased to answer any questions you or your colleagues might have.



**STATEMENT OF
DONALD L. MOONEY, ASSISTANT DIRECTOR
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION**

BEFORE THE

**COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES**

ON

**CHALLENGES AND OPPORTUNITIES FACING DISABILITY CLAIMS
PROCESSING IN 2006**

DECEMBER 7, 2005

STATEMENT OF DONALD L. MOONEY, ASSISTANT DIRECTOR
VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
CHALLENGES AND OPPORTUNITIES FACING DISABILITY CLAIMS
PROCESSING IN 2006

DECEMBER 7, 2005

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present The American Legion's views on the challenges and opportunities facing Department of Veterans Affairs (VA) disability claims processing in 2006. We commend the Committee for holding this hearing to discuss these important issues.

Workload and Claims Backlog

The VA has a statutory responsibility to ensure the welfare of the nation's veterans, their families, and survivors. Providing quality decisions in a timely manner has been, and will continue to be, one of the VA's most difficult challenges.

There are currently almost 2.6 million veterans receiving disability compensation and VA reports that this number is increasing at a rate of 5,000 to 7,000 per month. VA reported that its 57 Veterans Benefits Administration (VBA) regional offices issued more than 763,000 disability determinations in fiscal year 2005. Three and four percent increases are expected in fiscal years 2006 and 2007, amounting to approximately 826,000 claims in fiscal year 2006 and 842,000 in fiscal year 2007. A majority of these claims involve multiple issues that are legally and medically complex and time consuming to adjudicate.

The increasing complexity of VA claims adjudication continues to be a major challenge for VA rating specialists. Since judicial review of veterans' claims was enacted in 1988, the remand rate of those cases appealed to the United States Court of Appeals for Veterans Claims (CAVC) has, historically, been about fifty percent. In a series of precedent setting decisions by the CAVC and the United States Court of Appeals for the Federal Circuit, a number of longstanding VA policies and regulations have been invalidated because they were not consistent with statute. These court decisions immediately added thousands of cases to regional office workloads, since they require the review and reworking of tens of thousands of completed and pending claims.

As of November 26, 2005, there were almost 368,000 rating cases pending in the VBA system. Of these, more than 84,000 (22.9 percent) have been pending for more than 180 days. According to the VA, the appeals rate has also increased from a historical rate of about 7 percent of all

rating decisions being appealed to a current rate that fluctuates from 11 to 14 percent. This equates to more than 152,000 appeals currently pending at VA regional offices, with more than 130,000 requiring some type of further adjudicative action.

Staffing

Whether complex or simple, VA regional offices are expected to consistently develop and adjudicate veterans' and survivors' claims in a fair, legally proper, and timely manner. The adequacy of regional office staffing has as much to do with the actual number of personnel as it does with the level of training and competency of the adjudication staff. VBA has lost much of its institutional knowledge base over the past four years, due to the retirement of many of its 30-plus year employees. As a result, staffing at most regional offices is now made up largely of trainees with less than five years of experience. Over this same period, as regional office workload demands escalated, these trainees have been put into production units as soon as they completed their initial training.

Concern over adequate staffing in VBA to handle its demanding workload was addressed by VA's Office of the Inspector General (IG) in a report released in May of this year (Report No. 05-00765-137, dated May 19, 2005). The IG specifically recommended, "in view of growing demand, the need for quality and timely decisions, and the ongoing training requirements, reevaluate human resources and ensure that the VBA field organization is adequately staffed and equipped to meet mission requirements." Additionally, the chairman of the newly established Veterans' Disability Benefits Commission questioned the Under Secretary for Benefits about the adequacy of current staffing levels during a Commission meeting this past July. The Under Secretary conceded that the number of personnel has decreased over the last three years. It is an extreme disservice to veterans, not to mention unrealistic, to expect VA to continue to process an ever increasing workload, while maintaining quality and timeliness, with less staff. Our current wartime situation provides an excellent opportunity for VA to actively seek out returning veterans from Operations Enduring Freedom and Iraqi Freedom, especially those with service-connected disabilities, for employment opportunities within VBA.

Training

Over the past few years, The American Legion's Quality Review Team has visited almost 40 VA regional offices for the purpose of assessing overall operation. This includes a review of recently adjudicated claims. Our site visits have found that, frequently, there have been too few supervisors or inexperienced supervisors to provide trainees necessary mentoring, training, and quality assurance. In addition, at many stations, ongoing training for the new hires as well as the more experienced staff would be postponed or suspended, so as to focus maximum effort on production. However, we are encouraged by the Under Secretary for Benefits' public commitment to improving the training of VBA personnel and we look forward to improvements in this area in 2006.

Production Versus Quality

Any rational, informed observer of the VA adjudication system would find that the VA suffers from a quality problem. Despite the fact that VBA's policy of "production first" has resulted in many more veterans getting faster action on their claims, the downside has been that tens of thousands of cases have been prematurely and arbitrarily denied. Sixty-five percent of VA raters and Decision Review Officers (DRO) surveyed by the IG, in conjunction with its May 2005 report, admitted that they did not have enough time to provide timely and quality decisions. In fact, 57 percent indicated that they had difficulty meeting production standards if they took time to adequately develop claims and thoroughly review the evidence before making a decision. Inadequate staffing levels and pressure to make quick decisions, resulting in an overall decrease in quality of work, has also been a consistent complaint among Service Center employees interviewed by The American Legion staff during our regional office quality checks. As a consequence, the appeals burden at the regional offices, the Board of Veterans' Appeals (Board or BVA) and the Appeals Management Center (AMC) continues to grow. In fiscal year 2005, the BVA issued more than 34,000 decisions and, of these, the BVA either overturned the regional offices' decisions or remanded for additional development in almost 60 percent of the appeals.

For years The American Legion and other veterans service organizations (VSOs) have stated that the driving force behind most VA adjudications is the need for the VA to process as many claims as possible in the fastest possible time. Awards and bonuses are often centered around production and even the IG acknowledged that because the VA often does not take the time to obtain all relevant evidence and information, there is a good chance that these claims are not properly adjudicated. The emphasis on quantity and speed of adjudication results in premature adjudications, improper denials of benefits, and of course, inconsistent decisions. The growing claims backlog and the immense pressure on VA leadership to reduce it and provide timely decisions is often at odds with efforts to maintain or improve the quality of the decisions. Instituting realistic production goals and timelines that take into consideration the number of pending cases and the complexity of the work must be accomplished if VA is to ever reach a much needed balance between production and quality in its adjudication process. In addition to providing rating personnel with enough time to properly develop and rate claims, it is essential for VA management to actively encourage and reward quality work.

Additional Areas of Concern

VBA Communication with Veterans

The Veterans' Claims Assistance Act of 2000 (VCAA), Pub. L. 106-475, was designed in part to improve the way VBA communicated with claimants and the way in which VA regional offices developed claims. Great pains were taken in the wording of the statute to make clear the exact nature and extent of VA's obligations and responsibilities in notifying and assisting claimants. Essentially, the VCAA required the VA to inform veterans of the evidence and information that was needed in order for the VA to award benefits. This process was a major departure from longstanding adjudication policies and procedures, which did not adequately inform and assist individuals with their claims. This legislation was expected to result in claims that were more fully developed and which could be adjudicated in a more expeditious and accurate manner,

thereby, improving service to claimants. There was also an expectation that these improvements would increase claimant's satisfaction with the decision received and, over time, reduce the appellate workload for the Decision Review Officers and for the Board of Veterans' Appeals.

Unfortunately, many VCAA development letters have not fulfilled the intent of the legislation. It is the experience of The American Legion, based on over thirty-six quality reviews of VA regional offices, that many VCAA letters are poorly written and difficult to understand. We have identified instances where the letter sent to the claimant did not even begin to address relevant issues. Additionally, during our site visits, some VA regional office adjudicators and managers expressed dissatisfaction with the content of the VCAA letters issued by VA Central Office. These regional office employees were upset that they were not permitted to alter or amend the language provided by VA Central Office. In addition, it has been the experience of The American Legion that in some VA regional offices, relatively inexperienced regional office employees are tasked with the job of developing claims. Inadequate early development and notification can lead to a plethora of later adjudication problems.

Veterans seeking VA benefits should not have to wait until they receive a statement of case in order to understand what evidence the VA needs in order to properly adjudicate their claims. Properly and promptly informing the claimant of the evidence and information required to win the claim is an essential part of the VA's duty to assist the claimant in the development of his or her claim and it is an integral part of the non adversarial VA claims adjudication process. It is evident from the high appeals rate and remand rate for VCAA deficiencies that in many instances this is not being done.

The American Legion wants to stress that besides inadequate VCAA notifications being a legal issue, the failure to properly communicate with veterans seeking VA benefits is a fairness issue. It makes no sense for the VA to hide from what evidence would support the grant of VA benefits.

Additional Outreach Requirement

A provision in the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act of 2006, passed by Congress on November 18 and signed by the President on December 1, requires the VA to conduct outreach to veterans in states with an average annual disability compensation payment of less than \$7,300 (based on the findings of the May 2005 IG report). Specifically, VA would be required to notify, by mail, all veterans in these states, who are receiving compensation, of their state's history of below average disability compensation payments. Veterans in the targeted states would also be provided with instructions on how to submit new claims and request review of past disability claims and ratings. Given its already large claims and appeals backlog, the additional claims work generated as a result of this outreach requirement will be a tremendous challenge for VA in 2006.

VBA PTSD Review

Last month, after intense scrutiny and criticism from members of Congress and VSOs, VA scrapped its plans to review more than 70,000 post-traumatic stress disorder (PTSD) cases, rated 100 percent and 100 percent based on individual unemployability, granted from fiscal year 1999 through 2004. VA's decision to review these cases was in response to recommendations in the

May 2005 IG report that found that about 25 percent of the 2,100 PTSD awards it reviewed were based on inadequate evidence of the occurrence of traumatic event, a key requirement in a PTSD claim.

The American Legion strongly believes that VA's decision to initiate the review was a knee jerk reaction to a flawed IG report and we are pleased that Secretary Nicholson eventually decided to do the right thing and call it off. Unfortunately, the public's trust and confidence in VA was damaged by what many saw as an excuse to take away veterans' benefits. Moreover, widespread media coverage of VA's announcement to conduct a large scale PTSD review caused undue stress and aggravation for an untold number of veterans with serious psychiatric conditions.

Not only was the intent of such a review highly questionable as it would only cover claims that were granted, not those that were erroneously or prematurely denied and/or under evaluated, a number that is undoubtedly higher than those that were improperly allowed, it wasn't practical. In light of its staffing issues and an enormous existing backlog of rating claims and appeals, VA simply could not afford to tap its limited resources to conduct a review of more than 70,000 cases that would otherwise not have to be touched. Additionally, announcing it would review thousands of previously granted PTSD cases without fully considering all potential ramifications, or even how such a large-scale review would be conducted, was extremely irresponsible. VA now has the opportunity to address any legitimate problems, identified by the IG, when adjudicating claims that are currently pending and those that are filed in the future.

We are hopeful that VA leadership has learned a lesson from this experience and will take the time to carefully and thoughtfully consider all future recommendations and reports before making important decisions that will have a direct impact on the lives of our nation's veterans and their families

Lump Sum Payments

VA is currently exploring the establishment of lump sum payments of benefits, as recommended by the IG in its May 2005 report. The IG report confirms that acceptance of a lump sum payment would prevent a veteran from filing a claim for increase. For example, a veteran might establish entitlement to service connection for hypertension evaluated as 10 percent disabling. Years later the hypertension could cause a heart condition that would render the veteran unemployable, and the heart disability might cause the veteran's death. The veteran would not be able to obtain an increase in evaluation if he or she accepted the lump sum payment. It is not clear whether the spouse would be entitled to service-connected death benefits in such a case. Additionally, in implementing this option, one would have to necessarily assume that the initial award, for which the lump sum is paid, is correct. As indicated by the high BVA remand and reversal rate, this is not a safe assumption.

Regional Office Consolidation

Regional office consolidation is an idea that surfaces every few years. Some VA managers like the idea of consolidation because of the economic advantage to the VA. It is cheaper to have 10 or 16 offices than to pay for 57 regional offices. However, in our experience, many of the bigger VA offices have more quality problems than the smaller regional offices. The American Legion quality reviews reveal that the fact that raters and DROs are under the same roof does not mean

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December 7, 2005

Honorable Steve Buyer, Chairman
Committee on Veterans' Affairs
335 Cannon House Office Building
Washington, DC 20515

Dear Chairman Buyer:

The American Legion has not received any federal grants or contracts, during this year or in the last two years, from any agency or program relevant to the subject of the December 7th hearing, concerning Challenges and Opportunities Facing Disability Claims Processing in 2006.

Sincerely,

Donald Mooney, Assistant Director
Veterans Affairs and Rehabilitation Commission

DONALD L. MOONEY
ASSISTANT DIRECTOR FOR RESOURCE DEVELOPMENT
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION

Donald L. Mooney began serving as Assistant Director for Resource Development in April 2003. Prior to serving as Assistant Director, he served as National Appeals Representative Team Leader at the Board of Veterans Appeals in Washington, DC.

He is a graduate of George Mason University in Fairfax, Virginia where he earned a B.A. in Psychology and holds a Master of Social Work degree from Virginia Commonwealth University in Richmond, Virginia. He is a Licensed Graduate Social Worker in the State of Maryland and holds an ABA Paralegal Certificate from Georgetown University in Washington, DC.

Mr. Mooney entered the United States Air Force in 1967. After completing basic military training at Lackland Air Force Base, Texas, he was assigned to Myrtle Beach Air Force Base, South Carolina as a Fire Protection Specialist. At MBAFB he provided base fire suppression services and responded to mutual aid calls in the surrounding communities. In April 1969, Mr. Mooney was transferred to Cam Ranh Bay Air Base, Republic of (South) Vietnam where he performed duties as a Crash Rescue Crew Chief on the airfield. Mr. Mooney returned to the U.S. in April 1970 at which time he served as Base Fire Inspector at Forbes Air Force Base in Topeka, Kansas until his discharge in September 1971. During his military service, he received the Air Force Commendation Medal, Air Force Good Conduct Medal, Presidential Unit Citation, Outstanding Unit Ribbon, National Defense Service Medal and the Vietnam Service Medal.

Following college, Mr. Mooney pursued a 23-year career in electrical distribution and construction purchasing management in the Washington Metropolitan area. Originally from Boston, Massachusetts, he now resides in Rockville, Maryland.



Testimony of
James W. Doran
AMVETS National Service Director
Before the
House Committee on Veteran Affairs
334 Canon House office Building
Washington, DC
7 December 2005

AMVETS National Headquarters
4647 Forbes Boulevard
Lanham, MD 20706
(301) 459-9600

Mr. Chairman, Ranking Member Evans, Distinguished Members of the Committee:

On behalf of National Commander Edward W. Kemp, I'd like to thank you for the opportunity to present testimony to the House Committee on Veterans Affairs concerning the challenges and opportunities facing the disability claims process at the Veterans Benefits Administration. Neither AMVETS nor I have been the recipient of any Federal grants or contracts during the current, or two previous, fiscal years.

For almost 60 years, AMVETS has represented the needs of the American Veteran, working with this Committee and the Department of Veteran Affairs to ensure that those needs are met.

It is my unfortunate duty to report to you, that in our opinion, those needs are not being met. Not by the Department of Veteran Affairs, not by the United States Congress, and not by this Committee.

As of 26 November, the Veteran Benefits Administration reports that 117,766 claims for benefits have been pending for more than 180 days. That's 19,581 more claims pending than at this same time last year. There are, of course, reasons for that. Budgets that can't stretch to cover the needs of the VBA; experienced employees retiring and being replaced by novices requiring years of training; and the Global War on Terrorism.

However, none of these reasons are pertinent. General of the Army Omar Bradley summed it up in 1947, when he said "*We are dealing with veterans, not procedures - with their problems, not ours.*" That hasn't changed. The Department of Veteran Affairs is tasked with dealing with the problems our veterans have; physical, emotional, financial, and educational. Everything else is of secondary importance.

The key issues that you are interested in are the challenges and the opportunities facing disabilities claims processing. The challenge is simple, how can VA adequately process disability claims with the funds they've been given? The answer is that they can't. If you, as the Members of Congress having oversight over the Department, can't get them the funding they need to fully staff all VBA Benefits Offices and Regional Offices, then VA will never be able to do its job to the best of its ability. If VBA is going to reduce the claims backlog to zero; if VBA is going to have to process over three-quarters of a million claims per year; if VBA is going to *deal with veterans and their problems*, then you need to do your part. You need to get the funds they need to hire additional full time employees. You need to listen to all of your constituents, not just the registered voters of your party, but to the veterans in your districts as well. We have all been engaged by them. You to represent them here in Washington. The Veteran Service Organizations to give you all the help we can in representing them and resolving their issues.

The opportunities are heavily keyed into the challenges. The funding for, and creation of, additional full time equivalent employees for the VBA should provide additional employment opportunities for our veterans. Unfortunately, as of the most recent data published on the VA website, only 26.5% of all DVA employees are veterans preference

eligible. That's not something to be proud of. This is the United States Department of Veteran Affairs, the majority of all department employees should be veterans preference eligible.

An even more important issue within the veteran community hinges on partisan politics and trust. No one asked us which party we belonged to when you sent us off to war, playing partisan politics with our lives now is inexcusable. This Committee needs to go on the floor with one face – not split into party factions. As members of the House you represent Congressional districts and political parties. As members of the House Committee on Veteran Affairs you represent ALL American veterans.

On Veteran's Day, the Secretary of Veteran Affairs announced that a pending review of 72,000 approved disability claims for Post Traumatic Stress Disorder had been cancelled. This announcement was highly publicized and joyfully received by the veteran community. On 27 November we found out that only six days later, the Secretary of Veteran Affairs requested that the Institute of Medicine conduct a review of Post Traumatic Stress Disorder diagnosis and treatment within the Department of Veteran Affairs. Is the IOM a recognized authority on Post Traumatic Stress Disorder? Looking at the members of the IOM Committee that may be assigned this task, I found that there are NO Military Physicians, NO DVA Physicians, not one individual with an apparent background in combat related PTSD. One member of the Committee did, however, serve on the Task Force that wrote the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV). A 27 member Task Force worked five years to develop the DSM-IV manual in a process that involved more than 1,000 psychiatrists and other mental health professionals. Now Secretary Nicholson wants the IOM to re-examine, and repudiate, the validity of the DSM-IV. Why?

A second committee will review, among other items, the compensation practices for PTSD, the criteria for establishing the severity of PTSD as published in the VA Schedule for Rating Disabilities. Again, I ask why? If the goal is to find ways to reduce the amount of moneys spent on Veterans Disability Compensation, all you need to do is ask us. I can tell you, without reservation, that the only way to effectively reduce that expense is to stop sending our young men and women into combat!

In the meantime, you, as Members of the Congress of the United States of America have a Constitutional Duty *"To raise and support Armies...To provide and maintain a Navy...To provide for calling forth the Militia..."* We, the veterans you created, are a part of that cost, and the bill is fast becoming past due.

*STATEMENT OF
BRIAN E. LAWRENCE
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE
DECEMBER 7, 2005*

Mr. Chairman and members of the Committee:

I am pleased to present the views of the Disabled American Veterans (DAV) on the challenges and opportunities facing the Department of Veterans Affairs (VA) disability claims processing system. We commend the Committee for holding today's hearing and for its continued efforts to improve the system of support our grateful nation has established for those who defend our safety and freedom. Today's date was well chosen for this discussion; sixty four years ago this morning, 2,335 American servicemen were killed and 1,178 were wounded during the Japanese attack on Pearl Harbor. It is appropriate that we bear in mind the bravery and sacrifice of those fallen and wounded in past wars, as well as those who now face peril every day during the War on Terror. It is a sad, sobering realization that thousands of active duty members, along with members of the Reserves and National Guard, will require disability compensation upon release from active duty. Our nation's deep appreciation for their sacrifices is best illustrated through our commitment to ensure that veterans' medical needs are met and that economic benefits are available, especially to those who become injured while on active duty.

The VA was established to fulfill this commitment by providing health care and administering benefits and services to veterans in return for their sacrifices. This includes assisting veterans with the development of claims for disability compensation and ensuring that they are aware of all other potential benefits, such as entitlement to training under the Vocational Rehabilitation and Employment (VR&E) program. Though seemingly straightforward, the task involves making judgments on a number of complex issues. Adjudication of such a massive number of disability compensation claims requires a proportionately large number of well-trained employees who possess at least a basic level of knowledge in anatomy and physiology and a thorough understanding of governing statutes, regulations, and precedent decisions by the Court of Appeal for Veterans' Claims. Since its inception in the early 1990s, the Court has imposed requirements that VA disability rating decisions be better reasoned, better explained, and better supported by the record.

Coupled with the demands for more thorough development and greater deliberation on each claim, is an ever increasing workload. In November 2005, VA reported that there were 366,122 rating cases pending. In November 2004, there were 338,180 rating cases pending. Though these figures do not represent an alarming increase, they do indicate that the VA has not been able to reverse the trend of steadily increasing numbers of pending cases.

Multiple in-depth studies by various agencies and committees have listed an array of factors that have contributed to the mounting claims backlog. The DAV too, has presented several statements on this topic. In May 2005, the DAV testified before the Senate Veterans' Affairs Committee and submitted an extensive statement describing how VA has struggled in this mission.

Problems with claims processing, accurate decisions, and timely benefits delivery have plagued and challenged VA for several years. Many underlying causes have brought about this now seemingly insurmountable situation, but the main reoccurring theme has been the failure to properly develop and correctly decide claims on the first effort. This failure has resulted from an emphasis being placed on quantity rather than quality. In other words, too many VA rating boards have created a façade of productivity via high numbers, when the concern should be with striking a balance between efficiency and accuracy. Placing priority on numbers alone is detrimental because it results in more appeals and the need to revisit work that has already been performed. Meanwhile, newer claims pile up, and, in the overall focus, more time and resources are consumed than if the work had been accomplished properly on the first try. Rating board personnel must be more accountable for accuracy in claims decisions.

The DAV Service Program exists largely because of the VA disposition regarding claims. It is common knowledge within the veterans' community and at military discharge facilities that a DAV National Service Officer (NSO) will review an individual's service medical record in a VA claims file with an entirely different perspective than many VA employees. Too often, a VA employee will view a file as an obstacle to get past as quickly as possible, while an NSO views the same file as a record of the pain and suffering an individual has endured on behalf of our free society. The VA's reputation for carelessness results in appeals even in cases that are error free. The 'scuttlebutt' among many veterans is that every VA decision should be questioned just to ensure nothing has been overlooked. In such instances, the DAV is a benefit to the VA because it can allay many veterans' concerns by verifying whether decisions are accurate or not. Thus, DAV is instrumental in reducing the number of appeals that have no merit.

In my personal experience, I did not know of the DAV prior to my medical retirement from the Navy. While going through a medical discharge following a parachuting accident, a Chief Petty Officer who served as a counselor at the naval hospital repeatedly emphasized that VA disability rating decisions frequently contain errors and that they should always be reviewed by a DAV NSO. He was so adamant, that I remembered and followed his advice a year later when I finally received my initial VA assessment, which was twenty points lower than the percentage the military had assigned. I found that the chief's advice was sound; it took an NSO merely a moment to consult the rating schedule and realize the VA had assigned the wrong diagnostic code to my injury. With his help, the simple technical error was corrected, but it would have cost me thousands of dollars and eligibility to educational benefits under VR&E had I not followed the chief's advice and questioned the accuracy of the VA decision.

My initial negative impression of the VA as a careless bureaucracy was altered somewhat through later experience. Following my transition from the military, I completed the 16 month DAV training program and became an NSO. During my tenure as an NSO, I learned that there are many VA employees who possess the highest level of integrity and are deeply concerned

with producing accurate decisions while maintaining productivity. The VA must find a way to identify and place such meticulous, caring personnel in leadership roles so that newer employees adopt similar attitudes and understand that each claim file may represent a veteran who has paid a dear price for his or her country. Often, VA employees with whom I was associated would express frustration that managerial impetus was on production over quality and that there were timeliness problems in developing and deciding claims, as well as authorizing awards, and completing actions on appeals and remands. VA leadership must establish clear, unequivocal goals and enforce accountability through a willingness to replace individuals who are not succeeding. Though urgency is necessary to stay abreast of the workload, quality cannot take a backseat to the blind pursuit of production quotas. As obvious as these realities are, VBA seems to set them aside, and field offices are directed to reduce backlogs at all cost.

While attitudinal change will help prevent the continued snowballing of the claims backlog, reducing it will depend on the VA's ability to train an adequate number of adjudicators to handle the future influx of claims. The most common complaint among VA employees pertains to inadequate staffing. Consultation with various DAV offices around the country revealed that about two-thirds of our NSO supervisors reported insufficient, overworked VA staff. These same supervisors reported low morale among VA employees consequent to the burdens and problems due to understaffing.

Another frequently occurring criticism was that, contrary to law, the VA usually seeks its own examination or medical opinion even when evidence provided by the claimant is adequate for rating purposes. VA adjudicators tend to mistrust private medical records submitted on behalf of a claimant even though evidence from private physicians is generally more thorough than VA evidence because it is based on a longstanding physician/patient relationship. Most VA examinations and treatment notes are based on brief examinations or the one-time treatment of a particular veteran. Rarely do VA physicians have the personal knowledge or continuity of experience with patients compared to family physicians or private specialists. Duplication of examinations delays the claims process in cases where the evidence provided by the claimant is sufficient to support a grant of benefits.

Another recurring comment was that adjudicators do not actually consult the laws, regulations, and other legal authorities to make decisions, but rather rely almost totally on standard formats in the computer-assisted rating tool, Rating Board Automation 2000, to make decisions, thereby omitting consideration of pertinent laws and regulations in some instances.

Many of the problems and frustrations within VA can be remedied through effective training. An effective training program requires knowledgeable and experienced instructors who have the time necessary to devote to their jobs. In turn, well-trained adjudicators must have adequate time to thoroughly review evidence and make well-researched and well-reasoned decisions. To ensure accuracy, competent quality reviewers should review a random sample of work from each adjudicator, and remedial training should be imposed when deficiencies are revealed.

Accomplishing these objectives will require adequate resources, which are essential to an efficient and effective benefits delivery system. Adequate resources will allow the VA to

develop a training program to increase the proficiency of existing adjudicators, and bolster VA adjudication staffs to levels that allow for a reasonable amount of time to thoroughly develop and deliberate on compensation claims. The VA cannot overcome the problems it is facing without adequate resources. We urge the Committee to consider the recommendations and funding levels presented in *The Independent Budget (IB)*. The *IB* is an estimation of the needs of veterans in the coming fiscal year, and it is produced via the collective efforts of the DAV, the Veterans of Foreign Wars, the Paralyzed Veterans of America, and AMVETS. The DAV and its fellow veterans' service organizations are cognizant of the high costs associated with veterans' benefits, but these men and women have paid the price. They have served and defended our country honorably and admirably, and we have an obligation to ensure they are not forgotten.

We appreciate the Committee's interest in these issues, and we appreciate the opportunity to present the DAV's views, which we hope will be helpful.



**STATEMENT OF BLAKE C. ORTNER,
ASSOCIATE LEGISLATIVE DIRECTOR,
PARALYZED VETERANS OF AMERICA
BEFORE THE HOUSE COMMITTEE ON VETERANS' AFFAIRS
CONCERNING
CHALLENGES AND OPPORTUNITIES FACING
THE DEPARTMENT OF VETERANS' AFFAIRS (VA)
DISABILITY CLAIMS PROCESSING SYSTEM IN 2006**

DECEMBER 7, 2005

On behalf of Paralyzed Veterans of America (PVA) I would like to thank you for the opportunity to testify today on the challenges and opportunities facing the Department of Veterans' Affairs (VA) as it processes disability claims in 2006. PVA appreciates the added focus that this Committee and the Subcommittee on Disability Assistance and Memorial Affairs have placed on improving the claims adjudication process, particularly the consistency of claims decisions.

PVA maintains a Veterans Benefits Department which provides assistance and representation, at no cost, to veterans with a spinal cord injury or dysfunction and other veterans seeking health

Chartered by the Congress of the United States

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care and benefits for which they are eligible. This assistance is offered through a network of 58 service offices located at VA Medical Centers and Regional Offices. PVA employs 72 National Service Officers (NSO) who provide services to veterans. Our service officers undergo extensive training prior to being released to assist PVA members, their families, and other veterans.

PVA also represents veterans who choose to appeal unfavorable ratings decisions. PVA attorneys provide direct representation to veterans who are seeking benefits and would otherwise not be able to afford legal assistance at the U.S. Court of Appeals for Veterans Claims (CAVC) and other appellate courts. Attorneys in PVA's Veterans Appeals Litigation Office review cases that have been denied by the Board of Veterans' Appeals to select cases that merit representation by PVA before the Court.

In order to properly address the issues under consideration today, we contacted each of our NSO's stationed around the country. We asked for their comments on problems or positive aspects that they have observed in the claims process. This statement reflects the responses from these individuals.

The responses we received primarily focus on four themes—timeliness and accuracy of ratings decisions, and training and accountability of VA claims adjudication personnel. We recognize that these are certainly not new issues, particularly with the attention that has been given to the Veterans Benefits Administration (VBA) this year. However, we find it disconcerting that the same problems are continually brought up regarding the VBA.

The most important concern voiced by our service officers was accuracy of ratings decisions. This problem is not a new one and has been repeatedly referenced over the last several years. As a result of the recommendations of the VA Claims Processing Task Force, commissioned by the previous Secretary of Veterans' Affairs Anthony Principi, in its report released in October 2001, the VA placed added emphasis on reducing the claims backlog and the time it took to receive a ratings decision. However, PVA believes that the accuracy of claims decisions was negatively impacted by the race to cut the pending workload. This idea was confirmed by many of the statements received from our NSO's. In fact, several of our representatives specifically stated that "VA is concentrating more on the backlog and not on the quality of the decisions."

Furthermore, the VA continues to recognize effectiveness of regional offices through the workload that it completes and not through quality decisions. Regional office managers are pressing ratings employees to process numbers without ensuring that claims decisions are done right the first time. One of our representatives actually stated that his service office theme seems to be "when in doubt, deny, and let the appeals process work it out." Furthermore, some PVA service officers believe that it is "less punishable to make a wrong denial than to make a wrong award of benefits." This is absolutely unacceptable.

However, this is not a universal theme. Some of our service officers explained that their offices appear to be operating slower than others because of an effort to ensure that a veteran receives more accurate and favorable decisions. PVA believes that quality decisions trump expediency.

PVA understands that timeliness also continues to be one of the challenges facing VBA. Secretary Principi made it his goal to cut claims adjudications down to 100 days on average. However, according to the VA's information provided in its Monday Morning Report for the week of November 7, 2005, there are currently over 20 percent of claims that have been pending for more than 180 days. Although we understand that the VA faces a number of challenges as it makes ratings decisions, we still believe that it is unacceptable for veterans to have to wait so long to receive the benefits that they have earned.

Several of our service officers explained that the time it takes to develop claims files seems to be getting longer all the time. Our service officers agree that if all the evidence necessary to grant a claim is initially presented, then an award should be made immediately. Instead, the VA usually sends Veterans' Claims Assistance Act (VCAA) letters, as mandated by law, to the individual to inform him or her of the VA's responsibility to further assist them in developing his or her claim. We believe that this simply confuses most beneficiaries. Many of our service officers recommended that VA create a "fast track" for claims that have the information necessary for a ratings decision. This would give the VA additional time to adequately develop questionable and incomplete submissions.

The VA is also slow in many locations in processing claims regarding simple issues. These issues include adding or removing a dependent from a claims file, approving the Specially Adapted Housing Grant or adaptive automobile grant, or reducing a veterans' aid and attendance benefits when a veteran remains hospitalized for a long period of time to prevent an overpayment. Our service officers voiced a great deal of frustration with VA Regional Office

staff who do not take action even after being notified that they have all evidence necessary to make a simple decision. Many of our NSO's stated that addressing these simple issues could take up to a year.

The VA did receive generally favorable reviews regarding its handling of claims for disability benefits of veterans who were injured in Iraq or Afghanistan. We are pleased that the VA is putting its best foot forward to help these young men and women. However, we must reiterate the need for the VA to provide this type of service universally.

We believe that VBA needs to continue to improve its training program as well as follow up the activities of its personnel through adequate accountability of ratings staff at all levels. PVA takes great pride in the training program that we have developed to ensure that veterans seeking benefits get the absolute best representation possible. Our NSO's participate in a rigorous training program. New service officers are designated as NSO Candidates and undergo a 16-month on-the-job training program. Each candidate is paired with an experienced NSO supervisor at a local VA Medical Center or Regional Office. Throughout the training program, candidates take courses to improve medical knowledge, learn relevant federal regulations and codes, and learn how to prepare a claim. The candidate must pass a series of quizzes and exams during the program. In order to be certified as a PVA NSO II, the candidate must pass a comprehensive final exam. The NSO takes a more extensive exam after 18 months to be promoted to NSO III, and after a second 18 months takes another exam to be promoted to Senior NSO. We believe that our rigorous and standardized training is a vital component to the success of this program.

Our NSO program is divided among four primary regions. Our first priority for assignment of NSO's is VA Medical Centers that have a Spinal Cord Injury Center. Our service officers are then placed in areas with a high population of our members or other veterans, particularly cities such as Las Vegas, Orlando, and Philadelphia. It is important to understand that this system is most effective because it is maintained and supervised at the national level. This provides for important uniformity and speedy dissemination of vital information. PVA has made every effort to place our service officers where they can most effectively serve our members and all veterans.

We recognize that one of the immediate problems facing VBA is the impending retirement of many of its staff. However, PVA service officers in the field complain that the VA is addressing this problem in a way that is adversely affecting ratings decisions. They explain that new ratings personnel at all levels are being rushed through the training process. They are then being plugged into staff holes to begin immediately rating claims for benefits. Our service office staff believes that these individuals should be required to undergo more extensive training before being released to make decisions. Our representatives believe that this quick turn through training and rapid placement on ratings boards have led to an unnecessarily high number of bad decisions. This ultimately only leads to appeals on decisions that further slow the process. The VA could have better prepared for this issue long before now. Many of VBA's staff are part of the so-called baby-boomer generation. It is an accepted reality that many of these individuals are rapidly approaching retirement age. The VA should have been gradually working new employees into the mix over the last several years so that it could handle a large exodus of ratings personnel. Unfortunately, it did not take this important step.

PVA believes that accountability may be one of the most important aspects in the claims adjudication process. This is an action that must start at the top. We are concerned that VBA distorts accountability by basing performance on processing a given workload with little to no focus placed on making quality ratings decisions. Regional Office managers will continue to do business in this fashion, as long as there are no repercussions for bad decisions.

The Claims Processing Task Force addressed this concern in its report in 2001 by recommending that funding for Regional Offices be tied to the performance of those offices. The Task Force stated that greater resources should be allocated to the highest performing Regional Offices. On the other hand, the Task Force recommended that the poorest performing offices should receive no additional staff or increase in resources to help improve those offices. This seems to be a backwards approach to the problem. It represents continued acceptance of failures in the management structure of those offices. If anything, the VA should focus more of its energy and resources on improving the operations as well as the quality of decisions of underperforming Regional Offices. Sanctioning these offices in this manner would only punish veterans who live in the jurisdiction of the offices in the long run.

Poor accountability of the ratings staff, compounded with their general lack of experience, has fostered an attitude where denials of claims are based on personal opinions. Several of our service officers complained that they have seen this in decisions for veterans who have filed claims based on mental health conditions, such as Post Traumatic Stress Disorder (PTSD).

Our service officers also made recommendations regarding the role of the Veterans Health Administration (VHA) in the claims process. Specifically, they emphasized the need for a universal link between VBA and VHA facilities. This would allow VBA to have instant access to health records and information for a veteran who files a claim. It would ensure that accurate information is available for Compensation and Pension examinations and eliminate the need for additional exams, particularly exams conducted by non-VA contract physicians who may not have treated the veteran in the past. Such a link would also allow the VBA to affect any necessary changes to a veteran's benefits as a result of hospitalization. We hope that as the VA updates its information technology infrastructure and improves its organizational structure, these recommendations will become a reality.

These are specific observations from our field service personnel, dedicated individuals who deal with these issues on an ongoing basis. We look forward to working with the Committee to ensure that veterans' claims are processed in a timely manner and that they receive the most accurate ratings decision possible. We also hope that the VA remains actively involved in effecting changes to improve the claims' adjudication process.

PVA would like to thank you again for the opportunity to testify. We would be happy to answer any questions that you might have.

Information Required by Rule XI 2(g)(4) of the House of Representatives

Pursuant to Rule XI 2(g)(4) of the House of Representatives, the following information is provided regarding federal grants and contracts.

Fiscal Year 2005

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program — \$228,000 (estimated).

Paralyzed Veterans of America Outdoor Recreation Heritage Fund – Department of Defense -- \$1,000,000.

Fiscal Year 2004

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program — \$228,000 (estimated).

Fiscal Year 2003

Court of Appeals for Veterans Claims, administered by the Legal Services Corporation — National Veterans Legal Services Program — \$228,803.

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Blake Ortner is an Associate Legislative Director with Paralyzed Veterans of America (PVA) at PVA's National Office in Washington, D.C. He represents PVA to federal agencies including the Department of Labor, Office of Personnel Management, Department of Defense, HUD and the VA. In addition, he is PVA's representative on issues such as Gulf War Illness and homeless veterans, and he coordinates issues with other Veteran Service Organizations. He also served as the disability advisor for the dedication ceremonies of the Korean War Veterans Memorial.

He has served as the Chair for the Subcommittee on Disabled Veterans (SODV) of the President's Committee on the Employment of People with Disabilities (PCEPD) and as a member of the Department of Labor's Advisory Committee on Veterans' Employment and Training (VETS) and the Veterans Organizations Homeless Council (VOHC).

A native of Moorhead, Minnesota, he attended the University of Minnesota in Minneapolis on an Army Reserve Officer Training Corps (ROTC) scholarship. He graduated in 1983 with an International Relations degree and was commissioned as a Regular Army Infantry Second Lieutenant. While stationed at Ft. Lewis, WA, he served with the 9th Infantry Division and the Army's elite 2nd Ranger Battalion. He left active duty in September 1987.

He continues his military service as an Infantry Lieutenant Colonel in the Virginia Army National Guard. In 2001, he served a 9-month deployment as part of the SFOR 10 peacekeeping mission to Bosnia-Herzegovina. He returned in July 2005 from a year commanding an Infantry Battalion Task Force in Afghanistan.

Mr. Ortner resides in Stafford, VA with his wife Kristen, daughter Erika and son Alexander.

VETERANS OF FOREIGN WARS OF THE UNITED STATES

STATEMENT OF

QUENTIN KINDERMAN, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

CHALLENGES AND OPPORTUNITIES
FACING DISABILITY CLAIMS PROCESSING IN 2006

WASHINGTON, D.C.

DECEMBER 7, 2005

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the 2.7 million members of the Veterans of Foreign Wars of the United States (VFW) and our Ladies Auxiliary, I appreciate the opportunity to present our views on this important topic. I congratulate the Committee for the decision to devote the time and effort to focus attention on what have been chronic problems for the Veterans' Benefits Administration (VBA) and for America's veterans. The backlogs of case work and the resultant delays have been, for a decade or more, resistant to efforts to solve the problem. Most veterans and their survivors have to wait longer than a reasonable period of time for a decision on their claims for disability or death benefits. All too often, the VA decisions have not provided the appropriate benefits authorized by law.

I will not dwell on the statistics regarding the VA's performance, or the number of cases pending, other than to clarify an apparent conflict between numbers that the VFW provided in previous testimony, and numbers provided by the VA.

VBA often provides the rating workload number. As of November 11, 2005, this was 365,503 cases. It is only part of what the approximately 7,336 employees have to face in workload. What concerns the Veterans of Foreign Wars is that the same employees also have 118,523 pending cases not involving ratings, 151,059 pending appeals, which, quite frankly, each take much more time and effort than an original or reopened claim, and 92,898 education claims in the rapidly growing GI Bill program. This adds up to over 760,000 claims for the same 7,336 employees. While VA may choose to focus only on rating workload in their public statements, we believe that VBA and VFW are essentially in agreement on these figures.

The VFW has long supported providing adequate resources to the VBA to provide highly accurate and timely benefit decisions. We realize that VBA is often forced to suffer problems that are directly related to the austerity of their funding. This includes the consequences of addressing, in the short run, critical situations that are a consequence of the inability to assume that the proper long-term resources will be available. However, we also believe that while the current situation of persistent backlogs and delays in claims processing are not entirely related to resource levels, little improvement is possible in the quality of claims decisions without a strong commitment by VA leadership, and the resources necessary to execute an effective improvement plan.

The recent IG report, styled as *State Variances in VA Disability Compensation Payments*, but including material far from that topic, documents as part of a VBA decision maker survey, the growing discomfort in VBA with the workload, and the imbalance to the staffing available to work on it, especially at the decision maker level. These dedicated employees have our sympathy and support. From their point of view, there is truly a never-ending supply of already old work to do. However, this has been the situation for many years. The emphasis from the top of the organization has persistently been on moving the cases along, to reduce the overall count, to bring down the backlog. VFW believes that an unintended price has been paid for this emphasis, both in the quality or accuracy of the decisions, and in VBA's institutional ability to address these chronically high caseloads. The growing frustration and stress of workload pressure have inspired some dedicated VBA employees to find early retirement attractive. The cumulative effect of subordinating training and guidance to production has taken its toll. We find it difficult to reconcile the unreasonable restrictions on discretionary GOE resources, used to administer the much larger compensation entitlement, and resulting poor decision quality in the compensation entitlement program. These restrictions discourage competent administration of the entitlement program, which requires much more effective quality control.

Compared to the compensation program of a decade or more ago, the work is much more complicated. It is now a complex thicket of court decisions, and statutory requirements that occasionally require the re-adjudication of thousands of cases. Veterans' claims adjudication is no longer a business that can be managed simply by the numbers, but VBA persists in this approach. Performance standards for Regional Office Directors encourage them to do more work than their demographic share, but require only mediocre quality. Our impression of management by the numbers includes a balancing of the numbers to even out workload, nationwide. Old work is "brokered" from one office to another office that is relatively advantaged in the age and volume of casework. At the worker level, the reward for work done is more work from another office. Perhaps this is effective in the short term, but after a decade or so, we think that it is possible that the office people may have figured out how to stay in the middle of the pack, low enough not to need to broker out work, but high enough not to be a broker in station as well.

Unfortunately, this plays into a budget process that by design ratchets down the resources available to do the work. Competition is largely limited to production of completed claims, and the system assumes, unless something different is justified, that what is done is adequate. VBA apparently does not set goals to improve quality above a 15% error rate, and lacks an overall plan to improve the situation. Until it does, and asks for the resources to fix things, little will change

for the better. Few cases are reviewed, and with the exception of the very small centralized reviews, the reviews are tempered by a higher priority to move the workload.

We also believe that, in the difficult situation of constant workload pressure, some confounding factors may have established themselves in the claims processing system. VBA operates a quality monitoring system, acronym "STAR" which finds, on a sampling basis, that about 15% of the cases have a significant error. There is little actual constructive feedback to the decision makers. The VFW thinks that, for a claims process that profoundly affects the lives of the veteran claimants, 15% is a very high error rate. It suggests that every VBA decision maker makes a significant error approximately every other day. Veterans and their survivors, after waiting many months, or even years, for a decision from VA, may receive a decision that is significantly flawed.

The VFW believes that there is at least symmetry to the VBA claims error rate. For this reason, we insist that when VA signals its intention to revisit claims decisions granting benefits, or sets higher approval standards for the decision makers for granting benefits, that there is equal, perhaps greater justification to revisit those decisions that denied the benefit. In VBA's current production mentality, getting to closure on a decision with marginal evidence development will, in most cases, result in a denial, not in an overgenerous grant. It is also the case that most veterans, contrary to the views expressed by the VA Inspector General, once they are denied, do not appeal the VA's decision.

The problem of too few resources, and too little commitment to error free decisions, spins off problems with which we are all familiar, like the findings in the VAIG *Variances* report that VA recently conceded were mostly VA's responsibility.

A GAO report (GAO-05-47) describes deficiencies in the VBA budget formulation process, and "productivity increases" mandated by OMB. This is a euphemism for arbitrary cuts. This is not conducive to either better than mediocre performance, or risk taking by the VA leadership to improve the situation. It is, however, conducive to waste in the entitlement account.

The IG, in their recent study, found an association between a higher average compensation payments and representation by veteran's service organizations (VSO). We believe that this may in part reflect the VSOs success in identifying rating decision maker's errors, and insisting on their correction, either locally, or on appeal. While we are proud of the efforts that VSOs make to assist veterans and their survivors, we have serious reservations about VA's tolerance for a level of errors that most people would not accept in most of life's other transactions, like one's bank account or virtually any consumer product or service. We also have serious concerns for those veterans who file claims with VA without assistance.

Furthermore, we do not believe that this deficiency in the ability to produce consistently accurate decisions can be divorced from the more public issue of the claims backlog. Clearly, a significant and cumulative portion of the work must be adjudicated more than once, often in an adversarial and inefficient situation leading to even more burdensome appeals. As pointed out in the VSO's *Independent Budget, FY 2006*, the emphasis on production at the expense of quality leads only to short-term gains.

Through most of the recent history of claims processing in the VBA, appeals have been the storm looming on the horizon. We have observed in VBA the tendency to focus on what is the immediate priority, often at the expense of other essential tasks. Too often in recent years, the priority has been new claims, and the other task has been appeals. As with the other claims, the backlog of appeals has been confounded with a larger than appropriate error rate, incessant remands directly resulting from these errors, and in many cases, extraordinary delays in processing.

VBA has sought to address these problems by creating an Appeals Management Center (AMC) here in Washington. By all accounts, the AMC and its dedicated and committed staff have begun to make a difference. The AMC was, however, necessarily created from the best available trained employees in VBA, and its mission is to meet a need in the appeals process that frankly was not being successfully addressed before. The AMC addresses the problem of appeal remand development, and with the cooperation of VFW and other VSOs, even successfully addresses some claims prior to or instead of returning them to BVA. Creation of the AMC does, however, reduce VBA's capacity in the other offices to deal with claims, perhaps even affecting VBA's existing efforts to improve quality, by the number of employees transferred to the AMC. This should be cause for concern for officials with overall responsibility for VBA's mission.

We supported the establishment of the AMC, and continue to work with their people to improve the appeal process, but we are concerned that the resources in VBA are finite, their people require long and complex training and are not easily replaced, and that the organization is eroding as a result of crisis management, an aging workforce, and a program that seems to be growing relentlessly more complex. Perhaps the answers lie in some combination of technology, more effective and enlightened training, and a new generation of employees, committed to serve a new generation of wartime veterans. Most troubling to us is the possibility of significant policy change, not necessarily favorable to veterans, which would further complicate and render more adversarial the claims process than it is today.

VBA indeed faces a dilemma. They have a complex and often modified program, a frustrated workforce, myopic focus on production to address backlogs to which training and quality control are subordinated, and a reliance on brokering work from office to office to avoid short term crises. Added to this are an increasing burden of appeals, and a new generation of wartime veterans deserving of the best service. The future is indeed challenging for VBA.

We do know, however, that the answer does not lie in the dismantlement or diminishment of America's commitment to our heroes, either in the programs necessary to support them, or the organization necessary to provide these earned benefits.

Perhaps VBA should be congratulated for doing a lot with marginal resources. However, tolerating an error rate as high as this in decisions committing payments from the compensation entitlement, to produce marginal savings in the discretionary GOE account, is false economy. It seems clear that VBA has no plan or methodology to eliminate, or even accurately identify, the serious errors that plague one out of every seven or eight claims decisions, much less the fortitude to request the resources, and commit to the goals that such a plan would require. It also seems obvious to us that faulty decision making cannot be addressed by panaceas like improved

information technology, or program “reform” and its attendant complexity and duplication. What is required is the commitment, from the top down, to do every claim properly, consistent with the letter and the spirit of the law, and the resources and tools necessary to ensure that happens. Reform of this magnitude is not without precedent in government agencies, but it is only possible when all concerned are truly interested in improvement, and not just in putting a positive spin on the latest bad news. We think that, with support, the VBA is capable of both this kind of improvement, and the internal honesty necessary to accomplish it.

We also think that there is no more deserving population of beneficiaries of this reform than the current generation of veterans, who are returning from Iraq, Afghanistan, and elsewhere in the Global War on Terrorism.

**Quentin Kinderman, Deputy Director
National Legislative Service
Veterans of Foreign Wars of the United States**



Quentin Kinderman was appointed to the position of Deputy Director, VFW National Legislative Service in April 2005. Before this Appointment, he served in a number of veterans' affairs positions, to include several years as a professional staff member/investigator for the Senate Veterans' Affairs Committee, and a career in disability policy formulation and congressional relations at the VA.

Mr. Kinderman served in the United States Army during the Vietnam War, including 13 months with the 25th Infantry Division in and near Cu Chi, Vietnam. Prior to his military service he graduated from Lehigh University in Bethlehem, Pennsylvania.

Mr. Kinderman also holds a Merchant Marine Masters license, 50 tons, inland waters, and has spent several years restoring sailboats and writing for boating magazines. Active sailors, his wife and he reside near Annapolis, Maryland. Quent is a member of VFW Post 2979.

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The Veterans of Foreign Wars is not in receipt of any Federal grants or contracts.

GAO

Testimony Before the Committee on
Veterans' Affairs, House of
Representatives

Not to Be Released
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Wednesday, December 7, 2005

VETERANS' DISABILITY BENEFITS

Claims Processing Challenges and Opportunities for Improvements

Statement for the Record by Cynthia A. Bascetta, Director,
Education, Workforce, and Income Security Issues



December 7, 2005



Highlights of GAO-06-283T, a statement for the record to the Committee on Veterans' Affairs, U.S. House of Representatives

VETERANS' DISABILITY BENEFITS

Claims Processing Challenges and Opportunities for Improvements

Why GAO Did This Study

The Chairman, Committee on Veterans' Affairs, U.S. House of Representatives, asked GAO to report on the claims processing challenges and opportunities facing the Department of Veterans Affairs (VA) disability compensation and pension program. For years, the claims process has been the subject of concern and attention within VA and by the Congress and veterans service organizations. Their concerns include long waits for decisions, large claims backlogs, and inaccurate decisions.

Our work and media reports of significant discrepancies in average disability payments from state to state have also highlighted concerns over the consistency of decision making within VA. In January 2003, we designated federal disability programs, including VA's compensation and pension programs, as a high-risk area because of continuing challenges to improving the timeliness and consistency of its disability decisions and the need to modernize programs. VA's outdated disability determination process does not reflect a current view of the relationship between impairments and work capacity. Advances in medicine and technology have allowed some individuals with disabilities to live more independently and work more effectively.

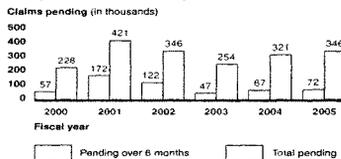
www.gao.gov/cgi-bin/getrpt?GAO-06-283T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Cynthia A. Bascetta at (202) 512-7215 or bascetta@gao.gov.

What GAO Found

The Department of Veterans Affairs continues to experience challenges processing veterans' disability compensation and pension claims including large numbers of pending claims and lengthy processing times. While VA made progress in fiscal years 2002 and 2003 reducing the size and age of its inventory of pending claims, it has lost ground since the end of fiscal year 2003. For example, pending claims increased by over one-third from the end of fiscal year 2003 to the end of fiscal year 2005. Meanwhile, VA faces continuing questions about its ability to ensure that veterans get consistent decisions across its 57 regional offices. GAO recommended in August 2002 that VA study the consistency of decisions made by different regional offices, identify acceptable levels of decision-making variation, and reduce variations found to be unacceptable. Several factors may impede VA's ability to significantly improve its claims processing performance. These include the potential impacts of laws, court decisions, and increases in the number and complexity of claims received.

Rating-Related Claims Pending at End of Period, Fiscal Years 2000-2005



Source: VA data.

Opportunities for improvement may lie in more fundamental reform in the design and operation of disability compensation and pension claims programs. This would include reexamining program design and the context in which decisions are made as well as the structure and division of labor among field offices. For example, in recent years, GAO has found that VA and other federal disability programs have not been updated to reflect the current state of science, medicine, technology, and labor market conditions. The schedule on which disability decisions are made within VA, for example, is based primarily on estimates made in 1945 about the effect service-connected impairments have on the average individual's ability to perform jobs requiring manual or physical labor. In addition, our work has shown that about one-third of newly compensated veterans could be interested in receiving a lump sum payment, potentially saving VA time and money associated with reopening cases over time. In addition, VA and other organizations have identified potential changes to field operations that could enhance productivity and accuracy in processing disability claims. While reexamining claims processing challenges in a larger context may be daunting, there are mechanisms for undertaking such an effort, including the congressionally chartered commission currently studying veterans' disability benefits.

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to comment on the claims processing challenges and opportunities facing the Department of Veterans Affairs' (VA) disability compensation and pension programs. Through these programs, VA provided almost \$30 billion in cash disability benefits to more than 3.4 million veterans and their survivors in fiscal year 2004. For years, the claims process has been the subject of concern and attention within VA and by the Congress and veterans service organizations. Many of their concerns have focused on long waits for decisions, large claims backlogs, and inaccurate decisions. Our work and media reports of significant discrepancies in average disability payments from state to state have also highlighted concerns about the consistency of decision making within VA. In January 2003, we designated modernizing VA and other federal disability programs as a high-risk area, because our work over the past decade found that these programs are based on concepts from the past and continue to experience management problems. VA's disability programs have not been updated to reflect the current state of science, medicine, technology, and labor market conditions. In addition, VA still experiences lengthy processing times and lacks a clear understanding of the extent of possible decision inconsistencies.

You asked us to discuss the challenges and opportunities VA faces in processing disability compensation and pension claims. My statement draws on numerous GAO reports and testimonies on VA's compensation and pension claims processing operations. (See Related GAO Products.) To update our work, we reviewed recent claims processing performance data and VA's fiscal year 2005 Performance and Accountability Report, but did not perform independent verification of VA's data. We conducted our work in November 2005 in accordance with generally accepted government auditing standards.

In summary, VA continues to face challenges processing disability claims. For example, as of the end of fiscal year 2005, rating-related claims¹ were pending an average of 120 days, 9 days more than at the end of fiscal year

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

2003, and far from VA's strategic goal of 78 days.² During the same period, the rating-related inventory grew by about 92,000 claims to a total of about 346,000 claims. While VA has improved the accuracy of its rating-related compensation decisions to 84 percent in fiscal year 2005—close to its goal of 88 percent in fiscal year 2005, it has 3 years to reach its strategic goal of 98 percent. Further, we have identified concerns about the consistency of decisions across VA's regional offices. VA has begun studying one indicator of inconsistency, the wide variations in average payments per veteran from state to state, in response to adverse media coverage. While VA is making efforts to address these problems, several factors may impede VA's ability to make and sustain significant improvements in its claims processing performance. These include the potential impacts of laws, court decisions, and continued increases in the number and complexity of claims being filed.

Opportunities for improvement may lie in more fundamental reform of VA's disability compensation programs. This would include reexamining program design and the context in which decisions are made as well as the structure and division of labor among field offices. For example, in recent years, GAO has found that VA and other federal disability programs have not been updated to reflect the current state of science, medicine, technology, and labor market conditions. The schedule on which disability decisions are made within VA, for example, is based primarily on estimates made in 1945 about the effect service-connected impairments have on the average individual's ability to perform jobs requiring manual or physical labor. In addition, our work has shown that about one-third of newly compensated veterans could be interested in receiving a lump sum payment, which could potentially save VA time and money associated with reopening cases over time and could be beneficial to veterans. In addition, VA and other organizations have identified potential changes to field operations that could enhance productivity and accuracy in processing disability claims. While reexamining claims processing challenges in a larger context may be daunting, there are mechanisms for undertaking such an effort, including the congressionally chartered commission currently studying veterans' disability benefits.

²In its fiscal year 2005 Annual Performance and Accountability Report, VA reports a separate strategic goal of 78 percent for rating-related compensation claims and 65 percent for rating-related pension claims.

Background

VA's disability compensation program pays monthly benefits to veterans with service-connected disabilities (injuries or diseases incurred or aggravated while on active military duty) according to the severity of the disability. Also, VA pays dependency and indemnity compensation to some deceased veterans' spouses, children, and parents and to survivors of service members who died on active duty. The pension program pays monthly benefits based on financial need to wartime veterans who have low income, served in a period of war, and are permanently and totally disabled for reasons not service-connected (or are aged 65 or older). VA also pays pensions to surviving spouses and unmarried children of deceased wartime veterans.

When a veteran submits a claim to any of VA's 57 regional offices, a veterans service representative (VSR) is responsible for obtaining the relevant evidence to evaluate the claim. Such evidence includes veterans' military service records, medical examinations, and treatment records from VA medical facilities and private medical service providers. Once a claim is developed (i.e., has all the necessary evidence), a rating VSR, also called a rating specialist, evaluates the claim and determines whether the claimant is eligible for benefits. If the veteran is eligible for disability compensation, the rating specialist assigns a percentage rating based on degree of disability. Veterans with multiple service-connected disabilities receive a single composite rating. For veterans claiming pension eligibility, the regional office determines if the veteran served in a period of war, is permanently and totally disabled for reasons not service-connected (or is aged 65 or older), and meets the income thresholds for eligibility. A veteran who disagrees with the regional office's decision for either program can appeal sequentially to VA's Board of Veterans' Appeals (BVA), the U.S. Court of Appeals for Veterans Claims, and the U.S. Court of Appeals for the Federal Circuit.

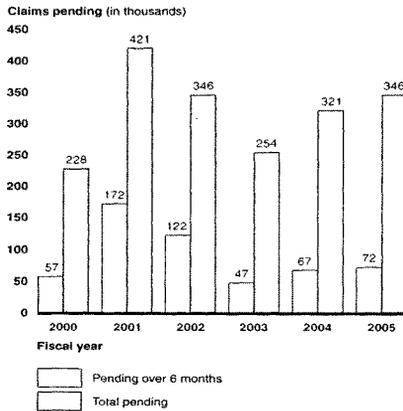
In January 2003, we designated modernizing VA's disability programs, along with other federal disability programs, as high-risk. We did so, in part, because VA had long-standing problems with lengthy claims processing times and lacked a clear understanding of the extent of possible decision inconsistencies. Moreover, VA's disability programs have not been updated to reflect the current state of science, medicine, technology, and labor market conditions.

In November 2003, the Congress established the Veterans' Disability Benefits Commission to study the appropriateness of VA disability benefits, including disability criteria and benefit levels. The commission held its first public hearing in May 2005.

VA Continues to Face Significant Challenges in Processing Disability Compensation Claims

VA continues to experience challenges processing veterans' disability compensation and pension claims. These include large numbers of pending claims and lengthy processing times. While VA made progress in fiscal years 2002 and 2003 in reducing the size and age of its inventory of pending claims, it has lost ground since the end of fiscal year 2003. As shown in figure 1, pending claims increased by over one-third from the end of fiscal year 2003 to the end of fiscal year 2005, from about 254,000 to about 346,000. During the same period, claims pending over 6 months increased by about 54 percent, from about 47,000 to about 72,000.

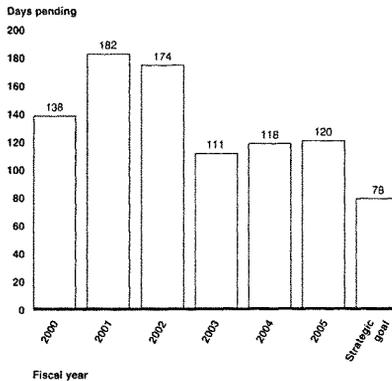
Figure 1: Rating-Related Claims Pending at End of Period, Fiscal Years 2000-2005



Source: VA data

Similarly, as shown in figure 2, VA reduced the average age of its pending claims from 182 days at the end of fiscal year 2001 to 111 days at the end of fiscal year 2003. Since then, however, average days pending have increased to 120 days at the end of fiscal year 2005. This is also far from VA's strategic goal of an average of 78 days pending by the end of fiscal year 2008. Meanwhile, the time required to resolve appeals remains too long. While the average time to resolve an appeal dropped from 731 days in fiscal year 2002 to 622 days in fiscal year 2005, VA was still far from its fiscal year 2005 goal of 500 days.

Figure 2: Average Days Pending for VA Compensation and Pension Rating-Related Claims, Fiscal Years 2000-2005



Source: VA data.

In addition to problems with timeliness of decisions, VA acknowledges that the accuracy of regional office decisions needs further improvement. VA reports that it has improved the accuracy of decisions on rating related compensation claims from 80 percent in fiscal year 2002 to 84 percent in fiscal year 2005, close to its 2005 goal of 88 percent.³

VA also faces continuing questions about its ability to ensure that veterans receive consistent decisions—that is, comparable decisions on benefit entitlement and rating percentage regardless of the regional offices making the decisions. The issue of decision-making consistency across VA is not new. In May 2000 testimony⁴ before the House Subcommittee on Oversight and Investigations, Committee on Veterans' Affairs, we underscored the conclusion made by the National Academy of Public

³We are currently reviewing the reliability of VA's claims processing accuracy data.

⁴GAO, *Veterans Benefits Administration: Problems and Challenges Facing Disability Claims Processing*, GAO/T-IEHS/AJMD-00-146 (Washington, D.C.: May 18, 2000).

Administration in 1997⁶ that VA needed to study the consistency of decisions made by different regional offices, identify the degree of subjectivity expected for various medical issues, and then set consistency standards for those issues. In August 2002, we drew attention to the fact that there are wide disparities in state-to-state average compensation payments per disabled veteran. We noted that such variation raises the question of whether similarly situated veterans who submit claims to different regional offices for similar conditions receive reasonably consistent decisions.⁷ We concluded that VA needed to systematically assess decision-making consistency to provide a foundation for identifying acceptable levels of variation and to reduce variations found to be unacceptable. Again, in November 2004, we highlighted the need for VA to develop plans for studying consistency issues.⁷ VA concurred in principle with our findings and recommendation in the August 2002 report, agreed that consistency is an important goal, and acknowledged that it has work to do to achieve it. However, VA was silent on how it would evaluate and measure consistency. Subsequently, VA concurred with our recommendation in the November 2004 report that it conduct systematic reviews for possible decision inconsistencies.

In December 2004, the media drew attention to the wide variations in the average disability compensation payment per veteran in the 50 states and published VA's own data showing that the average payments varied from a low of \$6,710 in Ohio to a high of \$10,851 in New Mexico. Reacting to these media reports, in December 2004, the Secretary of Veterans Affairs instructed the agency's Inspector General to determine why average payments per veteran vary widely from state to state.⁸ The Inspector General found that compensation payments are affected by many factors and that some disabilities are inherently more susceptible to variations in rating determinations. The Inspector General made eight recommendations to improve the consistency of rating decisions,

⁶National Academy of Public Administration, *Management of Compensation and Pension Benefits Claim Processes for Veterans* (Washington, D.C.: August 1997).

⁷GAO, *Veterans' Benefits: Quality Assurance for Disability Claims and Appeals Processing Can Be Further Improved*, GAO-02-806 (Washington, D.C.: Aug. 16, 2002).

⁷GAO, *Veterans Benefits: VA Needs Plan for Assessing Consistency of Decisions*, GAO-05-99 (Washington, D.C.: Nov. 19, 2004).

⁸Department of Veterans Affairs Office of Inspector General, *Review of State Variances in VA Disability Compensation Payments*, Report No. 05-00765-137 (Washington, D.C.: May 19, 2005).

including recommending that VBA conduct a study of the major influences on compensation payments and use the results to detect, correct, and prevent unacceptable payment patterns. Also, VA's Veterans Benefits Administration began a study in March 2005 of three disabilities believed to have potential for inconsistency: hearing loss, post-traumatic stress disorder, and knee conditions. VA assigned 10 subject matter experts to review 1,750 regional office decisions. After completing its analysis of study data, VA planned to develop a schedule for future studies of specific ratable conditions and recommend a schedule for periodic follow-up studies of previously studied conditions.

Recent history has shown that VA's claims processing workload and performance are being affected by several factors, including the impacts of laws and court decisions and the filing behavior of veterans. For example, court decisions in 1999 and 2003 related to VA's duty to assist veterans in developing their benefit claims, as well as legislation in response to those decisions, significantly affected VA's ability to produce rating-related decisions. VA attributes some of the worsening of inventory level and pending timeliness since the end of fiscal year 2003 to a September 2003 court decision that required over 62,000 claims to be deferred, many for 90 days or longer. Also, VA notes that legislation and VA regulations have expanded benefit entitlement and as a result added to the volume of claims. For example, presumptions of service-connected disabilities have been created in recent years for many Vietnam veterans and former Prisoners of War. Also, VA expects additional claims receipts based on the enactment of legislation allowing certain military retirees to receive both military retirement pay and VA disability compensation.

In addition, VA continues to receive increasing numbers of rating-related claims, from about 586,000 in fiscal year 2000 to about 788,000 in fiscal year 2005. VA projects 3 percent increases in claims received in fiscal years 2005 and 2006. VA notes that claims received are increasing in part because older veterans are filing disability claims for the first time. One reason for this increase could be that older veterans have incentives to file disability claims because obtaining a service-connected disability rating is a gateway to VA health care. According to VA, the complexity of claims is also increasing because veterans are citing more disabilities in their claims than in the past. Because each disability needs to be evaluated, these claims can take longer to complete. VA planned to develop baseline data on average issues per claim by the end of calendar year 2005.

In November 2004, we reported that VA would have to rely on productivity improvements to achieve its claims processing performance goals in the

face of increasing workloads and decreased staffing levels.⁹ However, its fiscal year 2005 budget justification did not provide information on claims processing productivity or how much VA expected to improve productivity. VA's fiscal year 2006 budget justification provides information on actual and planned productivity, in terms of rating-related claims decided per direct full-time equivalent (FTE) employee, and identifies a number of initiatives that could improve claims processing performance. These initiatives include technology initiatives, such as Virtual VA, involving the creation of electronic claims folders; consolidation of the processing of Benefits Delivery at Discharge (BDD) claims at two regional offices; and collaboration with the Department of Defense (DOD) to improve VA's ability to obtain evidence, such as evidence of in-service stressors for veterans claiming service-connected Post-Traumatic Stress Disorder.

Despite these and other measures, we noted in May 2005 that it is still not clear whether VA will be able to achieve its planned improvements.¹⁰ In our May 2005 testimony we noted that VA's fiscal year 2006 budget justification assumes that it will increase the number of rating-related claims completed per FTE from 94 in fiscal year 2004 to 109 in fiscal year 2005 and 2006, a 16 percent increase. For fiscal year 2005, this level of desired productivity translates into VA completing almost 826,000 rating-related decisions. In actuality, VA completed about 763,000 decisions in fiscal year 2005.

Opportunities for Improvement May Lie in More Fundamental Reform

While VA is taking a number of actions to address its claims processing challenges, there are opportunities for more fundamental reform, that could dramatically improve decision making and processing. These include reexamining program design and the context in which decisions are made as well as the structure and division of labor among field offices. For example, in designating federal disability programs as high risk in 2003, GAO noted that VA's and the Social Security Administration's (SSA) disability programs have not been updated to reflect the current state of science, medicine, technology, and labor market conditions. In addition,

⁹GAO, *Veterans' Benefits: More Transparency Needed to Improve Oversight of VBA's Compensation and Pension Staffing Levels*, GAO-05-47 (Washington, D.C.: Nov. 15, 2004).

¹⁰GAO, *Veterans' Disability Benefits: Claims Processing Problems Persist and Major Performance Improvements May Be Difficult*, GAO-05-749T (Washington, D.C.: May 26, 2005).

our work has shown that about one-third of newly compensated veterans could be interested in receiving a lump sum payment, potentially saving VA time and money associated with reopening cases over time. Moreover, VA and other organizations have identified potential changes to field operations that could enhance productivity and accuracy in processing disability claims.

After more than a decade of research, GAO has determined that federal disability programs are in urgent need of attention and transformation and placed modernizing federal disability programs on its high-risk list in January 2003. Specifically, our research showed that the disability programs administered by VA and the Social Security Administration lagged behind the scientific advances and economic and social changes that have redefined the relationship between impairments and work. For example, advances in medicine and technology have reduced the severity of some medical conditions and have allowed individuals to live with greater independence and function in work settings. Moreover, the nature of work has changed in recent decades as the national economy has moved away from manufacturing-based jobs to service- and knowledge-based employment. Yet VA's and SSA's disability programs remain mired in concepts from the past—particularly the concept that impairment equates to an inability to work—and as such, we found that these programs are poorly positioned to provide meaningful and timely support for Americans with disabilities.

In August 2002, we recommended that VA use its annual performance plan to delineate strategies for and progress in periodically updating labor market data used in its disability determination process. We also recommended that VA study and report to the Congress on the effects that a comprehensive consideration of medical treatment and assistive technologies would have on its disability programs' eligibility criteria and benefits package. This study would include estimates of the effects on the size, cost, and management of VA's disability programs and other relevant VA programs and would identify any legislative actions needed to initiate and fund such changes.

Another area of program design that could be examined is the option of providing a lump sum payment in lieu of monthly disability compensation. In 1996, the Veterans' Claims Adjudication Commission noted that most disability compensation claims are repeat claims—such as claims for

increased disability percentage—and most repeat claims were from veterans with less severe disabilities.¹¹ According to VA, about 65 percent of veterans who began receiving disability compensation in fiscal year 2003 had disabilities rated 30 percent or less. The commission questioned whether concentrating claims processing resources on these claims, rather than on claims by more severely disabled veterans, was consistent with program intent. The commission asked Congress to consider paying less severely disabled veterans compensation in a lump sum. According to the commission, the lump sum option could have a number of benefits for VA as well as veterans. Specifically, the lump sum option could reduce the number of claims submitted and allow VA to process claims more quickly—especially those of more seriously disabled veterans. Moreover, a lump sum option could be more useful to some veterans as they make the transition from military to civilian life. In December 2000, we reported that about one-third of newly compensated veterans could be interested in a lump sum option.

In addition to program design changes, external studies of VA's disability claims process have identified the regional office structure as disadvantageous to efficient operation. Specifically, in its January 1999 report, the Congressional Commission on Servicemembers and Veterans Transition Assistance found that some regional offices might be so small that their disproportionately large supervisory overhead unnecessarily consumes personnel resources.¹² Similarly, in its 1997 report, the National Academy of Public Administration found that VA could close a large number of regional offices and achieve significant savings in administrative overhead costs.

Apart from the issue of closing regional offices, the Congressional Commission on Servicemembers and Veterans Transition Assistance highlighted a need to consolidate disability claims processing into fewer locations. VA has consolidated its education assistance and housing loan guaranty programs into fewer than 10 locations, and the commission encouraged VA to take similar action in the disability programs. In 1995 VA enumerated several potential benefits of such a consolidation. These included allowing VA to assign the most experienced and productive

¹¹Veterans' Claims Adjudication Commission, *Report to Congress* (Washington D.C.: December 1996).

¹²Report of the Congressional Commission on Servicemembers and Veterans Transition Assistance (Washington, D.C.: Jan. 14, 1999).

adjudication officers and directors to the consolidated offices; facilitating increased specialization and as-needed expert consultation in deciding complex cases; improving the completeness of claims development, the accuracy and consistency of rating decisions, and the clarity of decision explanations; improving overall adjudication quality by increasing the pool of experience and expertise in critical technical areas; and facilitating consistency in decision making through fewer consolidated claims processing centers. VA has already consolidated some of its pension workload (specifically, income and eligibility verifications) at three regional offices. Also, VA has consolidated at its Philadelphia regional office dependency and indemnity compensation claims by survivors of service members who died on active duty, including those who died during Operation Enduring Freedom and Operation Iraqi Freedom.

VA is also in the process of consolidating decision-making on Benefits Delivery at Discharge claims, which are generally original claims for disability compensation, at the Salt Lake City and Winston-Salem regional offices. VA established this program to expedite decisions on disability compensation claims from newly separated service members. A service member can file a BDD claim up to 180 days before separation; VA staff performs some development work on the claim before separation. VBA actually decides the claim after the service member is separated and the official discharge form (DD Form 214) is received. Under the consolidation, regional offices and VBA's 142 BDD sites will accept and develop claims, but will send the developed claims to Salt Lake City or Winston-Salem for decision. VBA expects this consolidation to help improve decision efficiency and consistency. Consolidation began in December 2004 and is expected to be completed by March 2006.

While reexamining claims processing challenges in a larger context may be daunting, there are mechanisms for undertaking such an effort, including the congressionally chartered commission currently studying veterans' disability benefits. In November 2003, the Congress established the Veterans' Disability Benefits Commission to study the appropriateness of VA disability benefits, including disability criteria and benefit levels. The commission was to examine and provide recommendations on (1) the appropriateness of the benefits, (2) the appropriateness of the benefit amounts, and (3) the appropriate standard or standards for determining whether a disability or death of a veteran should be compensated. As of October 2005, the commission had established 31 potential research questions for study. Questions include how well do disability benefits meet the congressional intent of replacing average impairment in earnings capacity, should lump sum payments be made for certain disabilities or

level of severity of disability, and how does VA's claims processing operation compare to other disability programs, including the location and number of processing centers. These issues and others have been raised by previous studies of VBA's disability claims process.

Contact and Acknowledgments

For further information, please contact Cynthia A. Bascetta at (202) 512-7215. Also contributing to this statement were Cristina Chaplain, Irene Chu, and Martin Scire.

Related GAO Products

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Responses from the Department of Veterans Affairs

**Questions for the Record
House Committee on Veterans' Affairs**

December 7, 2005

**Hearing on Challenges and Opportunities Facing Disability Claims
Processing in 2006**

Chairman, Steve Buyer

Question 1: From the end of FY 2003 to the end of FY 2005, the number of rating-related claims pending has increased over one-third, from 254,000 to 346,000. At the same time, the number of claims pending over six months increased by approximately 54 percent, from 47,000 to 72,000. What are the primary reasons for these increases?

Response: The number of veterans filing initial disability compensation claims and claims for increased benefits has increased substantially every year since fiscal year (FY) 2000. Disability claims from veterans who served in Afghanistan and Iraq as well as from veterans of earlier periods of service increased from 578,773 claims in FY 2000 to 788,298 claims in FY 2005. This represents an increase of more than 209,000 claims in FY 2005, or 36 percent, over the claims received by the Department of Veterans Affairs (VA) in FY 2000. It is expected that these increases will continue over the next five years.

The most important factors leading to the sustained high levels of claims activity are:

- Operations Iraqi and Enduring Freedom;
- an increasing number of beneficiaries on the rolls, who file additional claims for increased benefits;
- improved and expanded outreach to active duty service members, guard and reserve personnel, veterans' survivors, and veterans of earlier conflicts; and
- implementation of Combat Related Special Compensation and Concurrent Disability and Retired Pay programs by the Department of Defense (DoD).

Question 2: Assuming VBA was fully staffed and fully trained, are there inherent limitations on how quickly a claim can be processed? If so, please explain.

Response: Yes, there are several factors that limit how quickly a claim can be processed. Some of the most common follow:

Veterans Claims Assistance Act (VCAA): Enacted in 2000 to provide claimants with a greater understanding of the information and evidence necessary to substantiate their claims, the VCAA also introduced new "wait times" into the process. As a result, the timeline for adjudicating disability claims has

significantly lengthened. Upon receipt of a complete or substantially complete application, the VCAA requires that VA notify a claimant of the information and evidence that is needed to substantiate the claim and which portion of the information and evidence VA will attempt to get, and which portion the claimant must submit. No benefit may be paid if the information and evidence to be provided by the claimant is not received by VA within one year from the date of the notice. The Veterans Benefit Administration (VBA) adjudication procedures provide that, if the claimant does not respond to VA's request within 60 days, VA may make a decision on the claim before the end of the one-year period. If VA does make a decision before the end of the one-year period and the claimant subsequently provides the information and evidence within one year of the date of VA's request, VA must re-adjudicate the claim.

Receipt of Service Medical Records: Service medical records for veterans discharged in recent years are available from VA's Records Management Center and usually take 3-5 days to obtain. However, service medical records for veterans who were discharged many years ago or who are still active members of a National Guard or Reserve unit must be requested from the National Personnel Records Center or the individual's specific Guard/Reserve unit. Obtaining records from these other sources can often take weeks, and sometimes longer.

Medical Examinations: A compensation and pension examination is normally required in order to process a disability claim. In some instances, VA does not request an examination until the Department receives the veteran's service medical records. Once an examination is requested, VA allows 35 days for return of the completed examination. Examinations sometimes take longer than 35 days to complete because of required specialty examinations or requests by the veteran to reschedule the exam.

Private Treatment Records: If a claimant identifies private treatment records that could substantiate the claim, VA must send the claimant forms authorizing the release of those records to VA. The claimant has up to 60 days to submit the appropriate signed releases. Once the appropriate releases are provided by the claimant, VA sends the request for the records to the treating physician or facility. VA must wait a minimum of 60 days to receive the records. If the private care provider fails to respond, requires that the veteran sign the provider's own release form, or requires a fee to release the records, VA must go back to the veteran. If the private physician requires completion of the physician's own release form, VA again must wait up to 60 days for the veteran to provide the completed form. If the veteran completes the form, VA must allow up to 60 days for the private provider to provide the records. In those cases where the private provider does not respond or requires a fee, VA must notify the veteran of the situation and allow the veteran 30 days to submit the records.

Requests to DoD and Other Federal Agencies: For claims for service connection for post-traumatic stress disorder, VA must verify the occurrence of the stressor through the Joint Services Records Research Center. That process can take weeks to months to complete. In a claim for service connection based on exposure to ionizing radiation, VA must obtain an estimate of the dose of radiation to which the veteran was exposed. The current time to obtain a reconstructed dose is in excess of two years. Social security records must also be sought when the veteran is receiving social security disability payments and files a claim for VA compensation.

Question 3: In your written testimony, in particular the section related to the Veterans Claims Assistance Act, you state that "positions advanced by some advocates, if sustained in court, will further aggravate the current claims processing situation." Are there specific positions currently before the court that could impact the claims processing system? If so, please explain.

Response: Two cases recently decided by the The U. S. Court of Appeals for Veterans Claims, Dingess v. Nicholson and Hartman v. Nicholson, raise the issue of whether, under the VCAA, VA is required to provide notice of the information and evidence necessary to substantiate a claim each time VA renders a decision on a claim and the claimant files a notice of disagreement with that decision. The U. S. Court of Appeals for Veterans Claims held that, assuming VA has provided proper notice VCAA notice is no longer required once a decision awarding service connection, a disability rating, and an effective date has been made by VA. In Mayfield v. Nicholson, which was argued on February 6, 2006, before the Federal Circuit, the claimant contends that VA is required to provide VCAA notice after VA complies with its duty to assist and obtains a medical opinion or report that proves to be adverse to the claimant. If these arguments were adopted by the courts, a claimant would have one year after receipt of VCAA notice in these circumstances to provide VA with the information and evidence necessary to substantiate the claim, although VA could issue a decision before the end of the one-year period. If the information/ evidence provided by a claimant did not substantiate the claim, under the claimants' analysis, the cycle would start anew and VA would again have to provide VCAA notice.

Question 4: Please elaborate on VBA's "high-level" review of the Claims Processing Improvement (CPI) model. When does VBA anticipate the review will be completed?

Response: The claims processing improvement (CPI) task team, chartered by the Under Secretary for Benefits, will evaluate the existing specialized team structure of the CPI model and provide recommendations to further improve the processing structure. The specialized teams are: Triage, Pre-Determination, Rating, Post-Determination, Appeals, and Public Contact. The review will be completed by June 2006.

Question 5: The GAO has reported that fundamental reform may provide opportunities for improved claims processing performance. For example, providing a lump sum option to less severely disabled veterans in lieu of monthly compensation could be beneficial to some veterans while reducing the number of reopened claims. Likewise, in May 2005 the VA Office of Inspector General recommended that VA consider establishing a lump sum payment option for veterans whose disability rating is 20 percent or less. Please comment on this recommendation.

Response: In October 2005, the Disability Benefits Commission included lump-sum benefit payments on the list of research topics that the Commission would study. The following is the language from the Commission's list:

Should lump sum payments be made for certain disabilities or level of severity of disabilities? Should such lump sum payments be elective or mandatory? Consider the merits under different circumstances such as where the impairment is to quality of life and not to earnings capacity.

The Disability Benefits Commission's statutory charge includes a requirement to submit their study to the President and Congress. The Commission's report is to include its findings and conclusions as well as any recommendations it may have for revising benefits provided to veterans. Since the Commission has expressly included the issue of lump sum payments as a research topic, VA anticipates a recommendation on this issue from the Commission for consideration by the Administration and Congress.

Question 6: The GAO has reported that opportunities for efficiency and consistency improvements in claims processing may lie in reexamining VBA's regional office structure. Please comment on the potential for improved performance through changes to VBA's field structure.

Response: VBA has implemented several initiatives to realign the claims processing structure at field stations. Specialized processing operations have been consolidated to achieve processing efficiencies and better use of resources. Consolidating select operations allows VA to develop processing expertise, improve quality control efforts, and facilitate the delivery of training, resulting in improved claims processing timeliness, quality, and consistency.

VBA has consolidated the pension maintenance workload (annual recurring eligibility verifications and income match programs) to three Pension Maintenance Centers. VBA also consolidated processing of dependency and indemnity compensation claims for in-service deaths to the Philadelphia Regional Office in order to expedite benefits for veterans' survivors. VBA established the Appeals Management Center to consolidate the appeals remanded by the Board of Veterans' Appeals for further development. VBA also recently consolidated

the rating aspects of the Benefits Delivery at Discharge Program to two regional offices.

As recommended by GAO, VBA is committed to exploring other possibilities for organizational restructuring that will improve service to veterans and their families. VBA is in the early stages of forming a Compensation and Pension Realignment Task Force to review strengths and weakness of realignment activities to date and to make recommendations on whether further changes to VBA's field structure and claims processing activities could improve performance.

Questions for the Record
Honorable Jeff Miller

Question 1: Veterans' groups have cited the increased complexity of disability claims processing. Would claimants benefit from being able to secure an attorney's assistance at the beginning of the process? What affect would attorney representation have on the claims processing system?

Response: Under current law, an agent or attorney may participate in the initial claims process but may not charge a fee for services provided to a claimant for veterans benefits before the date on which the Board of Veterans' Appeals first makes a final decision in the case. The Administration has not taken an official position as to whether the law should be changed to permit representation by paid attorneys earlier in the process. However, VA historically has not advocated such a change because national, state, and local service organizations that provide their services free of charge are more than able to adequately represent veterans at the beginning of the claims process. Also, VA has obligations to notify and assist in the development of claims under the VCAA. There are concerns that attorney involvement at the beginning of the claims process could unnecessarily lengthen the claims process without affording any offsetting benefits to claimants.

Question 2: The number of claims with eight or more disabilities has risen over 100 percent since 2000. How do you explain the increase in issues per claim? What are the most common issues claimed by veterans seeking compensation?

Response: VA believes the increasing number of disabilities for which service connection is claimed is the result of a number of factors. Service in the military is now a career, and many service members serve longer than the traditional 3 to 4 years of service. Length of service increases the potential that veterans will claim a greater number of service-connected disabilities. Serious combat injuries often result in multiple, complex conditions such as amputations, burns, traumatic brain injuries, and mental disorders. Other disabilities, such as diabetes and cancers in which radiation therapy has been used, result in claims for disabilities that are proximately caused by service-connected disabilities.

The most common disabilities for which VA grants service connection are:

- Defective hearing
- Musculoskeletal conditions
- Tinnitus
- Scars
- Arthritis due to trauma
- Impairments of the knee
- Post-traumatic Stress Disorder
- Diabetes mellitus
- Hypertensive vascular disease
- Lumbo-sacral strain

Question 3: A concern expressed by many veterans' groups is the need for VBA to identify and recruit caring and compassionate individuals to lead VA in the future. What is VBA doing to recruit separating servicemembers to fill VBA's employment ranks?

Response: VBA is committed to recruiting and hiring veterans to fill positions within the organization. VA actively recruits on military bases and at job fairs specifically targeted to veterans. VA also works through state employment agencies to recruit veterans, and hires disabled veterans participating in VA's Vocational Rehabilitation and Employment Program. Vacancy announcements for veteran's service representative positions are posted on the Office of Personnel Management's website, USAJOBS, and are open to all veterans. Regional offices also inform its local veteran's service organizations of vacancies.

In June 2004, VBA conducted a national hiring initiative. Of the 289 employees hired, 43 percent were veterans. In the January 2005 national hiring initiative, 68 percent of the 179 employees hired were veterans.

Question 4: VA has seen a 36 percent increase in the number of initial disability claims filed since FY 2000. Are the majority of these claims from OEF/OIF veterans or are they veterans from prior wars?

Response: VA identifies deployed Operation Enduring Freedom/Operation Iraqi Freedom (OEF/OIF) veterans through data sharing with DoD. The most recent information VA has identifies deployed OEF/OIF veterans discharged through October 2005. VA used this information to match against the benefits information system.

The chart below provides counts of the number of original disability compensation claims received from all veterans and the number of those claims from deployed OEF/OIF veterans, for FY 2002 through FY 2005. The

percentage of OEF/OIF veterans' claims from among all veterans' claims is also provided.

Category	FY2002	FY2003	FY2004	FY2005
Original Compensation Claims, All Veterans	159,078	167,105	194,706	210,504
Original Compensation Claims, Deployed OEF/OIF Veterans	2,133	8,045	30,716	47,038
Percent of Deployed OEF/OIF Claims Among All Veterans' Claims	1.3%	4.8%	15.8%	22.3%

Some of the deployed OEF/OIF veterans had prior active military service. VBA's benefits information system does not attribute each claim from a veteran to a specific period of service or deployment. Therefore, not all of the claims from deployed OEF/OIF veterans are for disabilities incurred during OEF/OIF deployment.

VA refined its matching processes between November 2005 and January 2006. This response provides the most current information available using updated data from both VA and DoD.

Question 5: The claims appeals rate has grown in recent years from 7 percent to between 11 and 14 percent. Some stake holders cite a lack of faith in the quality of VBA's decisions. What is VBA doing to bring greater legitimacy to its claims decisions?

Response: VBA has a multifaceted quality assurance program that includes monthly quality reviews of a statistically valid sample of disability decisions for each regional office and regularly scheduled regional office oversight visits. During these oversight visits, individualized training focused on the needs of the regional office is provided as necessary. The results of the monthly quality reviews and oversight visits are also analyzed to determine areas where additional training is needed across the organization. National training plans are developed accordingly, and training is offered through various mediums such as satellite broadcasts, standardized course curricula, and training letters. When necessary, procedural guidance is modified for clarity.

The Under Secretary for Benefits recently established an 80-hour mandatory training curriculum for all employees. This mandatory training is comprised of 20 hours of local training and 60 hours of program-specific material. Regional offices are required to submit yearly compliance reports showing that mandatory training requirements have been met.

Question 6: The C&P Service has begun identifying unusual patterns of variance in claims adjudications by diagnostic code. When was this program implemented and how will it assist VBA to address the issues that were raised in

the Office of Inspector General's report: "Review of State Variances in VA Disability Compensation Payments?"

Response: VBA's Compensation and Pension (C&P) Service established a rating consistency working group in October 2005. The working group includes representatives from C&P Service, the Office of Field Operations, the Office of Policy and Program Management, and the Program Analysis and Integrity Staff. The goal of the working group is to develop a blueprint for monitoring decision making consistency through structured data analysis.

The working group is analyzing a number of parameters and filters using statistical methods to determine outlying factors associated with or driving variances in disability compensation grant and denial rates and disability evaluations for individual conditions.

The analysis effort is currently reviewing data regarding claims for service connection for Post-Traumatic Stress Disorder. Once a valid and acceptable data analysis model is developed, the effort will be expanded to include disabilities across all thirteen body systems. The rating consistency analysis will provide more robust information regarding the consistency of our decision making and provide insight into the factors affecting claims processing consistency. The results of the analysis will allow us to focus our process improvement, training, and quality assurance efforts on those aspects of claims processing that have a greatest impact on decision consistency.

**Questions for the Record
Ranking Democratic Member, Lane Evans
Honorable Darlene Hooley
House Committee on Veterans' Affairs
December 7, 2005**

**Challenges and Opportunities Facing Disability Claims Process at
Veterans Benefit Administration**

**Questions for the Record
Ranking Democratic Member, Lane Evans
House Committee on Veterans' Affairs
Responses from Chairman, Board of Veterans' Appeals James P. Terry**

Question 1: Does the Board's reported cycle time of 104 days include the days a veteran is waiting for a travel or video hearing before the Board? Please provide a list of the average time for each regional office for Fiscal Year 2005 between notification that the claim was ready for a hearing and the hearing was actually conducted.

Response: The Board of Veterans' Appeals' (Board's) cycle time for Fiscal Year 2005 does not include any time spent waiting for Travel Board hearings, but does include a small amount of time spent waiting for video hearings. The Board's cycle time calculation includes only the period of time that appeals are in active status, *i.e.*, physically present, at the Board. Because Travel Board and videoconference hearings are scheduled by the regional office (RO) having possession of the claims file, cycle time does not include the amount of time that a veteran waits for a Travel Board hearing, and includes no more than approximately three weeks of waiting time for video hearings. The Board's cycle time includes some wait time for video hearings because the ROs generally forward claims files to the Board approximately three weeks prior to the scheduled video hearing date. Those cases are placed in active status at the Board upon receipt of the claims file.

The Board is not able to provide the requested information regarding the average time for each regional office because the data collected in the Veterans Control and Appeals Locator System (VACOLS), the Board's computerized tracking system, does not include the date when a RO determines that a claim is ready for a hearing. For Travel Board hearings only, VACOLS includes a check box for RO staff to mark when a case is ready for a hearing, but no particular date is associated with the marking of that box. Accordingly, for both Travel Board and videoconference hearings, the type of data that would be needed to provide a response to your question is not collected or otherwise available.

Question 2: Does the Board's reported cycle time include the time it takes to transcribe Board hearings? What was the average transcription time in Fiscal Year 2005?

Response: As previously mentioned, the Board's cycle time includes only the period of time appeals are in active status, i.e., physically present, at the Board. For cases in which a central office or videoconference hearing is held, these cases are generally in active status as the claims file is physically present at the Board. Therefore, the Board's cycle time calculation for these types of Board hearings does include the amount of time it takes to complete the hearing transcriptions. However, in most instances, the Board's cycle time does not include the amount of time it takes to transcribe a Travel Board hearing, because the RO at which this type of hearing is held often retains possession of the claims file after the hearing in order to complete the certification process and, at times, to hold the file open for the submission of additional evidence under 38 C.F.R. § 20.709. For this reason, the transcription of Travel Board hearings is generally, but not always, completed before the claims file is physically received at the Board. In those Travel Board hearing cases where the claims file is received prior to completion of the hearing transcript, the cycle time calculation would include some transcription time. This would include the period of time between the date the claims file is received and the appeal is activated at the Board, and the date the hearing transcript is received.

For hearings held during Fiscal Year 2005, it took an average of 37.73 days between the date a hearing was held, and the date the transcript was completed and attached to VACOLS.

Questions for the Record
Ranking Democratic Member, Lane Evans
House Committee on Veterans' Affairs
Responses from Deputy Under Secretary for Benefits Ronald R. Aument

Question 1: Veterans returning from Iraq with PTSD seem to be facing the same problems obtaining service-connection for PTSD as Vietnam veterans did. Decisions are delayed when evidence of stressors is deemed not credible. Given the large number of deaths and injuries from explosive devices and random attacks, please provide specific examples of stressor evidence (including both combat and noncombat) other than a Combat Infantry Badge (or similar combat medals) or a Purple Heart which VA recognizes as credible to support a diagnosis of PTSD in Operation Enduring Freedom or Operation Iraqi Freedom veterans.

Response:

Background

Under 38 U.S.C. §1154(b) and 38 C.F.R. § 3.304(f), veteran's testimony alone establishes the occurrence of the claimed in-service stressor for purposes of establishing service connection for PTSD if:

1. The evidence of record establishes the veteran engaged in combat or was a prisoner-of-war (POW) and; the claimed stressor is related to that episode of combat or POW experience;
2. There is no clear and convincing evidence to the contrary, and;

3. The claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service.

Proof of Combat

There are no limitations as to the type of evidence that may be accepted to confirm engagement in combat. Any evidence that is probative of (serves to establish the fact at issue) combat participation may be used to support a determination that a veteran engaged in combat.

As stated in VAOPGCPREC 12-99:

- a. The ordinary meaning of the phrase "engaged in combat with the enemy," as used in 38 U.S.C. § 1154(b), requires that a veteran have participated in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality. Nothing in the language or history of that statute or any Department of Veterans Affairs (VA) regulation suggests a more specific definition. The issue of whether any particular set of circumstances constitutes engagement in combat with the enemy for purposes of section 1154(b) must be resolved on a case-by-case basis.
- b. The determination as to what evidence may be satisfactory proof that a veteran "engaged in combat with the enemy" necessarily depends on the facts of each case. Determining whether evidence establishes that a veteran engaged in combat with the enemy requires evaluation of all pertinent evidence in each case, and assessment of the credibility, probative value, and relative weight of the evidence.

As noted in your question, VA considers the receipt of certain decorations to be evidence of exposure to combat-related stressors. However, certain medals that may be awarded to veterans who served in Afghanistan or Iraq, i.e., Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Afghanistan Campaign Medal, and Iraq Campaign Medal, do not necessarily confirm participation in combat because they may be awarded for non-combat service as well as combat service. Therefore, VA may request additional documentation from a veteran's service records showing the justification for awarding such a medal to a veteran who served in Operations Enduring Freedom and Iraqi Freedom.

Also, if a veteran alleges that the in-service stressor is related to combat and the veteran did not receive a medal, VA will request evidence to corroborate the veteran's engagement in combat, such as:

- Morning reports
- Unit and organizational histories
- Daily staff journals
- Operational reports-lessons learned
- After action reports

- Radio logs, deck logs, and ship histories
- Buddy statements from other service members
- Service medical records
- Hazard pay records
- Military occupational specialty evidence
- Service personnel records
- Contemporaneous letters and diaries
- Newspaper reports

Non-combat Stressor

A veteran who served in OEF or OIF may also allege an in-service stressor not related to combat. Under § 3.304(f), in a PTSD claim filed by a veteran who did not engage in combat with the enemy or who was not a POW, there must be credible supporting evidence that the stressor occurred. Credible supporting evidence that an in-service stressor actually occurred includes evidence specifically documenting a veteran's personal participation in an event as well as evidence that indicates a veteran served in the immediate area and at the particular time in which the stressful event is alleged to have occurred and supports the description of the event. This requirement does not necessarily require official documentary evidence. VA relies upon evidence from the sources listed above to verify the occurrence of a noncombat-related stressor, as well as the following sources:

- Private medical/counseling records
- Clergy statements

In the case of a PTSD claim based on an in-service personal assault, 38 C.F.R. § 3.304(f)(3) provides examples of the evidence that may be used by VA to corroborate a veteran's account of the stressor incident, including:

- Records from law enforcement authorities, rape crisis centers, mental health centers, and hospitals
- Pregnancy tests or tests for sexually transmitted diseases
- Statements from family members, roommates, fellow service members, and clergy
- Evidence of behavioral changes such as request for transfer to another military duty station

Question 2: Please provide the staffing plan for Rating Veterans Service Representatives (RVSR), Veterans Service Representatives (VSR) and other staff for each VA Regional Office for the purpose of adjudicating claims for compensation and pension benefits for FY 2006. Please indicate the criteria which were used to determine the number of staff for the three highest staffed and lowest staffed offices based upon the workload of expected, pending, and appellate claims (including both rating and non-rating claims).

Response: VBA's compensation and pension resource allocation model does not specifically allocate staffing for RVSRs and VSRs at the individual regional office level. Rather, the model is used in setting the overall staffing levels for the Veterans Service Center at each regional office. Regional office directors then determine their local needs for individual positions, including RVSRs and VSRs.

The model allocates staffing levels based on four factors: 1) volume of incoming claims work, including compensation and pension claims, telephone inquiries, and non-rating claims; 2) accuracy of completed work; 3) performance on appeals measures; and 4) performance on timeliness measures. To minimize large variations in staffing allocations from year to year, the model employs a two-year average for each of these factors.

The volume of incoming claims is given the greatest weight as the most important factor driving staffing requirements. The use of accuracy and timeliness measures provides a level of accountability for both employee productivity and the quality of service delivery. The appeals factor is derived from both output and timeliness measures and assesses the effectiveness of appellate workload management.

The resource allocation model considers the impact of workload and performance in determining regional office staffing levels. However, it is not viewed as an absolute standard for final staffing decisions. VBA leaders use the model as a guide, but then make some adjustments for special circumstances or unique missions performed by a regional office. The model applies no disparate factors in allocating staffing levels for large or small regional offices; the same factors are considered, regardless of the size of the office. The Fiscal Year 2006 staffing allocation is currently under review because of the potential impact of new requirements included in Section 228 of the Military Quality of Life and Veterans Affairs Appropriations Act of 2006, which mandates significant outreach in states with average disability payments less than \$7,300.

Question 3: Please describe what actions VBA is taking to improve the performance of offices that have been designated as "poorer performers".

Response: We continually review our work processes, staffing levels, and regional offices' performance to identify opportunities to improve the delivery of benefits to veterans.

At the regional office level, systematic analyses of operations are conducted on a prescribed schedule to identify and address performance problems and weaknesses. At the Headquarters level, each of the Services conduct regional office site visits to review compliance with policy and processing guidelines, identify both strengths and challenges, and recommend corrective actions and improvements.

In addition, Area Directors visit each regional office twice a year to review operations. Wellness plans are developed and implemented at regional offices experiencing performance difficulties, and aggressive follow-up is conducted to ensure offices improve their performance and receive the training, tools, or other resources needed to be successful. Additionally, VBA uses a brokering strategy to move work from offices

experiencing workload difficulties to our Resource Centers or other regional offices with capacity to assist. In this way, the regional offices experiencing difficulties are better able to address their problems while minimizing delays in the processing of veterans' claims.

VBA also analyzes the practices and performance of the regional offices that consistently demonstrate high performance to identify best practices that can be shared across the organization. For example, VBA conducted a "cycle-time" study that analyzed each segment of the claims process to identify ways to reduce the overall processing time. The study initially focused on higher performing stations, observing and documenting best practices. The study then concentrated on offices experiencing performance difficulties to compare and validate findings. The results of the cycle-time study were shared with all regional offices for their use in improving performance. In addition, VBA is currently performing a comprehensive study of the findings of the Inspector General's Combined Assessment Program Reviews to identify recurring weaknesses and to develop strategies to address them system-wide.

We continue to focus our efforts on improving VBA's training systems – not only for new employees but also to continue to raise the skill levels of the more experienced staff. VBA calls on high-performing offices to provide instructors for centralized training sessions. These sessions are held throughout the year for specific groups of employees, including those newly hired, those recently promoted to first-line supervisory positions, and new division-level managers. Additionally, senior leaders within the organization are asked to enter into structured mentoring relationships with employees selected for formal development programs, including VBA's Leadership Enhancement and Development (LEAD) Program, the Assistant Director Development Program, and VA's Senior Executive Service Candidate Development Program. VBA further leverages the knowledge and skills of the top-performing offices by frequently looking to those offices for candidates to fill VBA leadership positions at other offices.

Questions for the Record
Honorable Congresswoman Darlene Hooley
House Committee on Veteran's Affairs
Responses from Deputy Under Secretary for Benefits Ronald R. Aument

Question 1: You've both spoken about the growth in the number of claims and the increased complexity of claims, and yet, in its fiscal year 2006 budget submission, the VA did not request an increased number of FTEs to adjudicate claims. Given the increase in claims since the Budget was submitted, does VBA need additional staff to handle the increase in workload in 2006?

Response: VA requested 7,703 direct Compensation and Pension FTE in its 2006 budget to meet a projected workload of 818,076 rating receipts. We are currently projecting a workload of 910,126 rating receipts during 2006. The increase is anticipated as a result of the additional outreach required by section 228 of Public Law 109-114, the Military Quality of Life and Veterans Affairs Appropriations Act of 2006.

However, the 2006 Appropriations Act provided VA the flexibility to increase our direct Compensation and Pension FTE to 7,911, an increase of more than 200, to help address the increase in rating receipts.

Question 2: We've also heard about the need to reduce unnecessary remands and increase productivity among staff in order to reduce the backlog of appeals. However, as I review the Fiscal year 2005 Elapsed Processing Times Report of the Board of Veterans Appeals, for the Portland regional office which serves the veterans in my district, has a very high ration of appeals to pending claims. It took an average of 1000 days, 858 of which were at the regional office for veterans to have their appeals resolved. The percentage of cases remanded by the Board is lower than the National average, yet Portland has far fewer FTEE to adjudicate claims compared to other offices – making calls for increased productivity rather impractical. It seems rather clear to me that what you need is more staff to handle these cases. When the VA looks at what they are going to do to reduce the appeals backlog, is there any consideration given to differing circumstances, such as the appellate and remanded claims workload, at the different regional offices or does the VA plan to use the same tactics in Portland as they do in New York City and St. Petersburg?

Response: When allocating staffing or other resources and assistance to regional offices, we balance all facets of the workload including disability claims requiring rating decisions, appeals, non-rating claims work, and public contact activities. Based on its workload, the Portland Regional Office was authorized to hire 11 additional employees over the past year. The Portland office also received brokering assistance from other regional offices, sending more than 5,000 cases to other offices for decision. As a result, the pending rating claims inventory was reduced from almost 8,000 to 6,400. The brokering assistance also allowed the Portland Regional Office to focus additional resources on appeals processing.

Several special training sessions were conducted at the Portland Regional Office to enhance the ability of the Veterans' Service Representatives to process claims efficiently. The Portland Regional Office was also authorized additional overtime.

Question 3: What is the VA doing to address the long appeals wait and high workload for staff at the Portland regional office?

Response: The Portland Regional Office is proactive in its approach to processing both notices of disagreement (the first step in the appellate process) and formal appeals. In addition, to the actions highlighted in response to question two above, the following measures have been implemented to reduce processing time:

- Top priority is given to processing the oldest notices of disagreement and appeals.
- Telephone, fax, and e-mail contacts are used to reduce the time required to secure evidence needed to make a decision.

- The Decision Review Officers work closely with Veterans Service Organization representatives to resolve appeals.
- The Regional Office conducts training on the appellate process at County Veterans Service Officer conferences.

Question 4: What percentage of claims adjudicated in Portland were appealed in Fiscal year 2005? What percentage of claims brokered to other offices and appealed as Portland cases were appealed in Fiscal Year 2005?

Response: In FY 2005, the number of appeals filed by Oregon veterans represents 18.5 percent of the total number of decisions made in that year. We do not have data that would allow us to separately identify the rate of appeals on brokered decisions.



February 15, 2006

The Honorable Steve Buyer
 Chairman
 House Committee on Veterans' Affairs
 335 Cannon House Office Building
 Washington, DC 20515-6335

Dear Mr. Chairman:

Paralyzed Veterans of America (PVA) appreciates the opportunity to respond to your Questions for the Record regarding the December 7, 2005 hearing on the Challenges and Opportunities Facing Disability Claims Processing in 2006. We went back to our Service Officers in the field and they have presented us with specific issues that address your questions. Though some of the answers may not fit neatly into either of your questions, they indicate systemic problems and are included for your information. Please see the answers below.

Your first question was: **In your testimony you state that the notification requirements imposed by the Veterans Claims Assistance Act can have an impact on the timeliness of adjudication in some cases and confuse claimants. Please explain further.**

1) One of our Service Officers stated: In our RO there is no such thing as timely adjudication of cases due to the volume of claims handled here. The VCAA requirement forces the VARO to send out a VCAA letter in multiple stages of a claim. The initial letter to the veteran can be intimidating because the veteran may believe he has to satisfy all of the suggested types of evidence in order for his claim to succeed. The problem is compounded when the veteran appeals and receives another VCAA letter with his Statement of the Case. If the veteran then files his Form 9, he could potentially get another VCAA letter. This is frustrating to the veteran because he provided what he could and does not know why VA is asking for it again. He may resubmit evidence as a result which then requires VA to review the evidence. There is even the possibility of another VCAA letter if 1-646 is written and VARO finds information needs to be obtained or issues settled before certification. Then the file goes to BVA and if there is no decision or only a partial decision and the case is remanded, then the AMC will send a VCAA notice to the veteran. There is potential for additional notices to go out until the claim is resolved either to the veteran's advantage or not. While the VCAA law is basically good for the veteran, it would help if VA could get away from multiple notices throughout the life of a claim. Additionally, if the letters could be reedited they would potentially be less intimidating to the veteran.

Chartered by the Congress of the United States

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2) The VA cannot work a claim for 60 days after notifying the vet that they must wait 60 days to make a decision. If the vet notifies the VA that he or she has submitted all evidence available, the VA should not wait and rate the case on the evidence of record. A veteran with a CIB claiming PTSD must provide additional evidence before a C&P exam is scheduled. Verification from CURR to help establish service connection for PTSD can take up to six months.

3) If Law Judges who conducted personal hearings in the field subsequently leave the agency before a decision has been made, it results in the veteran having to reschedule a hearing... a situation that can take up to two years.

4) Even when a veteran advises that all health care is provided by the VA, the veteran is still requested to complete a Release of Information Form 21-4142. Most veterans send it back listing the VA as the provider. The time spent reviewing this form and taking no action adds to delays, time that could have been used to review and work other claims.

5) There are times when a reduction in benefit needs to be effective immediately. These are delayed because of the 60 day notice requirement. For example, a veteran submits a divorce decree that is 70 days past the date it was signed. The 60 day notice causes an additional 2 months of indebtedness.

6) There are a number of issues that were identified regarding the Duty to Assist (DTA) letter. This may be an easy fix to avoid delays as well as veteran confusion.

- a. The "Duty To Assist" (DTA) letters cause problems. An example is Aubrey Youngs. Injured in Afghanistan when she fell from a fork lift, we submitted a complete package yet they still had to send her a DTA letter. VA apologized for having to do it and our Service Officer advised Aubrey to ignore it. The point is that had she not been in the SCI Unit for our Service Officer to explain this, she would have wondered what was going on. It did not delay her claim, it was completed in one day, but the idea that VA had to send her a DTA letter in this case was unnecessary and may have caused delays had a Service Officer not been present.
- b. Raising the issue of increased comp without having the medical evidence in our possession, but telling them when and which VAMC treated the veteran, will generate a DTA letter. The veteran will question the Service Officer saying something like "Didn't you tell them where I was treated?" In some cases, even if you submit the evidence, VA will still tell them what is required to complete the claim, i.e. where were you treated?
- c. Another annoying example is when a filing for service connection of a secondary condition, i.e. veteran is 20% service connection for Type II diabetes and filing is made for secondary renal condition. The DTA letter sent invariably gives the criteria for a new service connected condition that must be met. It will cite the criteria for direct and presumptive service connection. The veteran then calls the Service Officer who will have to explain it.

- d. The DTA letters slow down the claims processing because of the time it takes to generate the letter, send it out and then wait the required 60 days. Even if the veteran signs the attachment saying there is no more evidence to submit, the claim is delayed. By the time it filters through the RO and catches up with the c-folder, the 60 day due process period is usually passed.
- e. One complaint from Service Officers is that the DTA letters make the VSO's look bad. The claimant almost always asks us whether we submitted everything needed. The DTA letters are simply too generic. Though this is a double-edged sword. To make a DTA letter specific to each case might slow the claim down even more as it would take time to review the issues and generate the "DTA specific letter". But this may also speed up the process as it may insure the proper information is getting to VA or that the case is being reviewed to ensure its completeness.
- f. One suggestion would be to send a DTA letter, but do away with the 60 day due process period. If a claim is submitted for an increase on PTSD, submit medical evidence including a statement to the effect that there is no other evidence. The claim is then processed with the information available. The DTA letter could be sent to say "We have received your claim for..." It could go on to say what they have received and the current status of the claim. But a big change would be language including, "If you have additional evidence, please submit it as soon as possible but no later than one year from date of this letter" or words to that affect. By telling the claimant this, VA still meets the DTA requirement, but by eliminating the 60 day due process period, the claim is not delayed.

Your second question was: **Has PVA identified other areas of title 38, United States Code, which may impede VA's ability to render timely decisions? If so, please explain.**

1) Concerning this question we find claims are extended by unnecessary or inadequate C&P exams, rating decisions which misstate the issues, Statements of the Case that also misstate issues or contain inaccuracies. The VA has been changed by the Judicial Review Act of 1988 from a friendly, paternalistic, non-adversarial institution to a creature of law in which Statements of the Case sent out to veterans will quote Court of Appeals for Veterans Claims decisions to justify their findings. A veteran without representation is at a loss to deal with this. Any initiative to restore the Agency of Original Jurisdiction to what it was in the past but retaining the good points of the new system would be favorable. If the VARO continues to operate like a legal juggernaut, veterans will need better access to legal help if they do not have VSO representation.

2) DRO's are required to certify two cases per week which can easily lead to denying two cases. DRO's may be able to schedule an exam or grant a case, but because they are required to certify two cases, this hurts a veteran that may receive a favorable decision. Clearly the purpose of the DRO program is to reduce backlog. But if they are required to certify two cases per week, will they be more likely to deny a claim to "move it along"? This again is a case of quantity decisions instead of quality. There is much more likelihood of a denial and a bad decision with

this sort of management technique. Particularly in a VA environment where the pressure to avoid an incorrect “favorable” claim seems to invite the more preferred incorrect denial of benefits.

3) The VA is requiring a medical opinion now in cases that previously were granted at the discretion of the Rater. An example is a veteran who is service connected for an amputation above the knee. The veteran submits a claim for arthritis of the lumber spine as secondary to the amputation. OPT records confirm arthritis exists. VA now requires a medical opinion as to cause and effect before the grant.

We hope that this information will be of assistance as you continue your efforts to provide veterans the services and health care that they have earned.

Sincerely,

Blake C. Ortner
Associate Legislative Director

February 13, 2006

The Honorable Steve Buyer
Chairman
Committee on Veterans' Affairs
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in reference to your letter dated January 17, 2006, enclosing questions related to the full Committee hearing on December 7, 2005.

Thank you for the opportunity to respond to your insightful and thought provoking questions. They inspired considerable discussion in the Veterans of Foreign Wars. Our responses, as you will no doubt notice, are not as brief as might be expected. We hope that you will not find this burdensome.

At this point, no one can offer an immediate remedy to all VBA's problems, especially within available resources. It is our sincere desire to move the dialogue forward, toward a solution that is in the best interest of America's veterans.

Thank you for the opportunity to participate in this important effort.

Sincerely,

QUENTIN KINDERMAN
Deputy Director
National Legislative Service

Enclosure
w/attachments

QUESTIONS AND ANSWERS

HEARING ON CHALLENGES AND OPPORTUNITIES FACING DISABILITY CLAIMS PROCESSING IN 2006 DECEMBER 7, 2005

1. Question: You indicated in your testimony, “Most veterans and their survivors have to wait longer than a reasonable period of time for a decision on their claims...” What do you believe is a fair and reasonable time frame for adjudicating a new claim?

Answer: This is an interesting question. First, some assumptions: By “new”, we will assume that you mean what VBA refers to as “original.” This is a claim filed by a person who has not filed with VBA before. This requires, generally, that VBA create a file, get the service records, review them to verify service, and in some cases, evidence of the existence of a disability, arrange for a medical exam, attempt to get any medical evidence, advise the claimant of the opportunity to submit any other evidence, giving said claimant 60 days to do so, evaluate (rate) the claimed conditions, including any other chronic conditions found in the record (so called inferred issues) and prepare and release the notification letter complete with a full description of the claimant’s rights of appeal.

VBA measures time in two ways, both begin from the date the claim is received. VBA measures how long claims have been in “pending” status if they have not been decided, and they measure the time elapsed from date of claim to date of decision, or date of the first payment of compensation on “completed” claims. These data are aggregated into averages, usually on a monthly basis. By our calculations, counting all cases that VBA C&P employees must work, not just “rating” cases, the pending workload now exceeds 813,000 cases.

The completed claims data shows interesting trends over time. VA compensation claims have grown more complex in recent years. In most endeavors, complexity has been trumped by technology. Unfortunately, this is not true for VBA, which has yet to implement even version one of a computer system under development since the early 1990’s. In the mid 1970s, an original compensation claim took about 100 days, from claim to payment. In the early 1990’s, about 111 days was typical. Today, a similar claim requires, on average, 171 days. The recently release Budget Request for FY 2007 projects that the average will increase to 185 days during FY 2006. Average numbers, however, are not revealing of the nature of the problem, or more to your question, what is a fair and reasonable processing time. It does, however, suggest the question of how a recent and seriously disabled veteran can support himself or herself, and family, while waiting for VBA to make a decision on their livelihood.

In the late 1990’s, VBA studied the problem and determined that there were, in essence, three categories of claims in the context of timeliness.

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dtd Dec 7, 2005

The first were claims filed as part of military separation, just prior to separation. Today, this is called the Benefits Delivery at Discharge (BDD) process. In theory, this begins 30 days, or more, before discharge. VBA collects all the evidence necessary before separation, does the work off the clock before separation, and then scores the elapsed time only from separation to decision delivery. US/B Cooper's expectation for this process is 30 days, post separation. Certainly this would meet the definition of fair and reasonable. In some situations, where we have the opportunity to observe the process, VBA manages to average 120 days or more. In one station, 4-6 months is typical. We suggest that these delays, caused purely by VBA internal processing problems, are neither fair, nor are they reasonable.

The second category was claims filed after separation, but not much later in life. In these cases, VA must do all of the process "on the clock" and it is reasonable that these claims would take more elapsed time to complete. It is likely that there are certain strategies that VBA can employ to minimize processing time on these cases, which mainly involve simultaneous development of evidence from multiple sources, tight control of deadlines, and close monitoring of cases that exceed normal timeframes. There are also tradeoffs against the pressures of production that are less enlightened, such as top sheeting, ignoring inferred issues, and failing to honor VCAA. The comments below, from an RVSR in a large RO, and reminiscent of the VAIG's Variance report, describes the situation that is far too typical:

If you have ever seen a multi volume claims folder, no matter how much value VA management claims to add to the claims process, an employee can only read, digest and formulate a theory of the case and a theory of entitlement so fast. 100 pages of evidence is a lot of evidence to go through and do it accurately. So unless you greatly increase the FTE or send Every VARO rating specialist to Evelyn Wood speed reading school, that time is a fixed event per case. If the VARO's are under pressure to produce more it is just a plain fact that the quality will drop to the dangerous levels that VA's own Numbers show. Our evidence and the evidence we've heard from the stations is that the VA's own numbers hide the true error rate. Just look, the appeals inventory has ballooned and the current BVA remand rate.

So if you are asking that what is a reasonable period of time for the current poor quality that we're seeing, anything slightly more than the 60 days of procedural due process is too much. With that you must acknowledge if the claim is denied whether rightly or wrongly the claimant should appeal and the veteran/ claimant should have no real expectation a quality decision and the veterans appeal time for the claim should be counted as the over all time to complete the claim. Lets just be honest and include the whole time issue including appeal time into your

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question. That's what the veteran/ claimant see so that's appropriate for us to look at. They don't see days, they see years to final resolution.

Second, it is widely reported that a VBA inventory reduction tactic to " just get the claim done and let the veteran appeal" So that VA can play the off the Percentage of people who just get sick and tired of the process..... not having to do with the merits of the claim. With this, No matter what the VA reports its quality percentage to be, we must look at the issue as really being much worse than reported. Those types of statements have come from to many diverse sources for us trust VA quality numbers.

If you factor in how many times a claim is actually reviewed – re-rated in each lower level of appeal PRIOR to the current 40% or so BVA remand rate I would put the estimation of cases where the initial decision was in excess or 95% correct at about 20%. To clarify further, I guess about 20% of all cases are 95% correct or more at the end of the first rating decision.

With the aforementioned in mind, the trade off is what level of quality are you (congress) going to fund because that is the true question?

✓ *In my value system and from what I know of the system, I believe that a veteran/ claimant should have well in excess of a 90% confidence level of an INITIALLY CORRECT DECISION in under 120 days. Based on how the Numbers are being perverted, VBA would have to increase its staffing by 50% to truly achieve the 90% 120 day standard and not hiding behind the shell game of whether the veteran files multiple appeals over the same issue and hoping for a procedural error or the veteran quitting in disgust.*

The third category was all those claims filed later, with the attendant problems of gathering evidence from multiple sources, generated over long periods of time, like for PTSD. These claims would naturally take longer. However, not all late in life filed claims are necessarily complex. Claims for certain presumptive conditions, for instance Herbicide claims by Vietnam Vets requiring only a diagnosis and verification of Vietnam service require little development. Typical claims would be handled perhaps five-six times before being decided. To determine what is fair and reasonable, one would look to see if VBA, at each decision point, took the appropriate actions, and how long the case, ready for action to be taken, sat in a backlog cue, waiting for a decision maker to open it. Our sense is that this backlog consumes an ever growing and unreasonable proportion of the time a veteran waits for a decision.

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dtd Dec 7, 2005

Unfortunately, VBA has not shared with us what data they collect that would enlighten us on these cueing delays. Perhaps in your oversight capacity, you would receive a better response.

VBA's backlogs have become institutionalized, and they devise ways to work around the delays as necessary. Brokering work to "Tiger Teams" may address workload in the short term, but this and similar strategies simply facilitate living with the problem. Over time, things have gotten worse.

Incidentally, that 1990s study concluded that, assuming the pre-discharge claims were about equal in number to the late filed claims, and there was sufficient processing capacity so that backlog cues were not a factor, the processing time for all compensation claims, averaged together, would be under 60 days.

Today, there is more interest in the VSO community in getting high quality decisions than there is in the "reducing the backlog" effort that so consumes VBA, and appears to drive the VBA field station employees in an unproductive direction. It has been suggested that many veterans would tolerate waiting, if VBA would just "get it right the first time."

Finally, there is declining confidence in VBA's ability to deliver an accurate, high quality decision. This, of course, increases the frequency of appeals. If we consider the appeal as part of the decision process, a concept increasingly popular both with veteran and with the VBA decision maker, then the decision process can be measured in years, the process becomes adversarial, and the consumption of VBA resources is substantially increased.

2. Question: In your testimony you state that VFW thinks an error rate of 15 percent is very high and later state that there is "too little commitment to error free decisions..." Is 100 percent "error free" adjudication a realistic accuracy goal? What does VFW believe an acceptable level of error to be?

Answer: No one would suggest that an organization as large, complex, and disorganized as VBA could be error free. However, VBA has winnowed down the definition of error to improve the reported numbers. No veteran should have to suffer a decision flawed by a deficiency so severe that VBA would count it as an error. A page attached to this document from last year's VA budget explains what VBA considers to be an error.¹ In addition, unless the error is part of the specific action selected for review, it does not count. In spite of these caveats, VBA reviews, looking at a very small sample of cases, discover that about 15% of these decisions are flawed by countable errors.

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To put this in context, consider how these benefits can be pivotal to the life of a veteran, and to his or her family- a Vietnam vet denied service connection for cancer because VBA failed to request the proper service records, denying his widow and kids subsistence and an education; or overlooked hypertension in the service record resulting in denied compensation, and survivor benefits denied as well.

In other venues, expectations are higher. If an automobile is flawed, the public expectation is, at the minimum, that there will be a process to identify the problem; that the cars will be recalled and fixed; and that a process will be put in place to prevent, to the extent possible, a similar problem in the future. VBA, on the other hand, has just enough process to discover that the problems exist, but no mechanism to deal with them.

GAO in the recently released report GAO-06-149, found VBA accuracy data sufficient to distinguish VBA's best office from the worst, but inadequate for other purposes. We quite agree. In fact, it appears that VBA's sampling is so small that the results may mask a much worse quality problem.

It also does not appear that VBA is motivated to be introspective about this problem. The attached report², prepared for VA executives, describes "accuracy" not "errors" and reports an 84.9% accuracy rate, against a 90% goal. This is comfortably within the 10% of goal standard. Had they measured "errors" instead of "accuracy", the figures would have been 14.9% and 10% respectively, and the "error" rate almost 50% over the standard. That, or course, would not look nearly as good inside VA, but would have been, in the view of the veteran, identical in effect.

Perhaps more disturbing is the realization that, by VBA methodology, the error rate could rise to almost 20% and still be a comfortable yellow on the chart. That would mean that one of every five claimants could be significantly disserved, without disturbing whatever internal VBA reward structure is conveyed by this standard.

To provide a straightforward answer to your question, the VFW believes that, using VBA's definition of error, that "error free" should be the standard. We do not believe that errors, as VBA defines them, are acceptable in any case. We believe that it cannot be acceptable that veterans are forced to appeal in order to get an accurate decision. We regard appealing decisions as an inefficient and inappropriate procedure to correct errors, but we will not hesitate to file appeals as necessary to protect our clients if VBA continues to ignore what we consider to be a major problem in their service to veterans.

¹VBA's Explanation.

²National Data Sheet for FY '05

NATION			
Sep 05	Green: Meet or exceed Target	Yellow: Within 10% of Target	Red: Miss Target by 10% +
Measures	VBA Target	VBA Actual	VBA Plan Variation
Compensation & Pension - Rating			
Inventory (EOM)	290,000	346,292	-19.4%
Avg Days Pending (EOM)	100.0	119.6	-19.6%
% Pending > 180 days	15.0%	20.8%	-38.7%
Avg Days to Process (by month)	130.0	168.2	-29.4%
Production (month)	73,246	69,180	-5.6%
Accuracy (12-mo avg thru 7/05)			
Rating	90.0%	84.9%	-5.7%
Authorization	92.0%	90.3%	-1.8%
Fiduciary	85.0%	85.1%	0.1%
Public Contact & Fiduciary			
% Abandoned Call (FYTD)	3.0%	7.9%	-163.6%
Initial Appts Processed >45 Days (FYTD)	8.0%	11.6%	-44.7%
Initial Appts Pending >45 Days (EOM)	12.0%	11.0%	8.4%
Fid-Ben Processed >120 Days (FYTD)	8.0%	10.3%	-29.0%
Fid-Ben Pending >120 Days (EOM)	12.0%	12.0%	0.3%

Measures	VBA Target	VBA Actual	VBA Plan Variation
Appeals			
Appeals Pending at RO (EOM)	100,000	112,439	-12.4%
Remands Pending (EOM)	21,000	23,298	-10.9%
Remand Rate (FYTD)	42.0%	38.5%	8.4%
NOD Days Pending (EOM)	140.0	181.2	-29.4%
Form 9 Days Pending (EOM)	325.0	373.9	-15.0%

Measures
Original - Avg Days to Process (FYTD)
Supp - Avg Days to Process (FYTD)
FATS Ratio (FYTD)
Vasistha
Returb. Rate (12 mo)
Disbursements Avg Days to Process (12 Mo.)

Rating Related Claims



DEPARTMENT OF VETERANS AFFAIRS
Board of Veterans' Appeals
Washington DC 20420

In Reply Refer To: (01)

December 9, 2005

The Honorable Steve Buyer
Chairman, Committee on Veterans' Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman,

I am writing to thank you for the opportunity to testify before the Committee on Veterans' Affairs at the December 7, 2005, hearing. I look forward to continuing to work with you and the members of the Committee in ensuring that we meet the needs of our nation's veterans.

Per your request at the hearing, I have enclosed a copy of Chairman's Memorandum No. 01-05-09 (May 25, 2005), which establishes the Board's internal operating procedures for the solicitation of waivers when additional evidence is received by the Board. If there is any additional information that I can provide, please do not hesitate to ask.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Terry".

James P. Terry

Enclosure



Office of the Chairman
Board of Veterans' Appeals
Washington, D.C. 20420

Date: May 25, 2005

MEMORANDUM
NO. 01-05-09

SUBJ: CONSIDERATION OF ADDITIONAL EVIDENCE BY THE BOARD—
SOLICITATION OF WAIVERS

1. REFERENCES

- a. 38 C.F.R. § 20.1304 (2004) (Rule 1304), as amended by 69 Fed. Reg. 53,807 (Sep. 3, 2004).
- b. 38 C.F.R. § 19.37(b) (2004).

2. PURPOSE

The purpose of this memorandum is to set forth procedures for seeking waivers when additional pertinent evidence has been received from an appellant or a representative, and that evidence has been accepted by the Board of Veterans' Appeals (Board or BVA) under the provisions of 38 C.F.R. § 20.1304, or referred to the Board by the agency of original jurisdiction (AOJ) under 38 C.F.R. § 19.37(b).

3. BACKGROUND

a. Before February 22, 2002, if the Board accepted any pertinent evidence not previously considered by the AOJ, either submitted to the Board by an appellant or a representative, or referred to the Board by the AOJ, the Board was required to refer such evidence to the AOJ for review and preparation of a Supplemental Statement of the Case (SSOC), unless the appellant or representative waived, in writing, initial AOJ consideration of the evidence, or the Board could fully grant the benefit(s) sought on appeal. 38 C.F.R. § 20.1304(c) (2001). Chairman's Memorandum No. 01-01-10 (May 2, 2001) (rescinded) set forth the Board's procedures for soliciting waivers.

b. Effective February 22, 2002, amendments were made to the Board's Appeals Regulations and Rules of Practice that, among other things, allowed the Board to consider additional evidence without having to refer the evidence to the AOJ for initial

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consideration and without having to obtain the appellant's waiver of initial AOJ review. Paragraph (c) of 38 C.F.R. § 20.1304 was removed in its entirety. *See* 67 Fed. Reg. 3,099 (Jan. 23, 2002). Chairman's Memorandum No. 01-01-10 was thereafter rescinded by way of Chairman's Memorandum No. 01-02-03 (March 22, 2002).

c. In *Disabled American Veterans v. Secretary of Veterans Affairs*, 327 F.3d 1339 (Fed. Cir. 2003), the United States Court of Appeals for the Federal Circuit, in relevant part, invalidated that portion of the Board's regulations that allowed the Board to consider additional evidence without having to remand the case to the AOJ for initial consideration and without having to obtain the appellant's waiver. The Court held that this provision was contrary to 38 U.S.C. § 7104(a), which provides that "[a]ll questions" in a matter subject to decision by the Secretary shall be subject to "one review on appeal" to the Secretary, with the final decision on such appeals being made by the Board.

d. Following the issuance of this court decision, the Board, among other things, amended its regulations to reimplement a substantially similar version of the prior 38 C.F.R. § 20.1304(c). *See* 69 Fed. Reg. 53,807 (Sep. 3, 2004). Accordingly, the Board is re-effectuating its procedures for soliciting waivers when pertinent evidence has been accepted without a waiver of initial AOJ consideration under the provisions of 38 C.F.R. §§ 19.37(b) and 20.1304. By soliciting waivers in those cases where an appellant or representative submits evidence without a waiver, the Board may be able to avoid unnecessary remands in those cases where the appellant or representative agrees to submit a waiver of initial review of the evidence by the originating agency.

4. INITIAL PROCESSING OF EVIDENCE RECEIVED BY THE BOARD

a. **Preserving Evidence Filing Date Information.** Any Board unit receiving evidence from a party or representative must preserve filing information so a determination can be made regarding whether the filing was timely under Rule 1304(a). If the evidence was received by mail, attach the envelope to the evidence. *All evidence received, regardless of the source or method of delivery, must be marked or stamped with the date it was received at the Board.*

b. **Associate Mail With Claims Files.** After ensuring that the filing information has been preserved, the Board unit that received the new evidence will promptly associate the new evidence with the claims file. (The usual VACOLS mail tab processing procedures should be followed.)

c. **Case Not Yet Assigned for Decision Preparation.** If the case has not yet been assigned to a Veterans Law Judge (VLJ) or counsel for review, no further action is required with respect to the newly submitted evidence. The evidence will be later reviewed by counsel in accordance with the procedures set forth in ¶ 5.

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d. **Case Assigned for Decision Preparation.** If the case is currently assigned to a VLJ or counsel for review, the evidence will be reviewed by the VLJ or counsel in accordance with the procedures set forth in ¶ 5. If a decision has already been signed by the VLJ, but has not yet been dispatched by Management and Administration (M&A), the case will be returned to the VLJ for review and assessment of the evidence in accordance with ¶ 5 *prior* to the decision being dispatched.

5. LEGAL REVIEW OF EVIDENCE BY BOARD COUNSEL

a. **Initial Review.** Directly upon assignment of a case, counsel (and/or the VLJ, as appropriate) should review the claims file to determine whether, under the provisions of 38 C.F.R. §§ 19.37(b) and 20.1304, additional, pertinent evidence has been received and associated with the record without a waiver of initial AOJ consideration. If no additional or pertinent evidence has been received, no further action is required. As provided by 38 C.F.R. § 20.1304(c), “[e]vidence is *not pertinent* if it does not relate to or have a bearing on the appellate issue or issues.” (Emphasis added). Also, if the benefit or benefits to which the evidence relates may be *fully* allowed on appeal without referral to the AOJ for initial consideration, a Rule 1304(c) waiver solicitation need not be obtained. (This does not mean, of course, that a claimant should draw any negative inference as to the possible outcome of the appeal just because the claim is not immediately granted and a waiver is solicited. There are any number of reasons why the Board may want to wait to decide a matter until after a waiver solicitation has been made, including deciding a multiple-issue case by way of a single decision.)

b. **Determine Timeliness.** Counsel (and/or the VLJ) will determine whether the evidence submission is timely under Rule 1304(a). As provided by that Rule, additional evidence submitted within 90 days following notification of certification and transfer of records to the Board is deemed timely, unless a Board decision is promulgated prior to that date. *See also* 38 C.F.R. § 20.305 (computation of time limit for filing).

(1) **Special Rule for *Bell* Constructive Receipt Records.** As further discussed in ¶ 10 below, where pertinent evidence generated by the Department of Veterans Affairs (VA), or possessed or within the control of any VA office, is received prior to the issuance of the Board’s decision, such evidence will be considered to have been timely received by the Board for purposes of Rules 1304(a) and (b). If the Board does not have a waiver of initial AOJ consideration of the new evidence, a waiver will be solicited in accordance with ¶ 6.

(2) **Special Rule for Evidence Submitted During Hearings.** *See* ¶ 7 below. If a waiver of initial AOJ consideration of the new evidence was not asked

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for and provided during the hearing, a waiver will be solicited in accordance with ¶ 6.

(3) **Special Rule for Evidence Submitted in Response to a Rule 903 Notification of Receipt of an Opinion.** See ¶ 12 below. If a waiver of initial AOJ consideration of the new evidence was not submitted, a waiver will be solicited in accordance with ¶ 6.

c. **Procedure if Request is Timely.** If the request is timely under Rule 1304(a) and the appellant or representative submitted a waiver of AOJ consideration of the evidence, proceed with normal case processing. If the request is timely under Rule 1304(a), but there is no waiver of initial AOJ consideration of the evidence, a waiver needs to be solicited in accordance with ¶ 6. Clearly mark or tab the new evidence and forward the case, with appropriate directions, to the Decision Team's co-located M&A Decision Team Support Unit for purposes of having a letter prepared and dispatched.

d. **Procedure if Request is Not Timely.**

(1) **Request Meets Motion Requirements.** If the request is in writing and is complete enough to serve as a motion, including the "explanation of why ... the submission of additional evidence could not be accomplished in [the] timely manner" that is required by Rule 1304(b), counsel should obtain a ruling from the assigned VLJ on whether there was good cause for the delay in submitting the evidence.

(a) If good cause is found and the appellant or representative submitted a waiver of AOJ consideration of the evidence, proceed with normal case processing.

(b) If good cause is found, but there is no waiver of initial AOJ consideration of the evidence, forward the case to the co-located Decision Team Support Unit for purposes of having a waiver solicitation letter prepared and dispatched in accordance with ¶ 6.

(c) If good cause is not found, the ruling on the motion should indicate that, in accordance with Rule 1304(b)(1)(i), the additional evidence is being referred to the AOJ without action or consideration by the Board.

Whether the Rule 1304(b) motion is being granted or denied, the ruling on the motion should be discussed in the "Introduction" portion of the Board's decision.

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(2) **Request Does Not Meet Motion Requirements.** If untimely evidence is not accompanied by the written explanation required by Rule 1304(b), clearly mark or tab the new evidence and forward the case, with appropriate directions, to the Decision Team's co-located Decision Team Support Unit for purposes of having a modified waiver solicitation letter prepared and dispatched that includes information regarding the need to submit a good cause motion because the evidence was not timely submitted in accordance with Rule 1304(a). *See* ¶ 6(b)(3).

6. PROCESSING WAIVER LETTERS BY CO-LOCATED DECISION TEAM SUPPORT UNITS

a. **Preparation.** When additional evidence is timely submitted under Rule 1304(a), or a motion for good cause for an untimely submission has been granted under Rule 1304(b), but there is no waiver of initial AOJ consideration of the evidence, the co-located Decision Team Support Unit will prepare, upon direction by counsel or VLJs, a waiver solicitation letter.

b. **Contents.** The contents of the letter will include the following:

(1) **Due Process Notice.** The letter will tell the appellant or representative that the Board will have to refer any newly submitted pertinent evidence to the AOJ for initial consideration, review, and preparation of an SSOC, unless this procedural right is waived.

(2) **Notice of Possible Delay in Processing.** While the decision of whether to submit a waiver is one that is solely made by the appellant or the appellant's representative, if any, the letter will tell the appellant or representative that the failure to submit a waiver may significantly delay the issuance of a final Board decision because the Board will be required to remand the case to the AOJ for the preparation and issuance of an SSOC that addresses the newly submitted evidence, unless the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal without such referral. *See* 38 C.F.R. §§ 19.9(a), (b)(3), 19.31, and 20.1304(c).

(3) **Rule 1304(b) Timeliness Issue.** If untimely evidence is not accompanied by the written explanation required by Rule 1304(b), the waiver solicitation letter will include information regarding the need to submit a good cause motion because the evidence was not timely submitted in accordance with Rule 1304(a).

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(a) **Motion Submitted.** If a motion for good cause is subsequently submitted, the co-located Decision Team Support Unit will return the case to the assigned VLJ for purposes of ruling on the timeliness motion.

(b) **Motion Not Submitted.** If the party or representative fails to respond within the time permitted, or if a motion for good cause is not submitted, annotate the copy of the letter filed in the claims file to record the failure to respond or to submit a motion, and then return to the claims file to the assigned counsel and/or VLJ.

(4) **Template Letters.** Template letters are available for the co-located Decision Team Support Unit to use when contacting the appellant or representative to invite the submission of a voluntary waiver or motion for good cause. *A period of 45 days will be provided for response.*

c. **Proper Addressee(s).** The letter must be sent to the appellant (with a "cc" to the representative, if any) or to the representative, depending on who submitted the newly received evidence. In cases where it is unclear who submitted the evidence, the letter must be sent to both the appellant and the representative.

d. **Special Rule for Attachment of Evidence.** In cases where newly received evidence was forwarded to the Board by the AOJ pursuant to 38 C.F.R. § 19.37(b) and was *not* submitted by either the appellant or the representative, a copy of the evidence will be attached to the notice letter. (*Exception: If the appellant is represented by a VSO representative co-located at the Board, a copy of the evidence does not need to be attached to the notice letter since the VSO representative will be receiving the claims file for review along with the letter.*) In cases where it is unclear who submitted the evidence, and a waiver solicitation letter is being sent to both the appellant and the representative, a copy of the evidence also will be attached.

e. **Final Processing and Dispatch.** The co-located Decision Team Support Unit should take the following actions for final processing:

- (1) Ensure that the letter will be mailed to the last known address of the appellant and/or representative, depending on who submitted the additional evidence.
- (2) *If the appellant is represented by a VSO representative co-located at the Board, the letter and file will be directly transmitted to the VSO.* Cf. 38 U.S.C. § 7104(e)(2)(B).
- (3) Date the letter after it has been signed by the co-located Decision Team Support Unit Team Leader. Dispatch and attach to VACOLS. Close mail controls.
- (4) File a copy of the letter and enclosure in the applicable claims file.

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- (5) Establish a 45-day suspense period in VACOLS. *See* VACOLS User Guide.
- (6) When the 45-day time period has passed, or when a response has been received, whichever occurs first, return the case to the assigned counsel or VLJ, annotating the record as appropriate.

7. SPECIAL PROCEDURES FOR EVIDENCE SUBMITTED DURING HEARINGS

a. **Solicitation of Waivers.** When evidence is submitted during the course of a Board hearing, the presiding VLJ should solicit a waiver of initial AOJ consideration of the evidence and annotate the documents to reflect that they were received during the hearing. Any waiver obtained must either be in writing or be formally and clearly entered on the record orally at the time of the hearing. Rule 1304(c). The presiding VLJ should make sure that the appellant and representative, if any, understands the nature of the waiver and agrees to it.

b. **Timeliness of Submissions.** Evidence submitted at a hearing is deemed to be timely submitted under Rule 1304(a) if the request for the hearing itself was timely, even though the hearing may be held following the expiration of the period provided for submitting evidence without the need to show good cause. Similarly, evidence received following the hearing, and during the period of time the presiding VLJ directed the record to be left open to permit an appellant or representative to obtain and submit additional evidence in accordance with 38 C.F.R. § 20.709, will also be deemed timely filed.

8. SPECIAL PROCEDURES FOR CASES ADVANCED ON THE BOARD'S DOCKET

When new evidence is received in a case that has been advanced on the Board's docket, *see* 38 C.F.R. § 20.900(c), an M&A employee will associate the new evidence with the claims file and *hand carry* the file to the appropriate Deputy Vice Chairman (DVC) who supervises the applicable decision team. The DVC will review the case and take whatever steps she or he deems necessary to expedite processing of the case. Such steps may include, but are not limited to, reviewing (either personally or in association with the assigned VLJ(s)) the file to determine whether the benefit or benefits being sought on appeal can be allowed without soliciting a waiver, or dispensing with waiver solicitation if the evidence received is not *pertinent* to any matter currently on appeal. Any other provisions of this memorandum notwithstanding, the DVC, or her or his designee, may use any expedited means available to contact the appellant or representative to determine whether a waiver will be filed, or, if the evidence was not timely submitted, whether a motion for good cause for the delay will be submitted. A waiver submitted by telefacsimile or e-mail may be accepted. (A VA Form 119, Report of Contact, should be completed and added to the file, and VACOLS should be updated.)

9. SPECIAL PROCEDURES FOR COURT REMAND CASES

Notwithstanding any other directions provided above, when additional evidence is submitted without a waiver in a case that is presently before the Board on remand from the U.S. Court of Appeals for Veterans Claims, the preparation and processing of the waiver solicitation letter will be completed by the Litigation Support Unit (01C2) if the claims file is charged to Litigation Support or elsewhere in the Appellate Group when the evidence is received. In all other situations, the co-located Decision Team Support Unit, except when otherwise specified by Litigation Support, will handle the preparation of the waiver solicitation letters.

10. SPECIAL PROCEDURES FOR *BELL* CONSTRUCTIVE RECEIPT RECORDS

Where relevant (or pertinent) documents relating to an appellant's claim are possessed or within the control of VA prior to the issuance of the Board's decision on appeal, such as medical records generated by VA or communications received by it, such documents are "in contemplation of law" deemed to be constructively part of the record of proceedings before the Board. *Bell v. Derwinski*, 2 Vet.App. 611, 613 (1992) (per curiam). In light of this holding in *Bell*, and notwithstanding any other directions provided above, *any pertinent evidence received prior to the issuance of the Board's decision* that was either generated by VA, or possessed or within the control of any VA office, will be considered to have been timely received by the Board for purposes of Rules 1304(a) and (b). If the Board does not have a waiver of initial AOJ consideration of the new evidence, a waiver will be solicited in accordance with ¶ 6.

11. SPECIAL PROCEDURES FOR SIMULTANEOUSLY CONTESTED CLAIMS

As provided by Rule 1304(d), if pertinent evidence which directly affects payment, or potential payment, of the benefit being sought is submitted by any claimant in a simultaneously contested claim, and such evidence is accepted by the Board, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. For matters over which the Board does not have original jurisdiction, a waiver of initial AOJ consideration of pertinent additional evidence received by the Board must be obtained from each claimant in accordance with Rule 1304(c) and the procedures set forth in ¶ 6. The date of mailing of the letter of notification of the new evidence will be presumed to be the same as the date of that letter for purposes of determining whether such comment or evidence in

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rebuttal was timely submitted. No further period will be provided for response to such comment or rebuttal evidence.

12. SPECIAL PROCEDURES FOR EVIDENCE RECEIVED IN RESPONSE TO A RULE 903 NOTIFICATION OF RECEIPT OF AN OPINION

When the Board obtains a legal or medical opinion pursuant to 38 C.F.R. § 20.901, a copy of the opinion is furnished to the appellant, subject to the limitations provided in 38 U.S.C. § 5701(b)(1), and to the appellant's representative, if any. A period of 60 days is allowed for response, which may include the submission of relevant evidence or argument. 38 C.F.R. § 20.903(a), as amended by 69 Fed. Reg. 53,807 (Sep. 3, 2004). Any pertinent evidence received during this 60 day period will be deemed timely submitted under Rules 1304(a), 1304(b)(2), and 1304(c). If the Board does not have a waiver of initial AOJ consideration of the new evidence, a waiver will be solicited in accordance with ¶ 6.

13. RESCISSION

a. Chairman's Memorandum No. 01-02-03, "Rescission of Chairman's Memorandum No. 01-01-10, Consideration of Additional Evidence By Board—Solicitation of Waivers," is hereby rescinded in its entirety.

b. This memorandum is effective until expressly rescinded, modified, or superseded.

Ron Garvin
Acting Chairman

DISTRIBUTION: COE (FOR BVA USE ONLY)

Director, Compensation and Pension Service (21)
Director, Records Management Service (005E3)