

# OVERSIGHT ON THE VETERANS BENEFITS ADMINISTRATION

---

---

## HEARING BEFORE THE SUBCOMMITTEE ON BENEFITS OF THE COMMITTEE ON VETERANS' AFFAIRS HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTH CONGRESS FIRST SESSION

MARCH 25, 1999

---

Printed for the use of the Committee on Veterans' Affairs

**Serial No. 106-8**



---

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1999

---

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-059483-9

## COMMITTEE ON VETERANS' AFFAIRS

BOB STUMP, Arizona, *Chairman*

CHRISTOPHER H. SMITH, New Jersey	LANE EVANS, Illinois
MICHAEL BILIRAKIS, Florida	BOB FILNER, California
FLOYD SPENCE, South Carolina	LUIS V. GUTIERREZ, Illinois
TERRY EVERETT, Alabama	CORRINE BROWN, Florida
STEVE BUYER, Indiana	MICHAEL F. DOYLE, Pennsylvania
JACK QUINN, New York	COLLIN C. PETERSON, Minnesota
CLIFF STEARNS, Florida	JULIA CARSON, Indiana
JERRY MORAN, Kansas	SILVESTRE REYES, Texas
J.D. HAYWORTH, Arizona	VIC SNYDER, Arkansas
HELEN CHENOWETH, Idaho	CIRO D. RODRIGUEZ, Texas
RAY LA HOOD, Illinois	RONNIE SHOWS, Mississippi
JAMES V. HANSEN, Utah	SHELLEY BERKLEY, Nevada
HOWARD P. (BUCK) McKEON, California	BARON HILL, Indiana
JIM GIBBONS, Nevada	TOM UDALL, New Mexico
MICHAEL K. SIMPSON, Idaho	
RICHARD H. BAKER, Louisiana	

CARL D. COMMENATOR, *Chief Counsel and Staff Director*

---

### SUBCOMMITTEE ON BENEFITS

JACK QUINN, New York, *Chairman*

J.D. HAYWORTH, Arizona	BOB FILNER, California
RAY LAHOOD, Illinois	SILVESTRE REYES, Texas
JAMES V. HANSEN, Utah	SHELLEY BERKLEY, Nevada
JIM GIBBONS, Nevada	LANE EVANS, Nevada

# CONTENTS

## OPENING STATEMENTS

	Page
Chairman Quinn .....	1
Prepared statement of Chairman Quinn .....	27
Hon. Jim Gibbons .....	2
Hon. Bob Filner .....	21
Hon. Lane Evans .....	34

## WITNESSES

A'Zera, Veronica, Legislative Director, AMVETS .....	16
Prepared statement of Ms. A'zera .....	59
Bascetta, Cynthia A., Associate Director, VA & Military Health Care, General Accounting Office .....	3
Prepared statement of Ms. Bascetta .....	36
Bradshaw, William L., Deputy Director, National Veterans Service, Veterans of Foreign Wars .....	23
Prepared statement of Mr. Bradshaw .....	68
Russo, Bill, Director, Veterans Benefits Programs, Vietnam Veterans of America .....	24
Prepared statement of Mr. Russo .....	71
Surratt, Rick, Deputy National Legislative Director, Disabled American Veterans .....	17
Prepared statement of Mr. Surratt .....	62
Thomas, Harley, Associate Legislative Director, Paralyzed Veterans of America .....	25
Prepared statement of Mr. Thomas .....	85
Thompson, Joseph, Under Secretary for Benefits, Veterans Benefits Administration, Department of Veterans Affairs; accompanied by Patrick Nappi, Deputy Under Secretary for Operations, Veterans Benefits Administration; Nora Egan, Deputy Under Secretary for Management, Veterans Benefits Administration; Robert Epley, Director of Compensation and Pension Services, Veterans Benefits Administration .....	-4
Prepared statement of Mr. Thompson .....	45
Wilkerson, Philip R., Deputy Director, National Veterans Affairs and Rehabilitation Commission, The American Legion .....	14
Prepared statement of Mr. Wilkerson .....	52

## MATERIAL SUBMITTED FOR THE RECORD

Information on VBA's new recruitment and training program: Opportunity Program and its mission statement .....	9
Statement of The Retired Enlisted Association .....	93



# OVERSIGHT ON THE VETERANS BENEFITS ADMINISTRATION

---

THURSDAY, MARCH 25, 1999

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON BENEFITS,  
COMMITTEE ON VETERANS' AFFAIRS,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10 a.m., in room 340, Cannon House Office Building, Washington, DC, Hon. Jack Quinn (chairman of the subcommittee) presiding.

Present: Representatives Quinn, Hayworth, Gibbons, and Filner.

## OPENING STATEMENT OF CHAIRMAN QUINN

Mr. QUINN. Good morning, and thanks for bearing with us. If you ever tell Bob Stump we got started 7 minutes late, I will not have a chairmanship anymore. We will keep it our secret, please.

We have some members with us this morning who have various other schedule commitments. Jim, I know you have to be over on the floor to chair the House, so we appreciate you coming. J.D. is going to be here. And I just saw Mr. Filner outside and he asked us to begin without him. He is on his way in the next couple of minutes.

I want to officially bring the meeting to order and announce that we will be receiving testimony on the challenges facing the Veterans Benefits Administration, VBA, as we begin the 21st century.

The hearing had originally been scheduled for March 10. But due to that Buffalo weather we had that day, about a foot of snow the day before, we decided to postpone the testimony rather than having people risk coming into work in that bad weather. Five inches of snow in Buffalo, of course, is a dusting. Here in the Nation's Capitol it paralyzes us. So we thought it better to postpone, and I appreciate everybody changing their schedules.

VA's compensation and pension program distributes more than \$17 billion annually to veterans and survivors. As a result of the high percentage of claims more than 180 days old, the 42 percent remand rate from the Board of Veterans' Appeals, the exodus of skilled adjudicators to early retirement, a 36 percent error rate on claims decisions, and numerous other factors, the compensation and pension program sometimes appears to be at a crossroads.

We look forward today to hearing from VA's witness, Under Secretary Joe Thompson, not only on his efforts to keep the system afloat and operating, but also his bridge building toward the new century. We also look forward to our continuing dialogue with the

Department and the veterans' service organizations as we address the needs of veterans and their families.

Under Secretary Thompson, we all welcome you and applaud you for your leadership and the work that you have done, your candor, your innovation, and unwavering commitment to the veterans we all serve. You wanted the job, and you got the job. And please know that the subcommittee will continue to do all we can to help you do the job, and I think we have a great understanding.

We also had to postpone a meeting—a field trip visit that I was going to make over to talk with your staff. We have tried to do that the last couple of years and we just were not able to get that done either.

Finally, I just want to talk about the deadlines set by the subcommittee in preparing for each of our hearings. We will make every effort possible to inform witnesses well in advance of the hearings, providing you with as much time as possible. We ask that all our witnesses try to provide their testimony by the date specified, so that we are able to review that in a timely fashion before we come to committee.

Mr. Filner will have some opening remarks that if he cannot make he will submit for the record, I am sure, but we will give, obviously, him a chance a little bit later on.

And before we begin, I would like to ask Mr. Hayworth if he has any opening remarks.

Congressman?

[The prepared statement of Chairman Quinn appears on p. 27.]

Mr. HAYWORTH. Mr. Chairman, thank you for holding this hearing. And with the sun shining and witnesses ready to go, I look forward to hearing your testimony.

Mr. QUINN. Thanks, J.D.

Mr. Gibbons?

#### OPENING STATEMENT OF HON. JIM GIBBONS

Mr. GIBBONS. Thank you, Mr. Chairman. I appreciate your leadership on this issue. I look forward to the testimony of the witnesses here today. I know the statistics you recited are very important to veterans in the Second Congressional District of Nevada, and I think we are here today to find out what types of accountability and efficiencies we can bring to bear on these statistics that will result in a turnaround of those delays and denials for our veterans' benefits. So I look forward to today's hearing.

Thank you, Mr. Chairman.

Mr. QUINN. Thank you, Mr. Gibbons. I appreciate both of you being here, and your help on the subcommittee behind the scenes. You are both great Members and we appreciate it.

We would like to ask the first panel, then, to come forward. Under Secretary for Benefits, Joe Thompson, is accompanied by Ms. Nora Egan, Mr. Patrick Nappi, and Mr. Bob Epley, and various other helpers who will be with us this morning as they have in the past. You are getting us to the right place, I am sure.

My notes say, Joe, if it is okay with you, that we hear from the General Accounting Office first. So we are going to ask Cynthia to start this morning, if that is okay with you.

You do not have the microphone at your end of the table, but thanks very much. And welcome.

**STATEMENT OF JOSEPH THOMPSON, UNDER SECRETARY FOR BENEFITS, VETERANS BENEFITS ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY PATRICK NAPPI, DEPUTY UNDER SECRETARY FOR OPERATIONS, VETERANS BENEFITS ADMINISTRATION; NORA EGAN, DEPUTY UNDER SECRETARY FOR MANAGEMENT, VETERANS BENEFITS ADMINISTRATION; ROBERT EPLEY, DIRECTOR OF COMPENSATION AND PENSION SERVICES, VETERANS BENEFITS ADMINISTRATION; AND CYNTHIA A. BASCETTA, ASSOCIATE DIRECTOR, VA & MILITARY HEALTH CARE, GENERAL ACCOUNTING OFFICE**

#### **STATEMENT OF CYNTHIA BASCETTA**

Ms. BASCETTA. Thank you. Mr. Chairman and members of the subcommittee, thank you for inviting me to discuss the state of VBA today. As you know, the Congress has sponsored three comprehensive studies reflecting its serious concerns about VBA programs, especially the compensation and pension programs.

Today, I would like to highlight our findings about VBA's progress and areas in which more needs to be done, as well as discuss how greater gains in efficiency and effectiveness could lie in solutions beyond current program boundaries.

First, on the positive side, several steps forward in key areas are very encouraging. VBA is measuring decisional accuracy more realistically and strengthening accountability by setting expectations for regional offices to share responsibility for overall network performance.

They are also developing training strategies for current employees as well as the many new hires who are expected to replace the retiree cohort. And they have worked well with VHA to improve the quality of medical evidence for adjudicating claims. Nevertheless, progress is still lacking in many dimensions.

In our March 1 report on claims processing accuracy, we found that limitations in VBA's ability to pinpoint error-prone cases are likely to perpetuate low accuracy rates. We recommended that VBA collect more specific data to analyze the root causes of errors. For example, VBA needs to understand whether errors are more common for certain types of claims, such as orthopedic or mental impairments.

Without such data, VBA can neither identify why such cases may be more error-prone, nor take corrective action to improve accuracy. Similarly, VBA needs more detailed data on medical evidence deficiencies that are most prevalent in incorrect decisions in order to reduce errors.

We also found that quality reviewers in regional offices do not have sufficient separation of duties or adequate organizational independence to meet government standards for internal controls or program performance audits. These shortcomings call into question the integrity of accuracy data.

VA's inspector general found similar problems with internal control weaknesses that undermined the integrity of timeliness data.

And, of course, both timeliness and accuracy data are key to performance measurement under the Results Act.

VBA has a long way to go in speeding up claims processing. Between 1994 and now, processing time has dropped from seven to about 5 months. This is still far from the 2-month goal set as part of business process reengineering. Taking account of NAPA's concerns, VBA is testing some new approaches such as case management of claims, but it is too early to tell whether this will improve timeliness in the face of workload demands.

And VBA, together with the Congress, also faces difficult decisions in streamlining its infrastructure. For example, both NAPA and the Transition Commission noted that consolidating claims processing at fewer locations could yield greater efficiency and effectiveness.

VBA's own education and insurance programs set precedents for consolidating operations, and VBA itself laid out some of the best reasons for consolidating C&P claims as well, including improving the consistency of decisions for complex cases that require specialized expertise. Even if VBA continues to make good progress, our work and the work of others suggests that diminishing returns may set in quickly under the current program design.

Consider, for example, that more than half of VBA's workload consists of repeat claims, and most of these veterans were rated as 30 percent or less disabled. Notwithstanding the importance of their conditions, lump sum payments for these veterans, especially if they would prefer this option, could improve administrative efficiency beyond what is possible under the current system, as well as free up resources to process claims for more seriously disabled veterans.

This and other options would require legislative support or action. But we believe that the gravity of the situation warrants closer examination of the costs and benefits of selected program changes to achieve the levels of efficiency, effectiveness, and fairness that the veterans and taxpayers deserve.

Mr. Chairman, this concludes my remarks, and I would be happy to answer any questions that you or the other subcommittee members may have.

[The prepared statement of Ms. Bascetta appears on p. 36.]

Mr. QUINN. Thanks very much.

I think if it is okay with everybody, Mr. Thompson, we will have you do your presentation first, and then we'll ask questions.

And let us try to get you a microphone that is working.

#### STATEMENT OF JOSEPH THOMPSON

Mr. THOMPSON. Mr. Chairman, members of the committee, I want to thank you for the opportunity to testify today. I would like to introduce those accompanying me, if I could. Rick Nappi is on the far right. Rick oversees our field programs. Bob Epley, on my immediate right, is the Director of Compensation and Pension Service. Nora Egan is our Deputy Under Secretary for Management. So between the four of us, hopefully, we can answer every question that comes at us.

With your permission, I would like to enter my written statement into the record and just make a brief opening statement.



Mr. QUINN. Without objection, so ordered.

Mr. THOMPSON. Thank you.

VBA is engaged in a period of great change, a change that we believe is unrivaled since the organizing principles which dictate our current structure were put in place in the 1950s and 1960s.

Every fundamental part of what we do is under change—how we are organized both in headquarters and in the field, how we handle work, how our jobs are structured, how our employees are trained, how technology is used to improve performance, and, finally, how data is used both to measure achievements and to predict future workloads.

Today we have over 80 major initiatives underway. It fills a page, a spreadsheet just listing the titles of these initiatives.

Mr. QUINN. Excuse me, Joe. This will be my time, we will not take it from your time. But when you say 80 initiatives, are you referring to new initiatives? Ongoing? Continuing?

Mr. THOMPSON. They are a blend. They are a blend of new and ongoing.

Mr. QUINN. Do any refer to previous GAO reports that made some suggestions on—

Mr. THOMPSON. Yes, absolutely. We refer to GAO, NAPA, the Claims Adjudication Commission, many of the things they have recommended.

Mr. QUINN. Great.

Mr. THOMPSON. In a macro sense, we are moving from an agency, I think, that has been largely internally focused and reactive to events to one that really understands what stakeholders expect from us, particularly veterans and their family members, and is able to deliver it—not only deliver but to anticipate change and build the kind of organization that can adapt when circumstances change.

Now, the backlog of compensation and pension claims remains a problem and a concern for us, as I know it does for this committee, as it does for veterans. However, many of the efforts of recent years to reduce these backlogs and to improve cycle times have, in fact, contributed to a serious deterioration of the quality of the claims decisions being made.

Our focus over the last year has been to improve the quality of the decisionmaking. Many of the efforts in this area—more training, better quality reviews, adding additional reviewers to the claims process, to name just a few—have themselves contributed to the backlogs because they draw from a limited pool of skilled employees.

Now, I do not say this as a way of excusing what to all of us is an unacceptably long process for giving a veteran a decision on his or her claim. Rather, I just want to be clear that our emphasis has been, and will continue to be, on doing what we consider to be our most important job, which is making the right decision. Cycle times will improve when we stop making the front end mistakes that we are making in the current system.

But also influencing the cycle times and, in fact, increasing cycle times is our emphasis over the last year on ensuring the highest integrity for our performance data. As mentioned in the GAO testimony, over the last few years, along with the declines in quality

have also come declines in the accuracy of the information or performance information that we have been reporting.

The management team here is committed to restoring the integrity of this system—and we have taken a number of steps to do that, including entering into a partnership with our own inspector general—and to make sure that we detect and correct our own worst practices that lead to the bad data coming out of the systems.

Mr. Chairman, this has been an exhilarating experience for all of us, but we believe that patience, focus, and persistence will allow us to achieve our vision. We also believe that working in partnership with the Congress and with veterans' service organizations will ensure our ability to deliver benefits and services to veterans in a way which is not only timely and efficient but which affirms our Nation's commitment to them.

Thank you, Mr. Chairman, for this opportunity. We look forward to the questions.

[The prepared statement of Mr. Thompson appears on p. 45.]

Mr. QUINN. Thank you, Joe.

Exhilarating experience is polite. (Laughter.)

But accurate, I think. Polite, but accurate.

I know that Mr. Gibbons has to leave to chair the proceedings on the House floor, so I am going to yield and offer him the first chance for questions of our panel.

Mr. GIBBONS. Mr. Chairman, I appreciate that greatly, and the indulgence of the other members for having to leave on this important occasion.

But, Mr. Thompson, can you briefly describe—I know the GAO report has stated that time between a benefit claims application and decisionmaking has been about 7 months. Well, you have taken some steps to get it down now to somewhere between 5 to 6, maybe 5½ months on average. What steps are you now taking to get it down to the recommended 60-day timeline? And what is your expected time for reaching that goal?

Mr. THOMPSON. We have taken a number of steps in terms of evaluating what we do. But if I could say one thing. In the past, almost our entire focus has been on reducing that cycle time. And as I mention in my testimony, that has actually hurt the quality of the decisions we made.

Our error rate when we began our new review was 36 percent, and we have, in fact, focused most of our efforts to saying, "This is the most important thing we do. We have to make the right call." And making the right call will lead us to doing less rework and fewer disputed claims from veterans.

We have focused our efforts first on trying to create a system of measures that makes us consider not just how fast we are doing it but with the degree of accuracy that we need, what veterans think of the process, and how much it costs us and how our own employees are doing in that. We call that a balanced scorecard.

We have also begun to fundamentally restructure the way we handle claims in regional offices. Typically, that is an assembly line process. We are forming teams of employees who have much broader responsibilities and have direct contact with the veteran and

have the responsibility for keeping veterans apprised of what is going on with their claims.

In the 1970s we were one of the leaders in the government in technology and use of technology. Today we are the guy that cannot shoot straight, and we have to reverse that. We have spent an enormous amount of money, and, frankly, not gotten the results. But we think we have a number of technological innovations that are going to have a significant impact.

And one other piece that was mentioned in the testimony by GAO—the actual laws and regulations that we use are enormously confusing and very difficult to use in a practical sense in a regional office.

Our procedural instructions may require a claims examiner, for example, to look at three, four, or five different sites to make a decision on one piece of information. So we have a project underway to rewrite our own regulations to make them smoother and easier to use.

The timeframe is somewhere beyond 2002, 2003. I do not know that we will ever get to 60 days. I am not sure whether that is a goal that is important to veterans. When we poll them, they tell us closer to 3 months is an acceptable range.

If we keep them apprised of what is going on, if we make a good decision, they are pretty comfortable with something closer to 3 months. And I believe as we go through the process of reevaluating our measures we are going to end up with that number.

Mr. GIBBONS. Mr. Thompson, just one final question, if I may. You alluded to it a little bit. Your claims there percentage today—what is the percentage of error now between the decision—final decision and the returns or the overturns by the Court of Veterans Appeals?

Mr. THOMPSON. Well, we have two key measures. One, we look at our own process and decide we made a mistake, whether the veteran said anything about it or not. Now, when we started this in November 1997, that was about 36 percent.

Mr. GIBBONS. The error rate.

Mr. THOMPSON. The error rate in ratings. Today, that is 29 percent.

Mr. EPLEY. Actually, our accuracy rate is 73 percent, so it is 27 percent.

Mr. THOMPSON. 27 percent. We are making some gains which is what we hope to do. So we are very pleased with that.

The other part is the remand rate. When the Board of Veterans' Appeals looks at the case and returns it to the regional office, that rate had been at a high of 52 percent at one point. And I believe it was in the mid forties last year.

Mr. EPLEY. Yes. Last year, 41 percent for the year. We are now down to 39 percent and moving in the right direction anyway.

Mr. THOMPSON. They are both tracking in the right direction, so we are pleased with that because we think that the essence of what we need to do is to make sure we are making the right decision.

Mr. GIBBONS. Thank you, Mr. Chairman.

Mr. QUINN. Thank you, Mr. Gibbons.

Mr. Hayworth.

Mr. HAYWORTH. Mr. Chairman, I thank you.

And, Mr. Under Secretary, thank you for being here today. The Chairman made mention of your interesting terminology of exhilarating. Perhaps I might use ambitious. And I noted with interest your response to my friend from Nevada's first query.

When you talked about an emphasis on teams and technology, might I suggest, as we have examined your testimony, there is a third T that could probably use more elaboration. And that is training—employee training—given the fact that different people come into different jobs, there is a change in culture and a way of getting things done.

Could you detail for our subcommittee what efforts are being made in terms of training your employees for these changes?

Mr. THOMPSON. Absolutely. Thank you. We traditionally have trained on an ad hoc basis in VBA. Wherever you went to work and when you showed up there, it largely determined the training you received. It was a highly decentralized system. It led to widespread variances not only in the training but in the decisions. You could go to different regional offices and have them make different decisions on the same evidence.

We have begun over the last year to put in a highly focused and highly centralized process for training our regional office staffs. It combines several levels of training. We have a computer-based instructional system that we are putting in place right now. We have rolled the first four modules out into regional offices. They are being used today.

We have a satellite network, which allows us to take the program subject experts and allow them to share their experiences with every regional office. We use internet-based training, which has been developed over the last year.

What am I missing, Bob?

Mr. EPLEY. We are using the Academy.

Mr. THOMPSON. We have a training academy in Baltimore, which, travel expenses allowing, we can bring people in there to train.

This has been one of our major points of interest or initiatives. Our intention over the next several years, if things go right, is to spend \$31 million on training. And our goal by the year 2002, is that every decisionmaker in VA will have, on the day they begin working for us, a structured training program that not only teaches them what they need to know, but will also tell them when they are missing something or have gaps in any areas.

Mr. GIBBONS. Mr. Secretary, I appreciate that brief outline. If you could provide the committee in writing a more detailed plan for this training, because I think you have touched on something in your answer. While we certainly understand there are different conditions in different parts of the country, to have decisions made at variance depending on geographic location, obviously points out the difficulty in standardization of taking care of these claims.

So if you could detail that, have your staff detail that to us in writing, I would appreciate it.

Mr. THOMPSON. We would be delighted to.

[The information follows:]

### **Opportunity Program**

The Opportunity Program is the Veterans Benefits Administration's (VBA) new recruitment and training program for those newly hired employees who will administer VBA's product lines of Compensation and Pension and Vocational Rehabilitation & Counseling. Hiring and retaining the best and brightest individuals for these positions is a critical piece of the Program. Equally important and challenging is the training of these new employees.

To be successful, newly hired employees must not only receive a comprehensive and substantial orientation; but also thorough performance oriented technical training. Successful program graduates will provide benefits and services to veterans and their families in a responsive, timely, and compassionate manner that honors their service to the Nation.

The Opportunity Program begins with a 2-week orientation program delivered by VA's top management. Employee business-line technical training (TPSS) continues with their return to their home office. The Program is scheduled through Calendar Year 2002. All orientation training will be conducted at the Veterans Benefits Academy in Baltimore, Maryland.

#### ***VBA's Opportunity Program Mission Statement:***

*The purpose of VBA's Opportunity Program is to provide employees with a program of training that focuses on not only their technical capability, but also on their awareness of VBA's organizational/cultural mission to serve our Nation's veterans and their families. We will accomplish this by:*

- *Instilling in employees the values of VBA's culture, mission, and vision.*
- *Developing peers who will foster communities of practice aimed at serving veterans and their families that will span their careers.*
- *Introducing and instilling the concepts of teamwork, case management, Reader Focused Writing (RFW) and information technology from the very beginning of a individual's VA career.*
- *Creating a foundation for a program of continuous learning in the work place that will be available to all VBA employees, both new and current.*

The Opportunity Program is coordinated by the Employee Development and Training Staff (20T). Points of contact are George Wolohojian, Audrey Isett, or Sandra Keys at (202) 273-5446.

### **TPSS (Training and Performance Support System)**

TPSS provides technical training for Veterans Service Representatives (VSR's), Rating Veterans Service Representatives (R-VSR's) and Decision Review Officers at VBA regional offices. The TPSS program is designed to improve claims processing performance and prepare employees for new or changed job requirements.

TPSS integrates a variety of delivery technologies:

- Networked, cooperatively structured computer based training
- Electronic job aids
- Case studies
- Case-based tests

Cooperative learning is the most important aspect of TPSS. It fosters a higher level of reasoning, long-term retention and a positive attitude toward the subject matter.

The initial TPSS program was released in May 1998 and focused on certifying a case to the Board of Veterans Appeals. The next three TPSS programs were released in January 1999 on the following topics: how to rate an original claim for; 1) Service connected compensation; 2) Non service connected pension and; 3) Dependency and Indemnity Compensation). We plan to release two new programs concerning routine future examinations and hospitalization/convalescence benefits. Future programs being developed include due process, ancillary benefits, accrued benefits, advanced rating issues (this will include the more complex issues/claims for more experienced R-VSR's) and reopened service connected compensation, non service connected pension and Dependency and Indemnity Compensation.

#### **Benefits:**

- TPSS will provide standardized yet flexible training. It is standardized in that the rating trainees will undergo the same training in Phoenix as they will in St. Louis regardless of the instructor or the time of day. It is flexible in that the TPSS modules do not have to be administered in any set time-frame. The training can be mixed with on-line production.
- Consistency in training should result in more consistent rating decisions nationwide
- Well trained R-VSR's will produce better quality decisions
- Well trained R-VSR's should be able to decide cases quicker, reducing the backlog and processing time
- Individuals will be fully trained in a much shorter period of time (the training period for a new R-VSR is anticipated to be six to eight months)
- Training via TPSS provides a cost benefit in that the instructors are not taken off-line but can continue to produce work and in that the training time is reduced so the trainee can become productive much sooner. The result is that more cases are worked timely and to a higher degree of accuracy.

Mr. HAYWORTH. I thank you, sir. Mr. Secretary, we have the testimony, of course, of the General Accounting Office. The GAO recommends that you examine consolidating more adjudicative functions, but the DAV and others apparently have strongly opposed this recommendation.

So my question to you, in closing, is what course do you plan to steer between the opposing views that seem to be presented here?

Mr. THOMPSON. We are going to steer very carefully through this. (Laughter.)

Actually, what we are doing with—technology, I think, will moot the point of where you are located in order to do the job. One of the pieces of technology we are looking at is imaging.

Now, today, not only are we structured in a way that forces us to be in certain locations, because you physically have to have your hands on the paper, on the veterans' claims folder, but all of our partners in the service organizations who want to represent veterans also need to be in that same location and have their hands on that folder.

As we move to imaging, and as material and information and data becomes available, if you have a phone jack and a modem available, then the location of where you do work is less and less important. Our emphasis has been to build flexibility into the system because, I will say frankly, what we should look like in 4 or 5 years I do not know. I really do not know how we should be structured.

But I will say that if we build the proper technology and a proper base, if we, as we plan to do, put decisionmakers at every major discharge center in the United States to work with service members before they are out of service, and we decide we want to hit all of the population centers in the United States, we may actually move in the opposite direction of, instead of consolidation, further decentralization but still have the central control over what we are doing.

So I believe that we want to build flexibility in the system and make the decision as the technology becomes available.

Mr. HAYWORTH. Thank you, Mr. Secretary. I see the red light is on. I think it is a worthy goal, whether from the snows of Buffalo to the sun and sand of the desert floor in Arizona. We are very happy to see this type of attempted standardization.

And, again, I thank the chair.

Mr. QUINN. Thank you, J.D., and thanks for your question.

I want to follow up, though, on Mr. Hayworth's question. George Basher is the New York State Commissioner of Veterans' Affairs. He happens to be out of Buffalo and his office is near mine back home, my district office. So we have a chance to chat a lot.

He has been talking to me about the possibility of having vets file their claims electronically. And imaging, as you pointed out to J.D.'s question, is the thing of the future. In your testimony you mentioned technology. GAO mentions technology.

And then you say that, you know, sometimes after we review the claim and we get it back to the regional office, and you need to have your hands on it, and everything else to that effect. If we can get to that point—let me phrase it in a question.

What are we doing to help you get to that technology? Now, we have talked about the budget a little bit and where it is going to be plussed up a little bit in the right spots for people to help do this. But if we were able to take advantage of this electronic age, not only would it speed things up but it may also reduce some of the human error that takes place when you just have so many people's hands on the same report. I mean, that is just going to happen. No matter what we think or what we try to do, it is just—the training we give to people—when you have got that many people involved, the numbers are stacked against you.

So the question I guess, Joe, is, what are we doing? What could we do better in terms of, is it adequate enough to get you to a point where we could move. It does not matter to me today whether it is central or decentral. But, I mean, to get you to a place where you can do that better.

Mr. THOMPSON. Well, actually, we have a proposal in the budget this year, \$10 million, to look at imaging for compensation and pension.

Mr. QUINN. Is it funded?

Mr. THOMPSON. It is in the President's budget.

Mr. QUINN. It is.

Mr. THOMPSON. Yes, it is.

Mr. QUINN. And when you say "to look at imaging"—

Mr. THOMPSON. Well—

Mr. QUINN (continuing). Pilot program?

Mr. THOMPSON. Well, if I could back up just a moment.

Mr. QUINN. Sure, I am sorry.

Mr. THOMPSON. About a year ago we entered into a unique partnership with a commercial nonprofit organization in Washington called Highway One.

Mr. QUINN. That is brave of you to say with GAO sitting next to you, too, Joe. (Laughter.)

Mr. THOMPSON. This is a consortium of high tech companies, and we went to them and asked them as a public service if they would help us develop some technology in VBA. We did not have any money to pay for it. And luckily for us, they did volunteer.

And yet IBM, Microsoft, Sysco Systems, Eastman Kodak, Radian, and Computer Sciences Corporation worked together, and went in our local regional office, the Washington regional office on Vermont Avenue up from our headquarters, and they took a unit there and in about 5 months put them in an imaged environment. And they are on that today now.

That is our prototype, and it has proven to us that we know enough to realize that this has enormous potential.

Mr. QUINN. So it has been positive?

Mr. THOMPSON. It has been absolutely positive. It really fundamentally changes all of the ground rules because we are literally tethered to the paper today. So much of what we do has to do with the fact that you have got to have your hands on the paper. That has shown us that not only is this technology available, but it can work in our compensation and pension business.

So with that, we got the \$10 million into the budget this year to begin to export it. Right now, we are at the point of trying to define what our requirements are to go beyond this small prototype-type



operation. We may—we probably will take some significant deviations from what was put in place in the regional office, but we were enormously encouraged by what is there.

We think with a little bit of effort on our part, and a little bit of budget support, we will be able to make this happen.

Mr. QUINN. So, then, what does \$10 million get you—get us?

Mr. THOMPSON. Well, right now—

Mr. QUINN. By our shoestrings volunteering last year to this year. We are moving in the right direction with the \$10 million. It is funded. How far along do we go?

Mr. THOMPSON. It will allow us to export it. We are not sure to what degree. We are probably going to try to do it in one of our service delivery networks and say that we will try to image this entire network. We have nine networks. So this will tell us, "This is what the future can look like," and we will work out some of the kinks.

Now, there will be more costs for the first one than there will be for any of the subsequent ones—

Mr. QUINN. Well, and I am not trying to—

Mr. THOMPSON (continuing). Because of development issues.

Mr. QUINN. Thank you. I am not trying to put you on the spot with the \$10 million. I know it will be spent wisely. As early as you can in the process, then, could you get information to us on what amount you might need next year?

Mr. THOMPSON. Okay.

Mr. QUINN. I mean, this is a walk before you run process, as I understand it.

Mr. THOMPSON. Exactly.

Mr. QUINN. So we are up now—so for our benefit, to help you as best we can, try to let us know what you are looking at. Is it going to be, you know, \$20 million, or, you know, 100? I do not know what those number—

Mr. THOMPSON. I like that last number.

Mr. QUINN. Yes, I know you do. (Laughter.)

Not everybody does.

But let me ask GAO if—during this discussion here, we do not want to ignore you. Is there anything you want to add in your report that you have seen either with—from Joe's answers or some of the questions that the Members have asked this morning that could be helpful to us? Cindy?

Ms. BASCETTA. Well, on the last issue with regard to a paperless process, while I certainly agree that that is a terrific organizing tool and ought to speed things up, I would just like to caution people to remember that the decisions are only as good as the substance behind them, whether they are on paper or whether they are computerized.

And we would like to make sure that these tools are clearly supported, but that they are not thought of as a panacea that can achieve results instead of some of the data driven analysis that needs to be done to find out how to make these decisions more accurately.

Mr. QUINN. Very good point. Thank you.

And let me—I will also add that, you know, along with—and I am not computer literate like my kids are and my staff, of course,

but if the computer goes down then we have got a whole lot of veterans really mad at you, Joe. I mean, we are——

(Laughter.)

We say it joking around, but as soon as we go to that system, almost along the same lines here—that sometimes cannot replace decisions that need to be made and back up and all the rest of this.

Mr. THOMPSON. We are, in fact, at that point today.

Mr. QUINN. Okay.

Mr. THOMPSON. I mean, if our computer system goes down, we are, in essence—even the one we have in place—we are out of business.

Mr. QUINN. Mr. Filner, any questions?

We are going to ask—thank you all. I appreciate your testimony again today and your answers to our questions.

Mr. QUINN. We divided our next witnesses into two panels because we are not in the large room today. So we ask the second panel to come forward, please. Thank you.

Mr. Thompson, just as we are finishing up here, I am reminded that Mr. Filner does have a couple of questions, and in his absence he will submit them to me. Could you write us back, please? Thank you.

And the same thing with GAO, in case we have some questions for them. Thank you.

Okay. Our second panel—we have representatives from the DAV, AMVETS, and The American Legion, and I would like to thank you all for being here this morning. If it is okay with all of you, Mr. Wilkerson, I will start at your end, and remind everyone that, of course, we have your full testimony—the committee has—and your summary of about 5 minutes or so would be greatly appreciated.

**STATEMENTS OF PHILIP R. WILKERSON, DEPUTY DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION; VERONICA A'ZERA, LEGISLATIVE DIRECTOR, AMVETS; AND RICK SURRETT, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS**

**STATEMENT OF PHILIP WILKERSON**

Mr. WILKERSON. Good morning, Mr. Chairman and members of the subcommittee. The American Legion appreciates the opportunity to share its views with you concerning the current operations of the Veterans Benefits Administration.

Each year, VBA pays billions in statutory benefits. If the programs of benefits and services are to achieve the purposes that Congress intended, they must be managed in an efficient, cost-effective manner, and claims adjudicated correctly and in a timely manner.

VBA is certainly undergoing a period of major transition, and it is important that the veterans' affairs committees and other stakeholders closely monitor their plans and progress. We, therefore, wish to commend you, Mr. Chairman, for scheduling this very timely hearing.

Over the past 10 years, there has been a steady increase in VBA's overall workload due to new statutory entitlements and ben-

efit enhancements. Equally significant has been the fact that judicial review standards have made the claims adjudication process much more complex and time-consuming.

However, the training for adjudication personnel has not kept pace with the changing legal environment. In addition, long-promised processing efficiencies have never been able to make up for the repeated cutbacks in staffing. As cases continue to churn through the system for months and sometimes years, it is little wonder that VBA's own surveys have shown strong customer dissatisfaction with a lack of timely, quality service.

In response to consistent criticism from veterans, the VSOs, Congress, and others, VBA has focused most of its efforts on trying to improve the physical processes by which claims are adjudicated. Speed and production are the main priorities.

Less attention is being given to identifying and correcting the core problems of poor quality decisionmaking, despite the sustained high rates of appeals and remands.

Mr. Chairman, however, within the last 4 years VA officials have become increasingly open and frank about the seriousness of VBA's problems and their commitment to improving the quality and timeliness of service to veterans. Internal as well as external factors have contributed to the evolution of VBA's current strategic and business plans.

The challenge is now to go from what has traditionally been a process-oriented system to one which is results-oriented, where quality service is the guiding principle.

What is important, from our perspective, is that things have begun to move in the right direction. VBA has invested a lot of time and effort in developing its strategic plans and objectives, the mechanisms to measure progress and report on outcomes, such as the balanced score card initiative.

There are now rising expectations that service will soon begin to improve, and VBA must now begin to deliver on its promises. During this difficult period of transition, we believe strong oversight, as well as budgetary support, over the next several years will be critical to the ultimate success or failure of VBA's plans.

Underlying the key themes of improved customer service and quality decisionmaking is the need to make workers and managers accountable for the quality of work performed. Toward this end, the statistical technical accuracy review program, STAR, is aimed at improving VBA's quality assurance.

Current reported error rates are at unacceptable levels. This has been confirmed by The American Legion's own field visit to a number of regional offices. And I have included some information in our formal testimony.

For reasons which are still not clear, VBA continues to rely on a work measurement system which does not and which cannot provide accurate, reliable data on how long it takes to process a claim correctly, nor what resources are actually needed for this task. The current system is prone to abuse and mismanagement and must be replaced at the soonest possible date.

We have included in our testimony some of the more disturbing findings from the 1997 survey of VBA employees, which shows a serious disconnect between what is VBA's stated policy and what

is happening at the regional office level. We believe VBA should update this survey in the very near future to assess how much or how little the employees' perception and attitudes have changed since then. This type of information will be important to future changes.

Mr. Chairman, The American Legion is supportive of the concept of enhanced training for veterans service officers as part of VBA's training, responsibility, involvement, and preparation of claims initiative, called TRIP. We are hopeful it will evolve into a program which meets the needs of both VBA and veterans service officers.

We are also very supportive of the VA/DOD pre-discharge physical exam program, which is already providing improved access and direct service to thousands of veterans. As it expands in the future, we believe this will have a definite and favorable impact on VBA's workload.

Mr. Chairman, that concludes our testimony.

[The prepared statement of Mr. Wilkerson appears on p. 52.]

Mr. QUINN. Thank you, Phil. Thanks very much.

I think we will hear from all of the panel, and then do our questions at one time.

Ms. A'zera.

#### STATEMENT OF VERONICA A'ZERA

Ms. A'ZERA. Thank you, Mr. Chairman. We appreciate the opportunity to provide testimony to you today on VBA. In essence, Mr. Chairman, the VBA is currently an organization in transition, and I wonder how many times you are going to hear that today.

We believe that the initiatives that are implementing, if funded appropriately, will restore the effectiveness of, and the confidence in, VBA. Congress, and, more importantly, America's veterans, expect and deserve no less.

The leadership, managerial expertise, and commitment Under Secretary Joseph Thompson and his principal staff members are providing is essential to the agency's long-term success. We continue to support his efforts.

Current trends, however, are troubling. And one trend that was echoed today by GAO's report—VBA's inability to process veterans' claims in both a timely and accurate manner. Poor quality leads to a repetitious work cycle in which claims returned as a result of errors and/or insufficient information have to be reprocessed prior to a final determination. It has become a downward spiral.

To avoid insurmountable backlogs, VBA staff has been forced to emphasize speed and quantity in claims processing instead of quality.

At a time when reductions have occurred within the military, creating an expanded demand for VA services, and the addition of programs such as compensation for Persian Gulf veterans suffering from undiagnosed illnesses, the challenges confronting VBA have become almost insurmountable.

Add to these challenges the fact that during the last 6 years the VBA workforce has diminished by 19 percent and you define a system destined to fail. Today, VBA's workload has increased by 21 percent. We are unrealistically expecting fewer professional staff to do more.

Adequate funding is the key to correcting these problems. Not only must we increase VBA staff levels; we need to invest in training and improve information technology to improve veteran access.

We, therefore, recommend increase FTE and C&P by 400, include \$5 million in the GOE appropriation for development of programs to train C&MP personnel and redesignate their work functions and responsibilities, appropriate \$14 million to cover the cost of establishing VA pre-discharge claims processing services at military separation sites.

And I can tell you that I have personally visited the site at Great Lakes in Chicago, where this is currently being done, and it is a wonderful plan. The only thing that I would add to that is that we do not want to forget about the veterans who have been waiting for years. It is wonderful that we are helping them as they getting out, but I do not want to forget about the ones who have been waiting.

As you know, AMVETS has partnered, once again, with the Disabled American Veterans, Paralyzed Veterans of America, and Veterans of Foreign Wars to produce the independent budget. In an effort to save time, I am not going to mention all of the recommendations out of the independent budget, but I do want to mention one in particular which is the Montgomery G.I. Bill, which I know there are a lot of bills right now that would improve that.

AMVETS has a resolution calling for the elimination of the \$1,200 contribution requirement by service men and women and authorizing the universal transfer of unused benefits to the spouse and/or dependent child/children of the veteran, with the transferability at the sole discretion of the veteran beneficiary.

We recognize there are many improvements that need to be made the current G.I. Bill, and we look forward to working with this committee on this issue. We are also a part of a task force formed by several veterans' service organizations to examine the changes which need to be made.

In conclusion, VBA is definitely facing some major—and I will use Secretary Thompson's term—exhilarating challenges, but they are not insurmountable. With sufficient funding, it is AMVETS' opinion that an increase in FTE, some legislative initiatives, and the continued solid leadership of Under Secretary Thompson and his deputies, these problems will be successfully addressed.

We appreciate all of the efforts of this committee that has been made in the past, and we look forward to working with you in the future. Thank you.

[The prepared statement of Ms. A'zera appears on p. 59.]

Mr. QUINN. Thank you. We appreciate your input to help us make some decisions.

Mr. Surratt.

#### STATEMENT OF RICK SURRETT

Mr. SURRETT. Good morning, Mr. Chairman. I am Rick Surratt with the Disabled American Veterans. The Veterans Benefits Administration is a large geographically dispersed organization with responsibility for delivering diverse benefits and services, such as compensation, pensions, vocational rehabilitation, educational assistance, home loans, and life insurance.

An effective delivery system is essential if these programs are to fulfill their intended purposes. Erroneous eligibility decisions and undue delay in benefit awards defeat the beneficial purposes of any assistance program. VBA does a good job, generally. But one of the notable exceptions is in the processing of compensation and pension claims.

Unfortunately, that is where veterans' needs are most urgent and immediate, but where mistakes are common and delay is the rule. VBA recognizes and admits the many serious problems and has a comprehensive plan to correct them. Instead of reporting an error rate of three percent or lower, as it did for years, VA is now reporting error rates of up to 36 percent. But as startling as that is, it is a positive sign because it exposes the major problem and demonstrates more accurate measurement and more honest reporting.

Because the underlying problems are not susceptible to a quick fix, VA's plan phases in reforms to address the deficiencies. All elements of the business process reengineering plan are geared toward prompt, accurate, courteous, and efficient delivery of benefits. Better trained, more highly skilled teams, will work directly with claimants and be accountable for the quality of the total product from initiation of the claim to its disposition.

The plan's goals will not be realized in the near term because of the necessity to train new decisionmakers, test and certify the proficiency of existing decisionmakers, and incrementally implement the new methods. In fact, we are now seeing some increase in case backlogs and deterioration in claims processing timeliness.

Better quality measures have already been developed, but a substantial improvement in quality may only come with full implementation of new training and accountability mechanisms.

We believe, however, that VBA could do more to improve quality now and ensure attainment of future goals by acting to change the culture of indifference and arbitrariness that is partly responsible for claims decisions that do not conform to the law.

Despite the new philosophy of VA leadership, the VA's decisionmakers show little sign of changing from the old ways. We do not believe VA has adequately communicated to the decisionmakers the urgency of the situation and the absolute necessity to change. They seem oblivious to VBA's new vision and the necessity to strive for technical accuracy. The same attitudes and arbitrariness that were characteristic of the old VA remain today.

We believe VA would be better equipped to deal with this recalcitrance if C&P service had line authority over field adjudicators. Program management and control would be more direct and allow easier enforcement of accountability. Enactment of Congressman Evans' bill, H.R. 1214, would also add an important quality assurance function.

Congress can help VA overcome its serious deficiencies by ensuring that VBA has the resources to implement necessary reforms.

Finally, we note that VA's task has been made much more difficult by a line of court rulings that complicate the decisional process. In addition to being counterproductive for VA, and unfair to claimants, we believe this line of court decisions is clearly based on an incorrect interpretation of law.

Throughout VA's history, it has had the duty to assist veterans in meeting their burden of proof, which is well-grounded claim. The Court of Veterans Appeals turned this principle upside down, however. The court held that a veteran must prove that the claim is well-grounded before VA has any duty to assist.

That not only defeats the purpose of the duty to assist; it adds confusion because it is difficult for VA and veterans to understand what the veteran must prove without assistance as opposed to what the veteran is entitled to assistance in proving. In any event, the court's decisions are contrary to the way these provisions applied in VA practice since the 1920s, and contrary to congressional intent that they continue to apply that same way.

Because the case against the court's interpretation of the law is so compelling, we believe we have a duty to appeal all of VA's decisions that apply it, and we recently instructed our field offices across the country to do just that. Unfortunately, that will probably add to VA's already heavy workload.

Congress could remedy this situation by promptly enacting legislation to override the court's interpretation and restore the long-standing meaning of these provisions. The DAV urges you to do so.

Mr. Chairman, that concludes my statement. I will be happy to answer any questions.

[The prepared statement of Mr. Surratt appears on p. 62.]

Mr. QUINN. Thank you all very much.

And now that all three of you have completed testimony, Bob and I both have a couple of questions, I am sure, before the next panel comes up.

All of you say things, and you are right about transition. Everybody is saying the same thing. A few of us headed in the right direction, beginning to turn the corner a little bit, but some of the time delays are still not acceptable.

Let me start with the DAV from this end, Rick, because you just finished up. If you could—if we could say one single thing that VBA could do and get it done that would help the most—

Mr. SURRETT. Would help the most?

Mr. QUINN. Yes. And I do not want to put you on the spot here, but imagine we could do that and it did not have to do necessarily with extra FTEs or the technology we talked about with Joe Thompson before he left, and it is mentioned in all of your testimony here today. If we could get one thing done this year as we are building year to year to improve on this problem, in your opinion—or a couple of things—what would they be?

Mr. SURRETT. Well, obviously, everyone recognizes that quality is a problem, but quality does require a lot of other things. The one thing VA could do with the resources it has is what I mentioned in my statement. I think that VA could send a much clearer message to its decisionmakers, could have an attitude adjustment, if you will, and do some things to create some awareness in the front-line adjudicator that they have to change the old ways. I, frankly, do not think they have done that.

Mr. QUINN. And might I add to your statement that that does not cost anything, does it?

Mr. SURRETT. Well, it probably—not anything additional.

Mr. QUINN. Right.

Mr. SURRETT. I would not see any additional cost.

Mr. QUINN. Thank you.

I am going to ask the same question of all three of you. I guess that sort of boils down your testimony, but I am trying to get a sense here to match up your testimony with Mr. Thompson and GAO.

Ms. A'ZERA. Okay. Are we—

Mr. QUINN. Would you care to add to that?

Ms. A'ZERA. Are we assuming two things, then, that they get their FTE—

Mr. QUINN. Yes.

Ms. A'ZERA (continuing). And adequate funding?

Mr. QUINN. Yes.

Ms. A'ZERA. Okay. In that case, then, I would agree with the training aspect of it.

Mr. QUINN. Okay.

Ms. A'ZERA. The one thing that I have been getting—I am also on the Women Veterans Advisory Committee for the VA, and the one thing that I get questioned about all the time is we get complaints back when the decisions come back. For example, we had a sexual trauma case, and she put in for a PTSD compensation.

And it came back that she—although they agree that she—they had all of the documents saying that she had been raped in the military, and all of this other stuff had happened, they said she could not get PTSD because she was not—she did not serve in Vietnam in the combat arena. That should not happen, and that just recently happened, and I have turned it in to VA. When we get those things, we turn them into them and let them know.

But I think that, you know, that shows what we have been saying, that it is great that they have the new employees coming in and everything else, or the transitioning ones, but we have got to train them and get them out of that old mind set.

Mr. QUINN. Sure. And Mr. Thompson was asked that question about training earlier this morning—

Ms. A'ZERA. Right.

Mr. QUINN (continuing). And you heard his response. I am sure you were in the room.

Phil?

Mr. WILKERSON. Well, we would certainly agree with the comments that have been made as to the absolute necessity for continued and improved training of current staff as well as new hires. Certainly, they will be having an influx of new individuals as well as a loss of experienced people.

Mr. QUINN. Right.

Mr. WILKERSON. Going along with the idea of training is the necessity is quality assurance. You must have some way to measure and gauge the effectiveness of your training program on the quality of the work that is actually being produced. Otherwise, I think you will have wasted everybody's time and a lot of resources that we cannot afford these days.

While there are a number of initiatives that are focused in on ensuring accountability of individuals as well as managers for the work, these have to be coupled with some sort of incentives, if you



will, for better quality work, as well as disincentives for poor quality work.

Mr. QUINN. Thank you. Thanks very much. Mr. Filner.

#### OPENING STATEMENT OF HON. BOB FILNER

Mr. FILNER. Thank you, Mr. Chairman. I apologize to the panel and to the Chair for being late this morning. I was involved in the House debate on the budget resolution, which you all have an intense interest in, I know, and the rule for that resolution.

I will read your testimony, but it strikes me—and I know you all understand this—that the kind of changes that you want to see, the kind of efficiencies, the kind of concern and care in it comes back to resources. As you pointed out, the assumption is that you are going to be fully funded. And if you do not have the resources, if you do not have the positions, if you do not have the training, no matter what we say here, it is not going to happen.

Theoretically, by the rules of the House, if some of the legislation that you mentioned was not in our submission to the Budget Committee, which it was not, we cannot do it this year. As you know, the House rules can be bent and things can happen regardless of that rule. But as we have been progressing this year, it is a moot point to discuss all of these proposals, because the budget is not adequate to deal with them. You all know that.

The resolution that is in the House, that will be voted on at the end of the day, actually reduces the VA budget over the next 5 years and 10 years. It does not slow the rate of growth. It does not give less of an increase. It reduces by absolute dollars the amount of money for veterans over the next decade by \$3 billion.

The first year it increases the budget by \$900 million, and then every year after, it is on a downward swing. And there is an inadequate base to start with.

So I must say, Mr. Chairman, anybody who votes for the rule—and most of the veterans' organizations have recommended a vote against it—are voting for a resolution that puts the veterans' budget on a downward path. I think that is disgraceful. I think it is unconscionable. As you know, you all participated, at least two-thirds of you, in the Independent Budget, which was a great effort.

I think it was an incredibly good job, and virtually every organization in America that speaks for veterans endorsed it. And they asked for a \$3.2 billion increase over what the President asked for and over the baseline.

As you know those of us who favored that Independent Budget were not even allowed to bring it up at the Veterans' Committee. The full Veterans' Committee did increase the budget by \$1.9 billion, to its credit. But then the Budget Committee lowered that to \$.9 billion the first year, and then the decreases I have mentioned—

Mr. QUINN. Excuse me, Bob. Would the gentleman yield?

Mr. FILNER. Sure.

Mr. QUINN. You, of course, can point this out to me anytime. Do you have any questions for the panel?

Mr. FILNER. I just want to finish—let me finish, if I might, because their testimony is affected by what is going on.

The President's budget was terrible, but what is in the House is worse. You all have to get at the grass roots because those votes can be changed. The battle is never over at any one time. The budget resolution is just the first stage in an ongoing situation.

So your folks have got to get to work with us because this is unconscionable. When the bodies are allowed to vote—the Senate had a vote yesterday on a \$2 billion increase—99-0 yesterday in the Senate—we will win.

That is why they do not want us to have a vote on this; they know we will win. They know you will win. They know our veterans win, so they are trying to prevent a vote. I think it is terrible. I think you all have to make some noise about that wherever you can.

Whatever we talk about, whatever programs you are asking for, whatever positions you want, are not going to happen with this budget. I just do not see it. Do you agree with that or not? I would like to hear your response. It is pretty pessimistic, but it can be changed. If the Senate voted one thing, and we vote another, there is a conference on that. So it may go up a little bit.

Ms. A'zera, do you want to say anything?

Mr. Surratt. I wish you guys would start giving us enough money. It makes us all very contentious when we do not—

Mr. Filner. I am sorry?

Mr. Surratt. I said I wish the Congress would start giving us enough money because it makes us all very contentious when we do not get enough. But we hope the members on both sides will be with us in the future if we have to—we will probably, as we have in the last, have to fight next year's budget battle all anew, and it will probably be just as intense as this year's or even more so. But we appreciate everything you can do for us this year, of course.

Ms. A'zera. I would just like to say I understand what you are saying about the grass-roots effort. And as you know, this is our spring NEC this week, and so we do have our members traveling around and visiting. I have spent the last couple of days traveling around and talking and explaining our position with the IB, and, you know, where we think the money should go and why.

So we are working on the grass roots and we will continue to do that.

Mr. Wilkerson. I would just like to thank you, Mr. Filner, for your remarks in support of the real need for Congress to recognize their obligation and responsibility to veterans. However, politics frequently gets in the way, and we will certainly do all that we can to communicate those concerns to our membership and ensure that they contact their congressional delegation, so that this does not happen and we can work towards an adequate funding level for veterans.

Mr. Filner. It is sad that the partisanship seems to overwhelm because it hurts veterans. If we could be bipartisan in support of our veterans, so much the better. And I certainly want to work toward that. But if the reality is that you cannot even get a vote on your motions, you have got to point that out.

Thank you, Mr. Chairman.

Mr. Quinn. Thank you very much. We appreciate your time this morning, not only your testimony but your answers.

I would ask the third panel to come forward, please, the Paralyzed Veterans of America, Vietnam Veterans of America, and Veterans of Foreign Wars.

Gentlemen, welcome. Appreciate you being with us this morning, and I appreciate your patience as we began here today.

Mr. Bradshaw, if it is okay with you, we will start from your end of the table and work our way across. We have received your testimony, obviously. We ask that your summary be limited to about 5 minutes or so, and then we will wait until everybody has finished their presentation, and then if Bob and I have some questions, we will get to you then. Okay?

**STATEMENTS OF HARLEY THOMAS, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; BILL RUSSO, DIRECTOR, VETERANS BENEFITS PROGRAMS, VIETNAM VETERANS OF AMERICA; AND WILLIAM L. BRADSHAW, DEPUTY DIRECTOR, NATIONAL VETERANS SERVICE, VETERANS OF FOREIGN WARS**

**STATEMENT OF WILLIAM BRADSHAW**

Mr. BRADSHAW. Thank you, Mr. Chairman. The VFW believes that the most critical problem with the Veterans Benefits Administration today is the lack of people.

Last June 10th, in testimony before this same committee, we took the opportunity to describe three very important initiatives within the VBA that we felt, if successful, would make a tremendous impact toward resolving the current decisionmaking quality and timeliness problems in the adjudication and rating of veterans' claims.

These three are the post-decision review process, particularly the decision review officers—we call the DRO—the pre-discharge claims development, examinations and rating program, and the out-basing of adjudication and rating personnel in about 60 percent of the VA medical centers.

In our written testimony today we articulate in greater detail the critical importance of these programs. This is not just our opinion. For instance, the decision review officer is really the response to the suggestions made by the Veterans Claims Adjudication Commission in their 1997 report to expand the widely successful hearing loss program.

Further, our VFW Department of Service has 12 DRO test sites. Locations have universally praised the program as a means to expeditiously resolve contested claims, thereby drastically reducing the amount of appeals on VA rating decisions while providing better decisions.

These three programs are in jeopardy because of one reason: the VBA just does not have enough people to ensure at least a reasonable chance of success of these initiatives. The 36 percent error rate identified earlier in the January 1998 systematic technical accuracy review, the STAR report, just alone supports this supposition of ours. Simply stated, the VBA does not have enough people to do the job anymore.

We were very encouraged with our stated intentions last June, Mr. Chairman, to increase the VBA's FTE by 175. Regrettably, the

Congress eventually went along with the administration's recommendation for a further overall 125 FTE reduction in VBA from the 1998 level as part of the fiscal year 1999 budget.

This unfortunate swing of 300 FTE is now putting the VBA on the edge of the cliff toward a disastrous unfolding of the system. Today, we are again encouraged because of Congressman Evans' recent announcement to propose legislations for a quality assurance division in the VBA. But we also must remember that it is one thing to investigate quality problems. It is quite another to execute a corrective measure, plan the response to any findings of quality deficiencies.

Hopefully, as mentioned in Congressman Evans' announcement, the enhanceability to focus on training will be a benefit for the creation of this new division with VBA.

However, that is still not enough. Indeed, what is immediately required is an infusion of additional FTE beyond that to replace normal attrition. The fiscal year 1999 veterans' independent budget and policy provided justification for an increase of 500 FTE in the compensation and pension service while maintaining FTE at the 1997 level in VBA's other components.

And the IB for fiscal year 2000, again, did likewise with a slight modification to 400.

Mr. Chairman, Congress must now immediately act and provide the necessary appropriated funding to reverse this unhealthy personnel situation in the VBA. If we hope to have any further success towards the BPR goals of improved claims, timeliness, improved rating decisions, quality, and lower VBA remand rate.

Mr. Chairman, this concludes my statement, and I would be glad to answer any questions.

[The prepared statement of Mr. Bradshaw appears on p. 68.]

Mr. QUINN. Thanks very much. Mr. Russo.

#### STATEMENT OF BILL RUSSO

Mr. RUSSO. Mr. Chairman, members of the committee, good morning. Vietnam Veterans of America is very encouraged by the efforts of Under Secretary Joe Thompson over the last year. The initiatives he has introduced and begun are already showing very positive results that are going to speed the timeliness of claims and improve the accuracy.

In particular, we approve of the pre-discharge examinations and claims filing; the TRIP initiative, which will allow the veterans' organizations to file claims electronically, which was mentioned earlier this morning. The Decision Review Officer Program is basically an arbitration-mediation type program.

And at the 12 test stations where that was run last year, the number of veterans who were dissatisfied with their VA decisions and appealed up to the Board of Veterans' Appeals that number went down by 62 percent. So you can see the overall healthy effect that would have on the Board, on the court, and on the whole claims system.

Probably the most important effort by Under Secretary Thompson has been the balanced score card. Now VA measures its performance not just in terms of timeliness but also in terms of accuracy and several other measures. And that is important. And

speaking of accuracy, Vietnam Veterans of America strongly supports the legislation introduced last week by Congressman Evans, H.R. 1214, which will set up a quality assurance branch within the Veterans Benefits Administration.

I do not think the bill or our support for it should in any way be construed as a lack of confidence in Under Secretary Thompson. It is not that at all. We would simply agree with the conclusion of the General Accounting Office that VBA should have the same objective means of measuring quality that other government agencies have.

One thing about that bill that was very well-drafted was that it gives VBA the authority to set up this quality assurance either within each service line—compensation, education—should I continue or—

Mr. QUINN. I was just going to suggest that—that means a series of votes. So once Mr. Filner and I leave, it is likely we are going to be gone for a while, Mr. Russo. Could I ask you to be interrupted here just to give Mr. Thomas a chance to get a few minutes at least on the record, so that we can hear that before we leave?

Mr. RUSSO. Yes, absolutely. I did just want to, in one sentence, say we encourage the committee to also look at our written testimony regarding Hepatitis-C claims, and also regarding the rights of veterans to hire an attorney to represent them at the VA regional office, if they so choose. That is a very important issue.

Mr. QUINN. And you have spoken to us about that before. And for both of you who mentioned Mr. Evans' bill, H.R. 1214, we just took a look at it just now, and it looks favorable to me, too. I think you are right.

Mr. RUSSO. Good.

Mr. QUINN. Thank you very much for letting me interrupt you. [The prepared statement of Mr. Russo appears on p. 71.]

Mr. QUINN. Mr. Thomas, can we give you—ask you to take a couple, three, or four minutes here before we have to trot over?

#### STATEMENT OF HARLEY THOMAS

Mr. THOMAS. Thanks, Mr. Chairman. I will try to skip through this real quick. We also are very pleased at Mr. Evans' introduction of H.R. 1214, and we back it highly. We think without question VBA needs quality assurance and reviews in the adjudication of veterans' claims for compensation, pension, education, rehab, and loan guarantee.

One of the things that PVA has been adamant about for the past 2 years is BVA's participation in defense of its decisions on appeal. And we were very pleased to find out in a March 12, 1999, letter from DVA, "Although BVA denies any appropriate past procedures, effective immediately the General Counsel's staff will no longer consult Board staff with regard to proposed settlements of individual court cases." And in our opinion, this is a most appropriate decision.

And with that, I will just go ahead and close.

[The prepared statement of Mr. Thomas appears on p. 85.]

Mr. QUINN. Thank you. I appreciate that.

Rather than—I do not have an immediate question for either of—any of the three of you. But I know Mr. Thomas—that Mr. Thomp-

son's staff, some are still here. I would be interested in whether or not he has had a chance to respond to H.R. 1214.

And I guess what I will do is rather than put you on the spot by asking you to do that now, or come to the microphone, I would be interested and ask you, Ms. Egan, if you could ask Joe to drop me a note with his opinions of H.R. 1214.

Ms. EGAN. We would be happy to do that.

Mr. QUINN. And, of course, whenever he does that, copy all of the members of the subcommittee, please. We hear some widespread support here this morning. Before we go too far forward, I would like to hear what he has to say.

Ms. EGAN. I would be happy to do that, sir, but I also can tell you that while it does have the executive branch requirements for review, they are aware of the bill. We appreciate the committee's intent in doing it, and their concern, and I think you will find that there will be support for it.

Mr. QUINN. Very good. Thank you. If he could get something to us in the next—we are going to go to recess now, of course, in the next couple of weeks. But if he could get something over to us all by the time we return, that would be great. Okay?

I am going to—Bob, I do not know if you want to do some general questions right now. We have got about 3 or 4 minutes is all. Okay.

Thank you all for being here. We are not going to get to questions for this panel. That does not mean we do not love you. (Laughter.)

But it also means we have got a series of votes we have got to get to. I am going to say that we are closed and finish it up here today. Thank you all.

[Whereupon, at 11:19 a.m., the subcommittee was adjourned.]

# APPENDIX

---

HONORABLE JACK QUINN  
REMARKS  
OVERSIGHT HEARING ON THE VETERANS BENEFITS ADMINISTRATION  
MARCH 25, 1999

GOOD MORNING. THE SUBCOMMITTEE WILL COME TO ORDER. TODAY WE WILL RECEIVE TESTIMONY ON THE CHALLENGES FACING THE VETERANS BENEFITS ADMINISTRATION AS WE EMBARK ON THE 21<sup>ST</sup> CENTURY.

THIS HEARING HAD ORIGINALLY BEEN SCHEDULED FOR MARCH 10. DUE TO THE SNOW, HOWEVER, I CHOSE TO POSTPONE YOUR TESTIMONY RATHER THAN HAVING ANYONE RISK HIS OR HER SAFETY TO GET HERE. FIVE INCHES OF SNOW IN BUFFALO IS A DUSTING. IN WASHINGTON, I'VE FOUND IT WREAKS HAVOC! I APPRECIATE ALL OF YOU REWORKING YOUR SCHEDULES TO BE WITH US TODAY.

THE VA'S COMPENSATION AND PENSION PROGRAM DISTRIBUTES MORE THAN \$17 BILLION ANNUALLY TO VETERANS AND SURVIVORS. AS A RESULT OF THE HIGH PERCENTAGE OF CLAIMS MORE THAN 180 DAYS OLD, THE 42 PERCENT REMAND RATE FROM THE BOARD OF VETERANS' APPEALS, THE EXODUS OF SKILLED ADJUDICATORS TO EARLY RETIREMENT, A 36 PERCENT ERROR RATE ON CLAIMS DECISIONS, THE FAILURE OF VETSNET, AND NUMEROUS OTHER FACTORS, VA'S COMPENSATION AND PENSION PROGRAM APPEARS TO BE AT A MAJOR CROSSROADS. I LOOK FORWARD TO HEARING FROM VA'S WITNESS, UNDER SECRETARY JOSEPH THOMPSON, NOT ONLY ON HIS EFFORTS TO KEEP THE SYSTEM FROM COLLAPSING, BUT ALSO ON HIS

**BRIDGE BUILDING FOR THE NEW CENTURY. I ALSO LOOK FORWARD TO A CONTINUING DIALOGUE WITH THE DEPARTMENT AND THE VETERANS' SERVICE ORGANIZATIONS AS WE ADDRESS THE NEEDS OF VETERANS AND THEIR FAMILIES.**

**UNDER SECRETARY THOMPSON, I WELCOME YOU AND I APPLAUD YOU FOR YOUR LEADERSHIP, CANDOR, INNOVATION, AND UNWAVERING COMMITMENT TO THE VETERANS WE ALL SERVE. YOU WANTED THE JOB...YOU GOT THE JOB...AND PLEASE KNOW THIS SUBCOMMITTEE WILL CONTINUE DO ALL IT CAN TO HELP YOU AND YOUR TEAM DO THE JOB. IN ITS RECENT VIEWS AND ESTIMATES TO THE BUDGET COMMITTEE, THE COMMITTEE ADDED \$5 MILLION FOR VBA FOR QUALITY ASSURANCE AND TRAINING AND \$200 MILLION FOR AN IMPROVED MONTGOMERY GI BILL.**

**FINALLY, I WANT TO TALK ABOUT THE DEADLINES SET BY THE SUBCOMMITTEE IN PREPARING FOR EACH OF OUR HEARINGS. I WILL MAKE EVERY EFFORT POSSIBLE TO INFORM WITNESSES WELL IN ADVANCE OF HEARINGS, PROVIDING YOU PLENTY OF TIME TO PREPARE YOUR TESTIMONY. I APPEAL TO EACH WITNESS TO PROVIDE THEIR TESTIMONY BY THE DATE SPECIFIED IN THE INVITATION LETTER OR THEIR TESTIMONY WILL HAVE TO BE SUBMITTED FOR THE RECORD ONLY. EACH WITNESS IS VALUABLE TO THIS COMMITTEE, AND I APPEAL TO YOU FOR YOUR HELP AND COOPERATION.**

**I WILL NOW RECOGNIZE THE RANKING MEMBER, BOB FILNER, FOR ANY REMARKS HE MAY HAVE.**



**I'D LIKE TO ASK OUR FIRST PANEL TO PLEASE COME TO THE TABLE. JOE THOMPSON, UNDER SECRETARY FOR BENEFITS, IS ACCOMPANIED BY MS. NORA EGAN, MR. PATRICK NAPPI, AND MR. BOB EPLEY. WE ALSO WELCOME CYNTHIA BASCETTA (BA SET AH) OF THE GENERAL ACCOUNTING OFFICE. CINDY IS ACCOMPANIED BY IRENE CHU. IT'S GOOD TO SEE EACH OF YOU. JOE, PLEASE PROCEED WHEN YOU'RE READY.**

**IF IT'S ALL RIGHT WITH YOU, JOE, WE WILL HEAR FROM THE GENERAL ACCOUNTING OFFICE BEFORE WE BEGIN QUESTIONS. MS. BASCETTA?**

**THANK YOU. I HAVE JUST A FEW QUESTIONS. BOB, I'LL TURN IT OVER TO YOU.**

**THANK YOU. JOE, I WANT TO BE CLEAR IN MY COMMITMENT TO WORKING WITH YOU AND YOUR STAFF IN ADDRESSING THESE IMPORTANT ISSUES. IF THERE'S ANYTHING YOU NEED FROM MR. FILNER OR ME, I HOPE YOU WILL CALL ON US.**

**OUR SECOND PANEL IS COMPOSED OF REPRESENTATIVES OF SEVERAL VETERANS SERVICE ORGANIZATIONS. MR. PHILIP WILKERSON OF THE AMERICAN LEGION, MS. VERONICA A'ZERA FROM AMVETS, MR. RICK SURRETT FROM THE DISABLED AMERICAN VETERANS, AND MR. LARRY RHEA OF THE NON COMMISSIONED OFFICERS ASSOCIATION. IT'S GOOD TO SEE YOU ALL AGAIN. YOU MAY BEGIN IN THE ORDER YOU SEE FIT.**

**THANK YOU.**

**OUR FINAL PANEL ALSO REPRESENTS THE VETERANS SERVICE ORGANIZATIONS. MR. HARLEY THOMAS IS HERE TODAY ON BEHALF OF THE PARALYZED VETERANS OF AMERICA, MR. BILL RUSSO OF THE VIETNAM VETERANS OF AMERICA, AND MR. JOHN MCNEILL OF VETERANS OF FOREIGN WARS. GENTLEMEN, YOU MAY PROCEED.**

**THANK YOU.**

**THANKS TO ALL OUR PANELS FOR SHARING YOUR VIEWS WITH US TODAY.**

**IF THERE IS NOTHING FURTHER, THE HEARING IS ADJOURNED.**

OPENING STATEMENT OF HON. BOB FILNER  
SUBCOMMITTEE ON BENEFITS  
OVERSIGHT OF THE VETERANS BENEFITS  
ADMINISTRATION

March 25, 1999

Thank you, Mr. Chairman. I am pleased that we are reviewing the state of the Veterans' Benefits Administration today. I believe that Mr. Thompson has described the job of reforming the Veterans' Benefits Administration as trying to alter the course of a large battleship. Today we will have testimony from some who will, as I do, commend you for your leadership on that ship. Nonetheless, I believe that your leadership can not be effective unless you have adequate trained staff to implement your programs.

We will hear testimony that your ship lacks the crew necessary to complete the voyage of its Journey to Excellence. According to the information provided by VA in response to our budget questions, it appears that the Office of Management and Budget approved \$25 million less than you requested for funding of general operating expenses, including expenses for employees to process benefit claims. It is my understanding that VBA

could use 400 new employees, rather than the 164 recommended in the Administration's budget, in order to provide for reducing the backlog in processing claims, improving the quality of claims adjudication and training a workforce to replace those who will soon be retiring.

Testimony from our veterans service representatives suggest that you may have some crew members on the lower decks who still have not understood the seriousness of your message. Some crew members may be impeding your progress by failing to properly assist veterans in the development of their claims. For example, of the 109 cases remanded by the Board of Veterans Appeals to the San Diego Regional Office in fiscal year 1998, over 40% indicated that the regional office had failed to develop information from VA records. At the very least, veterans have the right to expect that the regional office will obtain records in the possession of the VA. An adequate complement of competent well-trained employees is essential if your journey is to be successful.

I appreciate the work of the General Accounting Office in identifying how various initiatives are working to improve the processing of claims as well as needed

improvements. I support H.R. 1214, the Veterans' Claims Adjudication Improvement Act of 1999 and hope that it will be given speedy consideration by this Congress.

I commend the members of the veterans service organizations who will be testifying today, and thank them for their input. In order to successfully undertake the changes needed to improve the quality of service to veterans, all have a part to play. I encourage the VSO's to keep their membership informed and active in the legislative process.

Thank you, Mr. Chairman.

**OPENING STATEMENT OF THE**  
**HONORABLE LANE EVANS**  
**SUBCOMMITTEE ON BENEFITS**  
**OVERSIGHT OF THE VETERANS BENEFITS**  
**ADMINISTRATION**

**March 25, 1999**

I would like to thank the Chairman of the Subcommittee, Mr. Quinn, and the Ranking Member, Mr. Filner, for holding this timely hearing on the state of the Veterans' Benefits Administration. For years, the processing of veterans' claims by the VA has been too slow and too inaccurate.

The lack of a formal quality review program within VBA has contributed to significant problems in the areas of Vocational Rehabilitation and Counseling as well as Compensation and Pension programs. To assure that quality assurance activities are at the forefront of the Veterans'

Benefits Administration agenda, I have introduced H.R. 1214, which mandates an independent quality assurance program in VBA to review claims processing accuracy. My bill requires that independent quality assurance performance audits are mandated for all Veterans' Benefits programs. I believe that an adequately staffed quality review division within VBA is essential if we are to provide our Nation's veterans with the benefits they have so justly earned.

I hope that all members of this subcommittee, as well as members of the full committee, will support this bill.

Thank you, Mr. Chairman. I look forward to this morning's testimony.

United States General Accounting Office

---

**GAO**

Testimony

Before the Subcommittee on Benefits, Committee on  
Veterans' Affairs, House of Representatives

---

For Release on Delivery  
Expected at 10:00 a.m.  
Thursday, March 25, 1999

---

**VETERANS BENEFITS  
ADMINISTRATION**

**Progress Encouraging, but  
Challenges Still Remain**

Statement of Cynthia A. Bascetta, Associate Director  
Veterans' Affairs and Military Health Care Issues  
Health, Education, and Human Services Division





Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss long-standing challenges facing the Department of Veterans Affairs (VA) in administering programs that provide financial and other benefits to veterans, their dependents, and survivors. These benefits programs, which are administered by VA's Veterans Benefits Administration (VBA), include disability compensation benefits, disability pension benefits, education assistance, life insurance, housing loan guaranty, and vocational rehabilitation and counseling services. Among these programs, the disability compensation and pension programs are the largest, accounting for about 90 percent of VBA's cash outlays in fiscal year 1998 (about \$20 billion out of about \$23 billion) and requiring about half of VBA's staff-years to administer.

The disability programs have been the subject of concern and attention within VA and by the Congress and veterans' service organizations for many years. The concerns have included outmoded processes, long waits for disability decisions, and decisional quality—all of which affect the quality of service provided to veterans and the effective use of taxpayer dollars. As a result, the Congress has sponsored three studies that focused heavily, if not solely, on the disability programs. These studies were conducted by the

- Veterans' Claims Adjudication Commission,
- National Academy of Public Administration, and
- Congressional Commission on Servicemembers and Veterans Transition Assistance.

Also, in recent years we have issued a number of reports on some aspects of VBA's operations, including a report issued earlier this month, at the request of Representative Evans, on the accuracy of VBA's adjudication of disability claims.<sup>1</sup> As a result of such studies and the requirements of the Government Performance and Results Act of 1993 (the Results Act),<sup>2</sup> VBA itself has established a framework for addressing issues raised by the various study groups and has been exploring ways to reengineer its business processes.

Drawing on the studies sponsored by the Congress as well as our own work, today I will highlight

- recent progress VBA has made,
- areas in which progress is lacking, and
- changes in program design that could hold potential for greater gains.

#### BACKGROUND

VA's compensation program pays monthly benefits to veterans with service-connected disabilities (injuries or diseases incurred or aggravated while on active military duty). Veterans with service-connected disabilities are entitled to compensation benefits even if they are working and regardless of the amount they earn. In contrast, the pension program pays monthly benefits to wartime veterans who have low incomes and are permanently and totally disabled for reasons not connected to their service. In compensation cases, the payment varies according to the degree of disability; in pension cases, the amount varies according to financial need.

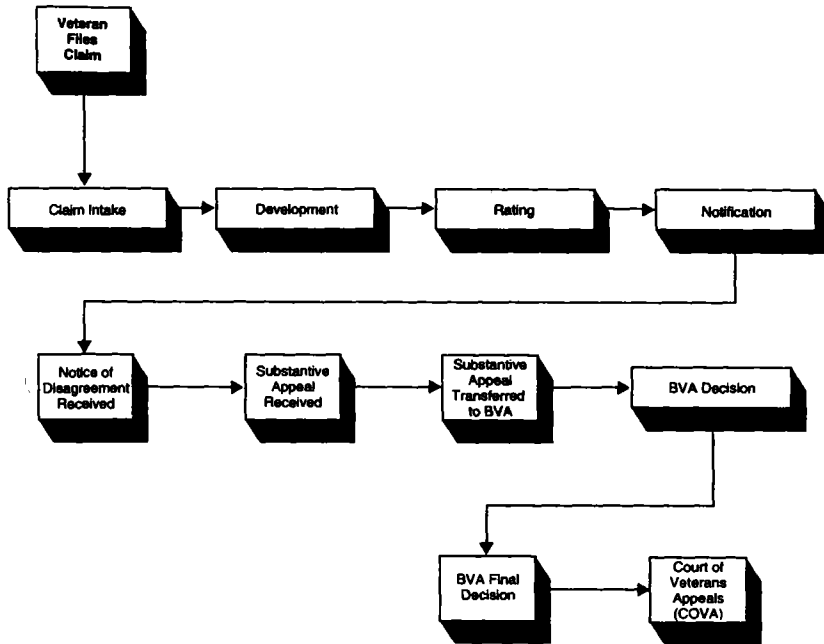
The disability claims adjudication process begins when the veteran submits a claim to one of VBA's 58 regional offices where counselors are available to answer questions and assist in completing forms (see fig. 1). VBA also maintains a nationwide toll-free telephone number to answer questions concerning application forms, and veterans' service organizations' representatives are often colocated in regional offices to help claimants prepare applications and to act as the claimants' representatives. The majority of claims are

<sup>1</sup>Veterans Benefit Claims: Further Improvements Needed in Claims-Processing Accuracy (GAO/HEHS-99-35, Mar. 1, 1999).

<sup>2</sup>The Results Act requires agencies to clearly define their missions, set goals, measure performance, and report accomplishments.

submitted through the mail to the 58 regional offices, which develop evidence and adjudicate veterans' claims.

**Figure 1: The Disability Claims Adjudication Process**



Note: Cases can be concluded at any point after notification.

Source: National Academy of Public Administration, Management of Compensation and Pension Benefits Claim Processes for Veterans (Washington, D.C.: Aug. 1997).

The regional office develops each claim by obtaining records from the military services and information from the veterans, such as medical records and information on income and dependents. In order to determine a veteran's degree of disability, regional offices often find that they need additional medical evidence and request that the Veterans Health Administration (VHA) conduct a physical or mental examination of the veteran. On the basis of such evidence, the regional office determines whether the veteran's disability is service-connected and, using VBA's Schedule for Rating Disabilities, rates (or evaluates) the degree of severity of the disability. The degree of disability is expressed in 10-percent increments up to 100-percent disability. For veterans with multiple impairments, the regional office must rate each impairment separately and then combine the ratings into a composite rating. A veteran can also receive a "zero-percent" rating for a condition that is service-connected but not severe enough to qualify for benefits. If a veteran's condition later worsens, the veteran may reapply for a higher disability rating.

After the regional office notifies the veteran of its decision, the veteran, if dissatisfied, may ask for a hearing before a regional hearing officer. The veteran may also file a notice of disagreement with the regional office and then file an appeal asking for a review of the decision by the Board of Veterans' Appeals, which makes VA's final decisions on appeals on

behalf of the Secretary. If the veteran disagrees with the Board's decision, he or she may appeal to the Court of Veterans Appeals, which was established in 1989 and is independent of VA. Additionally, both veterans and VA may appeal decisions of the Court of Veterans Appeals to the Court of Appeals for the Federal Circuit.

VBA considers a disability claim to have been accurately processed if basic eligibility has been determined correctly, the case file contains all required medical and nonmedical documentary evidence, the regional office's decision on whether the disability is service-connected and the disability rating given to each medical impairment are correct, the payment amount is correct, and the regional office has properly notified the veteran of the outcome of his or her claim.

#### RECENT PROGRESS IN MAJOR AREAS IS ENCOURAGING

VBA has taken steps to begin addressing several important issues, including

- measurement of decision accuracy,
- accountability for performance,
- training for decisionmakers,
- reliability of data systems, and
- coordination with VHA on medical examination adequacy.

#### Measurement of Accuracy

As we reported on March 1, 1999, VBA recently implemented a new accuracy review system that represents an important step forward in measuring the accuracy of the regional offices' adjudication of disability claims and in providing data to identify error-prone cases and correct the causes of errors.<sup>3</sup> Compared with the previous accuracy measurement system, the new system focuses more on cases likely to contain claims-processing errors, uses a more stringent method for computing accuracy rates, provides more data on performance, collects more data on errors, and stores more review results in a centralized database for review and analysis.

#### Accountability for Performance

In May 1998, VBA issued its Roadmap to Excellence, in which VBA established a baseline for its current operational environment and described a process for evolving into an agency that is customer-focused, team-driven, cost-effective, and responsive to the needs of its stakeholders.<sup>4</sup> In Roadmap to Excellence, VBA stated that it lacked adequate employee accountability. As part of an effort to improve service and accountability, VBA has grouped its 58 regional offices into nine service delivery networks. These networks do not have their own centralized offices or staff. Instead, the regional offices in each network are expected to closely collaborate with one another, provide mutual support, share resources, operate according to team-based principles, and share collective responsibility and accountability for the networks' overall performance of all work assigned to the regional offices.

To improve the accountability of these networks and all other VBA organizational units, VBA implemented, at the start of fiscal year 1999, a performance evaluation system called the "balanced scorecard." This system scores performance on the basis of five factors: claims-adjudication accuracy, timeliness, unit cost, customer satisfaction, and employee satisfaction and development. VBA believes this new approach will drive organizational change; provide feedback to employees on measures they can influence; and link performance appraisal and reward systems to performance measures, thereby providing incentives to managers to work as teams in meeting performance measures.

In March 1998, in testimony before this Subcommittee on VBA's implementation of the

<sup>3</sup>GAO/HEHS-99-35, Mar. 1, 1999.

<sup>4</sup>VA, VBA, Roadmap to Excellence—Planning the Journey (Washington, D.C.: VA, May 1998).

Results Act, we stated that VBA was developing goals and measures for its programs.<sup>6</sup> Since that time, VBA has made progress in setting goals and performance measures for the disability programs, and its success in meeting these performance measures will be assessed as part of the balanced scorecard process. For example, VBA had set a goal of achieving an accuracy rate of 75 percent in the adjudication of disability claims during fiscal year 1999 and a goal of increasing the accuracy rate to 93 percent by fiscal year 2004. However, in VA's fiscal year 2000 budget submission, VBA increased its accuracy goal to 96 percent but did not specify a time frame for reaching that goal. VBA's new accuracy measurement system will determine the claims-adjudication accuracy rate and will feed the accuracy data into the balanced scorecard for the disability programs. As part of our continuing review of VBA's progress in implementing the Results Act, we will be assessing VA's fiscal year 2000 performance plan.

#### Decisionmaker Training

In its Roadmap to Excellence, VBA also acknowledged that its training program had not prepared its workforce adequately to produce accurate disability decisions. VBA acknowledged the need for an effective, centralized, and comprehensive training program. Such training is important not only for current employees but also for the many new employees that will be hired to replace the up to 30 percent of the workforce that may retire by fiscal year 2003. VBA plans to identify the necessary employee skills and work processes for every decision-making position, implement skill certification or credentialing for these positions, and implement performance-based training connected to measurable outcomes. VBA has already developed a computer-based training module for processing appeals and is working on modules for original disability claims, service-connected death indemnity benefits, and pensions. VBA also plans to produce additional modules, including one for training new regional office staff when they begin rating disabilities. VBA estimates that it takes at least 2 to 3 years for a new decisionmaker to be able to operate at a fully productive, independent level.

#### Data Systems Reliability

Also in our testimony before this Subcommittee last March, we noted VBA's lack of accurate, reliable data to effectively measure and assess its performance. In Roadmap to Excellence, VBA itself stated that its ability to provide accurate and timely data on program activities is compromised by, among other things, outdated computer systems and databases, unvalidated data collection methodologies, and limited data storage capacity. Because of such restrictions, VBA management has limited access to the types of data needed to adequately describe and analyze program activities and participants, and the lack of data has hindered VBA's ability to justify resource needs. In addition, the data systems do not have adequate controls to ensure that performance data, such as timeliness and production numbers, are valid.

According to its Roadmap to Excellence, VBA's goal is to develop data systems that enable forecasting and are reliable, timely, accurate, honest, flexible, and integrated across the organization. VBA aims to accomplish this goal by about the year 2002. Toward this end, VBA has completed or has in process a variety of actions, such as establishing an office to manage the process of improving data systems, developing a system for capturing detailed data on regional office disability rating decisions, acquiring actuarial assistance in developing forecasting capabilities, establishing a data inventory, and developing a data validation methodology.

#### Coordination With VHA

Our testimony last March also addressed the need for VBA to coordinate its performance goals with VHA, which performs the medical examinations that are necessary for VBA to determine eligibility for disability benefits.<sup>7</sup> At the time of our testimony, VBA was working

<sup>6</sup>Veterans Benefits Administration: Progress and Challenges in Implementing the Results Act (GAO/T-HEHS-98-125, Mar. 26, 1998).

<sup>7</sup>VA is pilot testing the use of private medical providers to perform examinations of veterans.

with VHA to improve the quality of these medical examinations because the lack of adequate exams had been identified as a primary reason that appealed disability decisions were remanded by the Board of Veterans' Appeals to VBA regional offices. According to VBA officials, VBA and VHA have taken several actions to improve the quality of medical examinations. For example, VBA and VHA have jointly designed improved worksheets for every body system to guide physicians in performing examinations that meet adjudicators' needs. Also, VBA has provided training to VHA physicians.

#### PROGRESS IN OTHER AREAS IS STILL LACKING

Despite progress, VBA still has much to do in addressing issues related to

- accuracy in adjudicating disability claims,
- timeliness in adjudicating disability claims,
- organization and infrastructure, and
- rehabilitation of disabled veterans.

#### Accuracy in Claims Adjudication

As we reported on March 1, 1999, although VBA had been reporting more than 95-percent accuracy under the previous accuracy measurement system, the pilot test of the new system revealed an accuracy rate of only 64 percent. A primary reason for this difference is that the new system focuses on regional office work products that require a disability rating, and these are the most complex and error-prone work products. In contrast, the previous system drew its sample of cases from the entire universe of regional office work products, including those not requiring disability rating decisions and, therefore, less error-prone. The newly implemented accuracy measurement system continues to focus on claims that involve disability ratings.

The new system also tends to produce lower, more realistic accuracy rates because it uses a stricter accuracy rate computation method. Under the previous system, VBA categorized each error under one of three areas of the claims adjudication process: case control and development, decision elements, or notification to the veteran. Thus, if a case had one error, VBA would record this error under the appropriate area and show the two other areas as error-free. After reviewing all cases, VBA computed separate accuracy rates for each of the three claims adjudication areas and then determined an overall accuracy rate by calculating the average of the three accuracy rates. In contrast, under the new accuracy measurement system, if a case has an error in any area of the claims adjudication process, the entire case is counted as incorrect for accuracy rate computation purposes. This method tends to result in a lower accuracy rate than under the previous system.

Even with the improvements provided by the new accuracy measurement system, VBA's ability to identify error-prone cases and target corrective actions is constrained by the limited data that it captures on (1) the medical characteristics of veterans whose claims are processed incorrectly and (2) why medical evidence is deficient. Capturing more detailed data on claimants' medical characteristics could help pinpoint the specific types of claims in which errors occur. Also, capturing more detailed data on why reviewers find medical evidence supporting regional office decisions to be deficient could help identify the types of corrective actions that need to be taken.

VBA also needs to address vulnerabilities in the integrity of performance data produced by the new accuracy measurement system. The new system does not adhere fully to internal control standards that call for separation of key duties or to standards for performance audits that call for those who review and evaluate a program's performance to be organizationally independent of the program's managers. Under the new system, the regional office staff who review the accuracy of regional office decisions are themselves responsible for making such decisions, and they report to regional office managers responsible for claims adjudication. Both the regional office reviewers and their managers have an inherent self-interest in having as high an accuracy rate as possible. This self-interest derives from the fact that accuracy is one of the five factors that determine regional office performance scores under the "balanced scorecard" approach. The potential effect of

impaired objectivity on performance data is exemplified by findings reported by VA's Inspector General in 1998. The Inspector General found that regional office staff had manipulated data on the timeliness of claims processing to make performance appear better than it actually was. The Inspector General concluded that weaknesses in internal controls had contributed to lack of integrity in timeliness data.

While VBA needs to collect additional data to pinpoint causes of errors and to address vulnerabilities in accuracy data integrity, these improvements alone will not be sufficient for VBA to meet its goal of improving the accuracy rate from 64 percent to 96 percent. To do this, VBA must meet the two key management challenges mentioned earlier: establish stricter accountability and develop more effective training. In its *Roadmap to Excellence*, VBA acknowledged that lack of employee accountability and inadequate training were root causes contributing to quality problems in the adjudication of disability claims. As mentioned, VBA has begun taking action to address these issues; however, at this point, it is too early to determine the extent to which VBA will be successful in improving accountability and training or the extent to which these actions will enable VBA to meet its goal for improving accuracy.

### Timeliness in Claims Adjudication

Slow claims processing has long been a concern.<sup>7</sup> In 1994, processing original claims took about 7 months on average, and currently, it takes about 5-½ months. However, even this improvement is far from the goal of about 2 months that VBA set in 1997 as part of a business process reengineering effort to redesign the system for processing original disability claims. VBA envisioned a reengineered system that would use advanced technologies to expedite the development of claims and also envisioned it would eliminate unnecessary tasks, reduce the number of hand-offs in the process, make information technology changes, and provide additional training for rating specialists.

However, the National Academy of Public Administration observed in its report that VBA's reengineering program needed better planning and management. Among other things, the report found that VBA had neither documented nor evaluated regional office initiatives, had neither prioritized reengineering initiatives nor developed a master plan for addressing specific problems, had not tested reengineering initiatives before proposing large reductions in staff, and had not tested assumptions on which its budget and process improvement decisions were based. As a result, VBA reexamined its reengineering strategy and plans. VBA is testing some new approaches, such as case management of claims, but the extent to which reengineering efforts will improve claims-processing timeliness is still unclear.

### Organization and Infrastructure

In its January 1999 report, the Congressional Commission on Servicemembers and Veterans Transition Assistance stated that some VBA regional offices may be so small that their disproportionately large supervisory overhead unnecessarily consumes personnel resources. Excluding stations with insurance functions, the staffing in VBA's regional offices ranges from as many as 524 to as few as 18. Similarly, in its 1997 report, the National Academy of Public Administration stated VBA should be able to close a large number of regional offices and achieve significant savings in administrative overhead costs associated with supporting 58 regional office directors and their staffs. The Commission stated that VBA must develop streamlined and efficient processes to replace business practices that are merely adaptations of traditional paper-based processes implemented through aged computer systems and applications and administered through a network of disability claims-processing offices at 58 sites across the nation.

Apart from the issue of closing regional offices, the Commission also highlighted a need to consolidate disability program claims adjudication into fewer locations. VBA has consolidated the education assistance and housing loan guaranty programs into fewer than 10 locations, and the Commission encouraged VBA to take similar action in the disability

<sup>7</sup>Department of Veterans Affairs: Programmatic and Management Challenges Facing the Department (GAO/T-HEHS-97-97, Mar. 18, 1997).

programs. VBA itself had proposed such a consolidation in 1995 and in that proposal enumerated several potential benefits, such as allowing VBA to assign the most experienced and productive 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.

While VBA has not consolidated the disability claims-adjudication function, it has, as mentioned, grouped its 58 regional offices into nine service delivery networks. Nevertheless, greater efficiency and effectiveness could potentially be gained from adjudicating disability claims in fewer locations.

### Rehabilitation Program

In February 1998, we testified before this Subcommittee regarding VBA's vocational rehabilitation program.<sup>8</sup> As we stated then, VBA needs to improve its success in placing disabled veterans in jobs. On the basis of our review of the records for about 74,000 veterans found eligible for the vocational rehabilitation program during fiscal years 1992-95, we found that only 8 percent had successfully completed the vocational rehabilitation process by finding a suitable job and holding it for 60 days. We found that VBA did not focus on finding jobs for participants, even though the law requires that VBA base its rehabilitation program on finding suitable employment for disabled veterans. Instead, VBA focused on sending veterans to training, particularly to higher education programs. Similarly, in its January 1999 report, the Commission on Servicemembers and Veterans Transition Assistance reported that the rehabilitation program continues to concentrate its efforts on sending veterans to training, with about 87 percent of program participants pursuing college-level training in 1997. The Commission concluded that VBA is not achieving its statutory purpose of assisting disabled veterans to become employable and to obtain and maintain suitable employment. According to VBA, it is making progress in this area, but we have not yet evaluated its progress.

### PROGRAM DESIGN CHANGES COULD HOLD POTENTIAL FOR GREATER GAINS

Our work and the work of others suggest that making dramatic gains in some areas may require changes in the current design of the programs. For example, a large portion of VBA's workload in the disability programs consists of "repeat" claims from veterans who have previously filed claims. According to the Veterans' Claims Adjudication Commission, repeat customers typically outnumber those filing initial claims by about three to one, and as of late 1995, 69 percent of repeat claimants with pending compensation claims were already receiving disability benefits. Over half of the repeat customers were previously rated as 30-percent or less disabled. The Commission questioned whether concentrating claims processing resources on veterans already receiving benefits for relatively minor disabilities instead of more severely disabled veterans is consistent with program intent. The Commission suggested that perhaps the program should be modified to make lump sum compensation payments to "minimally" disabled veterans (defined as those with 10-percent disability) upon separation from military service. This, according to the Commission, would considerably reduce the volume of repeat claims, allowing concentration of VBA processing efforts on claims from more seriously disabled veterans, and, over time, would potentially save taxpayer dollars by reducing administrative and program costs. This course of action would require legislative change.

In another instance, the Veterans' Claims Adjudication Commission recommended simplifying the disability pension program to reduce resource requirements as well as confusion and burdensome reporting requirements for veterans. According to the Commission, only one in four disability recipients is a pension beneficiary, and total

<sup>8</sup>Vocational Rehabilitation: Opportunities to Improve Effectiveness (GAO/T-HEHS-98-87, Feb. 4, 1998).

compensation payments are almost seven times greater than pension payments. Nevertheless, maintaining recipients' accounts in the pension program requires almost twice as many staff resources as maintaining compensation recipients' accounts. Under complex and time-consuming pension program rules, VBA evaluates a claimant's need on the basis of income and assets available to the claimant's basic family unit. The Commission recommended pension program simplification to reduce confusion and burdensome reporting requirements for veterans and to improve VBA's administrative efficiency. While VBA may be able to accomplish some simplification through regulatory changes, some measures might require legislative action.

We support further evaluation of the issues we and others have raised, and we recommend that the Congress consider taking legislative action if necessary to achieve efficiency and effectiveness in VBA's programs. Without the option of altering the current programmatic framework, VBA may not be able to find solutions to provide the full measure of effectiveness, efficiency, and service that veterans and the taxpayers deserve.

-----

Mr. Chairman, this concludes my prepared remarks. I would be pleased to respond to any questions you or Members of the Subcommittee may have.

(105772)



**Statement of Joseph Thompson**  
**Under Secretary for Benefits**  
**Veterans Benefits Administration**  
**Department of Veterans Affairs**  
**Before the**  
**House Committee on Veterans' Affairs**  
**Subcommittee on Benefits**  
**March 25, 1999**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on the state of the Veterans Benefits Administration (VBA).

A year ago when I appeared before you, I listed the following issues as areas of major concern: inadequate quality of claims decisions/too many remanded claims from the BVA; high workload backlogs in C&P claims; underachieving Information Technology efforts; insufficient succession planning; unclear and fragmented organizational direction; outdated work processes; inefficient and unreliable data systems; poor communications with veterans and VSO's; insufficient numbers of veterans rehabilitated in the VR&C program; unacceptably low participation rates for GI Bill; materially weak financial management systems; and inadequately supported budget requests.

During the last year with the help of all stakeholders, we have been working aggressively to address these issues and build a base for the organization of the future that is flexible and veteran focused.

We are moving from our plan, which we published in Roadmap to Excellence: Planning the Journey, to accomplishing what we said we would accomplish. We will ensure that what we are doing is consistent with our Mission, Vision, and Core Values as well as with VBA's long history of providing service to this country's veterans and their families.

VBA has been using an organizational systems design (OSD) model over the past year to align our activities and move towards excellence. It has allowed us to systematically examine our environment from the standpoint of both internal and external stakeholders and to blend together the changes to the complex systems which drive our organizational outcomes. It is the basis for our on-going and future works.

In January 1999, we worked as a team to develop a VBA future state with six significant characteristics. We will:

- focus on veterans.
  - deliver exceptional service to veterans.
  - base all that we do on strong core values, both organizational and personal.
  - form productive partnerships with our stakeholders to improve service delivery.
  - be an adaptable and resilient organization, initiating change, not just responding to it.
  - develop ways to equip our future staff to serve 21<sup>st</sup> century veterans.
- **Characteristic 1: Focus on veterans**

VBA intends to establish a relationship with servicemembers early in their military careers and to provide information on benefits issues. We hope to begin to collect data from the Department of Defense (DoD) to build records which can serve as a basis for servicemembers future benefits needs.

VBA is working with both DoD and the Veterans Health Administration (VHA) to provide pre-discharge services, including the establishment of sites where physicals which meet the needs of both Departments will be conducted. This will allow veterans to file for, and receive, benefits more quickly and will significantly reduce the average number of days necessary to process an original compensation claim. Compensation claims will be complete when the veteran returns to civilian life or shortly thereafter. Vocational Rehabilitation staff can begin working with individuals before discharge. The goal is to provide seamless, timely, and comprehensive assistance during the transition from military to civilian life. VBA intends to establish a

presence at the top 20 military discharge sites in the country this year and extend our presence to other large discharge sites in the future.

VBA is directing a Contract Medical Examinations pilot project designed to measure the effectiveness of using non-VA medical examinations for disability rating purposes. The eight stations involved in the pilot are Atlanta, Boston, Los Angeles, Roanoke, Salt Lake City, San Diego, Wichita, and Winston-Salem. The test began on May 1, 1998, and is scheduled to run through April 1999. A report is due to Congress by October 1, 1999.

Focusing on veterans means improving how we communicate. VBA's Reader Focused Writing effort seeks to make our written communications readily understandable. We are committed to rewriting rules, regulations, and letters into plain language. In partnership with VA's General Counsel, we are currently working on rewriting regulations for C&P to streamline our claims adjudication process.

Focusing on veterans means that we must listen to what they are saying about our services and benefits and then act on that input. We are using customer surveys to get that feedback. The Insurance Service has employed an ongoing survey process for the last few years. We have finished our 3<sup>rd</sup> survey of C&P customers and are working on development of surveys for our other business lines.

Focusing on veterans means individualizing services to meet the unique needs of each veteran. We are implementing a C&P case-management system that is fully responsive to veterans' needs. Each Veterans Services Representative (VSR) will be able to advise claimants about evidence needed, steps that are the veteran's responsibility, when to expect a decision, and a point of contact for assistance. Ultimately, VSRs will be able to process a claim from first contact through the final decision.

#### **Characteristic 2: Exceptional service to veterans**

The logical extension of being veteran focused is to provide exceptional service to veterans. The Balanced Scorecard will serve as the tool for assessing whether the customer and business measures we have established are reflecting our commitment to achieving exceptional service.

Of central importance is our improvement in the accuracy and quality of claims decisions. With two-thirds of the offices reviewed, our error rate has declined from approximately 36 percent to 29 percent. This is still a long way from our goal of a 3 percent error rate but we believe it represents good progress.

Backlogs and cycle times remain a concern. Our drive to improve the quality of claims decisions has had a short-term negative effect on both areas. However, we have a Regional Office driven strategy being put into place which, we believe, will reverse the gradual increases of the last two years.

While we continue to focus on the quality and timely processing of claims, we cannot lose sight of the importance of being accessible to veterans and beneficiaries when they place a call to one of our 800 numbers. I am pleased to report that the national blocked call (caller receives a busy signal) rate dropped from 45 percent in January 1999 to 33 percent in February 1999. The improvement was the result of the implementation of two telephone initiatives, the expansion of the Education program's toll free service and the addition of four stations to the National Automated Response System.

As we move into the 21<sup>st</sup> century, we must take advantage of state-of-the-art and emerging technologies to the greatest extent possible. We are pleased to report that our efforts to comply with Y2K requirements are on schedule. We have established an Information Technology (IT) Investment Board to oversee our IT efforts and have initiated third-party reviews of our IT structure and development approach.

Some of our major IT initiatives are:

- **Claims Automated Processing System (CAPS)** is a Consolidation of Claims Processing System (CPS) and Claims Automated Tracking System (CATS).  
     **CPS** is a rules-based system that helps insure that we request all appropriate information from the claimant.  
     **CATS** is a case management tool to track the status of veterans' claims.
- **Electronic Claims Processing (Highway 1)** is a demonstration project using imaging in an electronic work environment.
- **Phones – VBA's National Automated Response System (N-ARS)** is a national phone system that will provide both veteran-specific interactive voice responses (IVR) from our mainframe applications in Hines, as well as generic information messages to answer as many calls as possible with an automated response on a 24-hour a day basis.
- **Personnel Information Exchange System (PIES)** is an application to electronically exchange information on a veteran's service medical records or request verification of military service. VHA employees can also generate electronic requests for service verification.
- **Enhanced Automated Medical Information Exchange (AMIE II)** is a system that electronically provides regional offices VA clinical and treatment records for resolving veterans' pending claims.
- **Interactive Voice Response (IVR) and Self Service** are used in conjunction with toll-free service. The IVR self-service features allow veterans to access information in their own accounts and release forms and applications to themselves.
- **Web technology and access to Internet.** VBA is currently exploring technologies that will provide improved veteran access to the Internet and World Wide Web. A pilot begun in 1998 with the State of Iowa will allow the on-line application for compensation and pension benefits.
- **The Image Management System (TIMS)** is a technology that allows education benefits specialists to process claims without paperwork. It also allows specialists to review "electronic" claims folders while discussing a beneficiary's claim during a telephone conversation.
- **Electronic Certification Automated Process (ECAFP)** allows schools to electronically submit enrollment information and generate payments to veterans without further handling by VA.
- **Education Toll-Free Telephone Service** provides education beneficiaries with better access to VBA personnel who can address their education needs.
- **Expanded Lender Information (ELI)** is a repository of lenders, their agents, appraisal reviewers, and underwriters involved in guaranteeing home loans to veterans.
- **Automated Loan Production System - Loan Processing (ALPS-LP)** is an improved version of VA's Loan Processing System which records vital information associated with the origination of a VA guaranteed loan.
- **Comprehensive VR&C case management system (WINRS)** is a tool to maintain information on veteran participants, contract service providers, facilities, and vendors. Yaco, Indianapolis, Newark, Roanoke, Seattle were the pilot stations.
- **Veterans Insurance Claims Tracking and Response System (VICTARS)** will provide an easy, single gateway to all Insurance functions, applications and data bases.

Improving our data collection and analysis remains a priority. The following will enhance data collection:

- **Veterans Issue Tracking Adjudication Log (VITAL)** -- This application is integrated with the C&P awards processing system to collect, monitor, and store statistical data for special issue claims (undiagnosed illnesses, POWs, Agent Orange, etc.).
- **Data Warehouse** -- The Data Warehouse will be VBA's newest resource for past, present, and future veteran and business information.
- **Operations Center** -- The operations center will serve as a centralized VBA information collection point. It will serve as a clearinghouse for all VBA project status reporting and outcome measures.
- **Data Integrity** -- We are committed to ensuring that information reported by all levels of the VBA is honest and accurate.

Other initiatives that will improve our ability to do quality and timely customer focused work include:

- **Systematic Technical Accuracy Review (STAR) Program** -- STAR replaced C&P's Quality Assurance program with a more structured and demanding quality review system. The results of the new reviews are driving a fundamental change in the way VBA provides service to veterans. The reviews identify systemic problems such as training deficiencies, unclear regulations and lack of data integrity.
- **Decision Review Process/Decision Review Officer (DRO) Test** -- This is a fundamental redesign of claims handling following a decision in cases where the claimant expresses disagreement with the decision.
- **Contract Exams** -- This pilot project is measuring the effectiveness of contracting with a non-VA medical source to conduct disability examinations.
- **Pre-Discharge Exams (Benefits Delivery at Discharge)** -- This initiative will allow for the complete development, examination, and rating of a compensation claim before or just after the individual's separation from military service.
- **VR&C Case Management** -- This approach will give the appropriate level of case management in programs of individualized services and will increase the case managers' available time for more direct service to seriously disabled veterans.
- **VR&C Business Case** -- This is a strategic planning document for use by VR&C leadership, veterans, other customers, and stakeholders detailing the shift to emphasizing suitable employment as the program's outcome.
- **Property Management A-76** -- VBA has contracted for an A-76 study to ensure the most cost-effective approach for disposing of foreclosed properties. It will include a comparative analysis of selling foreclosed properties for cash versus direct VA financing (vendee loans).

### **Characteristic 3: Strong core values**

Focusing on veterans and providing them with exceptional service that meets their needs rests on a firm foundation of strong core values. VBA's nine core values focus on veterans and employees and can be summed up by saying that respect, integrity, trust and fairness are hallmarks of all our interactions. To that end, we have stressed that integrity of our data is key. We have established and maintained open communication with all stakeholders and spoken openly about our operations. We recognize that our employees are our most precious asset, and are providing them with the tools, knowledge and training to do their jobs well.

#### **Characteristic 4: Productive partnerships**

Our journey to excellence must involve our partners and stakeholders. Developing and maintaining effective partnerships has been a cornerstone to our achievements thus far. Those partnerships include contracting and outsourcing arrangements as well.

- VBA has placed a renewed emphasis on our relationship with our labor partners, American Federation of Government Employees (AFGE) and National Federation of Federal Employees (NFFE). This has been evidenced by recent agreements which involve, for example, VBA's business process reengineering and organizational consolidations which will enable us to better serve veterans.

VBA teams and groups tasked with designing and implementing new initiatives include our labor partners, whose input enhances the final outcome.

We have agreed to the concept of a cooperative labor management relationship and have established a variety of mechanisms to assure and enhance our communications with each other. These efforts will continue.

- The C&P Service is partnering with VHA and BVA in the area of information exchange. The long standing partnership with the Veterans Services Organizations is being expanded to include the Training, Responsibilities, Involvement, and Preparation (TRIP) program, which provides for the training and certification of VSOs to enhance their ability to assist veterans with the claims process.
- The Loan Guaranty Service is partnering with several private and public sector organizations to automate and expedite program services.
- The Education Service, in partnership with DoD, provides education benefits to active duty military personnel. Continuing a long standing partnership with the State Approving Agencies (SAA), a new definition has been developed for "Program of Education" meeting the needs of veterans of today. The partnership with schools involves the VACERT program that allows for the electronic submission and processing of enrollment information.
- The Insurance Service is partnering with Prudential and DoD to develop new program initiatives for the SGLI and VGLI programs.
- The VR&C Service has a long standing and productive partnership with the Department of Labor (DOL). There is an ongoing training development and implementation effort with DOL at the national and state levels.
- VBA and BVA have partnered to provide teleconferencing equipment for all regional offices to conduct veterans' hearings. When not being used to expedite the hearing process, the equipment is being used to provide joint BVA/VBA training on adjudication issues common to both organizations.
- VBA and VHA officials meet monthly to discuss cross-cutting issues such as disability exams, vocational rehabilitation concerns, and billings for service-connected disabilities.
- VBA is collaborating with the National Partnership for Reinventing Government (NPR) on two initiatives of note. The first, Highway 1, is an electronic claims processing system that employs imaging technologies. This is a unique partnership with a consortium of private sector companies. The second initiative, Access America, will provide college students access to government information via the Internet. VBA plans to use this technology for veterans to verify monthly enrollments, apply for benefits, and make changes involving existing benefits.

- VBA is working in several ways to address the critical need for credible and reliable information systems. VA has an interagency agreement with the Institute for Defense Analysis (IDA) to assist VBA in improving its ability to forecast compensation and pension workload. On line access to the Defense Manpower Data Center (DMDC) will assist VA in gathering key information related to servicemembers and veterans.

#### **Characteristic 5: Adaptable and resilient**

We are changing our processes and structure to become more flexible and adaptable to meet the needs of our employees and customers.

For example, in our Education Service we have converted Chapter 30 claims processing to an imaging system, reducing dependency on paper and allowing the submission of electronic enrollment information. By reducing the number of times information is handled, delays in processing caused by misrouting are eliminated, which results in fewer inquiries. Storage and retrieval of all electronic information are more efficient.

Fundamental structural changes have been undertaken including organizational realignment of our 57 Regional Offices into nine Service Delivery Networks (SDNs), the centralization of Home Loan Underwriting and Servicing into nine Regional Loan Centers (RLCs), the consolidation of education claims processing into four Regional Processing Office (RPOs), the merging of our adjudication and veterans services divisions into Veterans Services Centers, a single Insurance Center, and the expansion of outreach and program services beyond the traditional regional office setting. The SDNs allow the flexibility to review work collectively and shift it among regional offices when necessary.

#### **Characteristic 6: Transitioning to the next generation**

Over the next five years, VBA will lose many experienced staff to retirement. They will take with them both experience and a degree of corporate history. As a result we need to increase staffing before the exodus.

We have an aggressive succession plan in place, targeting jobs and skills we need to preserve. The Opportunity 98 class for C&P and VR&C was our first attempt at meeting that need. Opportunity 99 will build upon what we have learned and address the program needs of C&P and VR&C.

Technical training and development, as well as leadership development, are important elements of our training plans and will ensure that we achieve the goals of our succession plan. We are moving in a positive direction. Centralized training development has strengthened our training program considerably. Training is being delivered using the following modes:

- Traditional classroom and group learning settings continue to serve as the backbone of VBA training. Local, regional, centralized, and satellite based training all use variations on the traditional class room settings.
- We are continuing to develop Computer Based Instruction (CBI) applications. As an example, the Training and Performance Support Systems (TPSS), involving a number of training modules covering the job tasks for the Veterans Services Representatives in the Veterans Services Centers, will provide a mechanism to assure employees can perform their tasks correctly.
- We are exploring ways to further our use of the Internet and Intranet for web based training which could expand our external sources of training.
- We are in the early stages of developing Communities of Practice. Communities of Practice are informal groupings of people who have spontaneously come together because they have common interests and goals and wish to share ideas and information.

- We are using the VBA Satellite Broadcast Network to bring uniform training to all regional offices at the same time.
- We will use the Video Teleconferencing System, shared with the Board of Veterans' Appeals (BVA), to provide training point to point and point to multi-point in a classroom setting as well as by computer at an individual's workstation.

Mr Chairman, we owe veterans and their families the best service we can provide in the most sensitive, caring way possible to ensure that they receive benefits in a manner befitting their service to our Nation. Working with you and the members of this Committee, we hope to meet these challenges. This completes my prepared statement. I will be pleased to answer any questions the Subcommittee might have.

**STATEMENT OF PHILIP R. WILKERSON, DEPUTY DIRECTOR  
VETERANS AFFAIRS AND REHABILITATION COMMISSION  
THE AMERICAN LEGION  
BEFORE THE  
SUBCOMMITTEE ON BENEFITS  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
ON  
VETERANS BENEFITS ADMINISTRATION**

**MARCH 25, 1999**

Mr. Chairman and Members of the Subcommittee:

The American Legion appreciates the opportunity to share its views with you concerning the current operations of the Veterans Benefits Administration (VBA)

**VETERANS BENEFITS ADMINISTRATION (VBA)**

VBA pays over \$19 billion annually in statutory benefits to disabled veterans, their dependents and survivors, through the compensation, pension, education, vocational rehabilitation, insurance, home loan guaranty, and burial benefit programs. If the mandated benefits and services are to achieve the purposes which Congress intended, VBA must manage these programs in an efficient, cost-effective manner. Equally important, VBA must establish policies and procedures which ensure that all claims are going to be adjudicated in a correct and timely manner

VA is now about half way through the current fiscal year and the department's budget request for FY 2000 was just presented to the Congress early last month. The goals and initiatives set forth in these budget plans describe fundamental changes in the way the Veterans Benefits Administration (VBA) operates and delivers benefits and services to this nation's veterans. During this period of major transition, it is important that their plans and progress be closely monitored. Therefore, The American Legion commends you, Mr Chairman, for scheduling this timely hearing to review and examine the impact these changes are having on the programs and activities of the Veterans Benefits Administration.

Because of new statutory entitlements and enhancements in recent years, there has been a steady increase in the number of new and reopened claims filed for such things as disabilities and death related to exposure to Agent Orange and radiation, experiences as a former prisoner-of-war, service in the Persian Gulf War, PTSD, and many other conditions. Equally significant, in terms of VBA's workload and resource needs, is that judicial review standards have made benefit claims much more complex and time consuming to adjudicate. In addition, most cases now involve multiple issues with sometimes up to a dozen or more conditions claimed. These factors more than offset any projected declines in certain types of claims primarily due to the high mortality rate among older veterans.

While the physical workload has increased, long-promised processing efficiencies related to computer modernization have never materialized. Repeated staffing cuts, predicated on computer modernization, have resulted in a steady decline in both the quality and timeliness of service to veterans. Cases continue to churn through the system. Regional offices are faced with a tremendous backlog of over 400,000 pending claims. There is also the additional workload resulting from over 65,000 new appeals filed, an overturn or allowance rate of about twenty percent by the Board of Veterans Appeals, and a remand rate of over forty percent. It is, therefore, little wonder that VBA's own surveys show continued strong "customer" and stakeholder dissatisfaction and frustration with the overall lack of timely, quality service. Many veterans feel, after waiting months or sometimes years, that their claims are not being correctly or fairly adjudicated; VA letters are confusing and lack essential information; it is difficult to get through to VA offices on the telephone for needed information, etc., etc.



Until recently, VBA's efforts to address these issues and concerns were primarily focused on trying to improve the physical and administrative processes by which claims were adjudicated. In retrospect, VBA was responding to the consistent criticism by veterans, the VSOs, Congress, and others about the length of time it was taking to process claims and mounting backlog of pending cases. Timeliness was equated with good service and better timeliness meaning better service. The issue of the quality of the decisions being made and quality assurance was not directly addressed. Little attention or priority was given to trying to identify and correct the underlying causes for the high rate of appeals and remands, and frequent regulatory and procedural changes brought about by a steady stream of precedent decisions from the Court of Veterans Appeals.

Program goals were established and defined in terms of their effect on the speed with which claims could be decided, rather whether the decision produced was fair, and legally correct and proper. Regional office training was frequently subordinated to the perennial need to increase production and control the growth of the backlog of cases. Management plans and operational decisions were based on an inaccurate, unreliable end product work measurement system, which could not tell how long it really took to process a claim correctly, nor did it reflect the quality of the work performed in the regional offices. This same data was also the basis for promotions and rewards. Time has also shown that the computer modernization program, long touted as the solution to VBA's claims processing ills, to be fragmented and lacking a sound strategic plan and the necessary leadership and direction. The seriousness of VBA's management problems were further demonstrated by the withdrawal of plans for a major reorganization of the field stations, after they were found to be fatally flawed.

The American Legion believes 1994 can be viewed as somewhat of a watershed for VBA, in terms of the beginnings of the current strategic and business plans now in place and under development. Since then, VA officials, most notably former Secretary Jesse Brown and current Secretary West as well as the former Acting Under Secretary for Benefits, and the current Under Secretary, Joe Thompson, have been increasingly open and frank about VBA many long-standing problems. We have appreciated their candor and expressions of resolve and commitment about correcting these core problems and the need to provide quality service in a timely manner.

The American Legion believes VBA's planning efforts have been greatly aided by several external factors, such as the enactment of the Government Performance and Results Act in 1993. The subsequent reports by the Veterans Claims Adjudication Commission in 1996 and the National Academy of Public Administration in 1997 were highly critical of VBA's overall performance. In particular, they cited major deficiencies in their Business Process Reengineering initiatives, especially in the area of strategic planning and coordination, computer modernization, training, and the fact that many of its procedures which were not responsive to the needs of those whom VBA was mandated to serve, i.e., veterans, their families, and survivors. Each of these reports included a long list of recommended changes, most of which VBA agreed to implement. Since then, Under Secretary Thompson has brought much needed leadership to VBA. His vision for the agency future has been set forth in the report, "Roadmap to Excellence" and subsequent reports detailing plans, performance goals, timetables, and results measures for a variety of new and ongoing operational and programmatic changes intended to improve service and stakeholder satisfaction.

Mr. Chairman, from our perspective, one of the important and difficult challenges for VBA is to go from a system of adjudication, which is still essentially process-oriented to a results-oriented system where quality service is the guiding principle. The use of the balanced scorecard approach provides VBA with a dynamic mechanism to set strategic objectives and progress measures, and to report on outcomes. Although this metamorphosis is still far from complete and there is still much work ahead, we believe things have begun to move in the right direction. Based on lessons learned from its past mistakes and poor planning, there are rising expectations that service to veterans is going to gradually improve in the future. While it can be debated that their plans are overly ambitious or the pace of progress is too slow, we feel that veterans and VBA's other stakeholders would rather see a moderate, well thought out plan for ongoing change, rather than having VBA take some radical or precipitous action for action's sake. However, we also believe that after setting specific goals and milestones, VBA must soon begin to show that clear and demonstrable progress is, in fact, being made in the identified key areas and that it "customers" are increasingly satisfied. Toward this end, we strongly believe that

during this difficult transition period, Congressional and budgetary support over the next several years will be critical to the ultimate success or failure of VBA's plans.

The claims adjudication system is analogous to a production line with a beginning, intermediate steps along the way where the claim is developed and evidence added to a case, and a terminal stage where a decision is rendered. On any given day there are literally tens of thousands of cases at various stages of development and adjudication in the pipeline. However, unlike a mechanical production line, if the system is broken or has a problem, there is no way that it can be shut down to make the needed repairs or changes. This makes the implementation of needed change that much more difficult and complex. Even with a shift towards improving customer satisfaction, we recognize there will still be the continuing tension between the need for mass adjudication and the need to ensure decisions are fair, proper, and timely. VBA's task is to ensure there is an appropriate balance between these often competing priorities.

Mr. Chairman, The American Legion remains deeply concerned that the current work measurement system remains essentially unchanged. The system lacks accountability with no link between an individual's performance evaluation and the quality of their work. According to VBA's own reports, the data is prone to manipulation and abuse. A recent management analysis of the Washington VA Regional Office found serious mismanagement and due process problems due to a lack of control over veterans claims and records. It also found that managers and employees have continued to be rewarded, despite these problems. We believe this example highlights the urgent need for VBA to develop and implement a new work measurement system which will provide accurate, reliable data.

The key themes in VBA's current and future plans, including their budget requests, are improved customer service and quality decision-making. Over the last several years, VBA has conducted a number of stakeholder surveys to assess and evaluate the impact of its wide-ranging changes on their satisfaction. In 1997, VBA surveyed 8,860 of its employees. While we realize that such surveys have certain limitations and that a year and a half has passed since the survey was done, we are nonetheless disturbed by many of the reported findings. They highlight a strong undercurrent of worker dissatisfaction with and a lack of confidence in management. Strong concern was expressed about the lack of training and career development. They also reflect the apparent disconnect which continues to exist between VBA Central Office statements and guidance on these subjects and what is happening at the field station level. Of those surveyed:

- \* Only thirty-one percent felt that employees were rewarded for providing high quality work products and service to customers;
- \* Forty-five percent agreed that employees receive the training they need to perform their jobs;
- \* Forty-one percent felt they received the training and guidance in providing high quality customer service;
- \* Forty-three percent believed managers demonstrate that quality is important in their day-to-day activities;
- \* Only thirty percent agreed that the amount of work was reasonable, allowing employees to provide high quality work products and services,
- \* Forty-five percent agreed that a spirit of cooperation and team work exists;
- \* Only twenty-seven percent believed that the quality assurance systems focused on the prevention of problems rather than the correction of problems;
- \* Only twenty-nine percent reported that there is trust between employees and their supervisors.

Despite the continued flow of directives from Washington and the variety of ongoing initiatives, we believe these attitudes will be slow to change. But change they must. Meanwhile, local operations are still primarily focused on trying to cope with often staggering workloads and production remains the number one priority. Field office managers and workers have yet to wholeheartedly embrace the concept of customer service. We believe it would be helpful for

VBA to update that 1997 survey to assess how much or how little the employee's perception and attitudes have changed. This type of information will be important in determining the effectiveness of management policies, local managers, and the training and career development programs.

Mr. Chairman, the average processing time for an original disability compensation is currently 168 days and will be at 170 days next year. This is up substantially from 133 days in FY 1997. As a matter of fact, processing times for all categories of claims show similar increases. According to the FY 2000 budget submission, "Because of our high error rate, employees are being asked to slow down and take a closer look at the way they are processing claims. We have asked them to write better decisions which are understandable to our claimants and which can be sustained through the appellate process." It acknowledges that efforts focused on completing older claims are also having an adverse impact on overall processing timeliness. The increased need for training also affects production.

On the subject of training, VBA projects that the overall claims workload will remain high into the future. Currently, a large percentage of adjudication personnel are trainees. Enhanced training is critical to building and maintaining an efficient, effective workforce. In the past, the need for training would frequently be subordinated to production priorities. Quality and service suffered, and VBA continues to pay the price for this short-sighted policy. Now, there is willingness to accept the fact that training time will cause some decline in production. The American Legion believes it is an acceptable tradeoff and will pay dividends in terms of better decision-making in the future. VBA must also prepare for another large-scale retirement of experienced decision-makers within the next several years. The American Legion believes it prudent to make plans and preparations now for this eventuality. We urge Congress to provide VBA with the resources necessary to expand its current training program and to begin the recruitment and training of workers who will be needed in the near future, before they are confronted with a staffing crisis.

Part of VBA's customer service strategy focuses on initiatives to expand and improve veterans' telephonic access to the benefit information system. A variety of initiatives are underway which have begun to reduce the number of veterans' blocked calls. Currently, the blocked call rate is reported to be forty-three percent. This has declined from sixty percent last year at this time and down from fifty-two percent at the end of FY 1998. VBA's balanced scorecard target for FY 1999 is to reduce this to thirty percent. The ability to get answers to questions about benefits or to talk with someone who can give them information about the status of their claim easily and without a lot of delay will go a long way towards reducing much of the frustration and dissatisfaction veterans and others experience in their contacts with VBA offices.

Mr. Chairman, in our opinion one of the key initiatives currently underway to improve the quality of regional office claims adjudication is the Systematic Technical Accuracy Review (STAR) program. This was developed and implemented in 1997 to replace the existing and largely ineffective Quality Measurement Program. There was, at that time, a growing concern that the ninety-two percent accuracy rate being reported was overstated. The initial STAR reviews verified that, in reality, the national accuracy rate of core rating work was only sixty-four percent or that there was an error rate of thirty-six percent. STAR data also highlighted those factors which contributed directly to continued poor quality work.

Based on information from the STAR program, and in conjunction with other initiatives, VBA is devoting additional staffing resources to the adjudication function to help handle the caseload, including a request for additional staff for FY 2000. Work is also proceeding on implementing improved training as well as continuing with the development and implementation of information technology improvements. Efforts are underway to rewrite and simplify VBA regulations and manuals. Modest and steady improvement in the quality of adjudication is expected, beginning this year. However, it remains to be seen if these efforts, individually and collectively, will achieve the improvements promised.

Mr. Chairman, in response to both the shortage of regional office adjudication personnel and long-standing desire of the veterans service organization representatives for greater access to the VA computer system, VBA has developed a service officer training and certification program called TRIP (Training-Responsibility-Involvement-Preparation of Claims). As we understand it,

VBA will provide training on the use of the VA computer system and claims development procedures to service officers. At some point of time in the future, there will be a test. If passed, the service officer will then be certified and can have access not only to data in the VA system, but will also be able to input data into the system. It is envisioned that the service officers will be able to establish a claim, request records, and undertake other development in preparation for a VA adjudicator to rate the claim. They will, in effect, be an unfunded resource for VBA and function as a quasi-VA employee.

The American Legion is generally supportive of the TRIP concept of expanded access to VA computer system, including the necessary computer training and testing. We believe it would assist the service officers, to some extent, in preparing a well-grounded claim for submission to the regional office. However, we have some very strong concerns with VBA's vision of having service officers perform functions which are the statutory duty and responsibility of the VA. The service officer is the veteran's advocate and care must be taken to avoid the perception of a potential conflict of interest. While we want to help VA help the claimant and are willing to do what we can, up to a point, to facilitate the processing of the claim, we cannot take any action which would compromise or be incompatible with our role of the claimant's representative. We are hopeful TRIP can evolve into a program that will meet the needs of both VBA and service officers.

Mr. Chairman, at many prior hearings before this Committee, The American Legion has expressed deep concern about the continued deterioration in the quality of regional office adjudication. We have observed this in the thousands of cases handled by our staff at the Board of Veterans Appeals. Our service officers across the country continue to bring problem cases to our attention. We also regularly receive by letter, phone, e-mail, and personal visits complaints from claimants about errors, delays, and the general poor quality of service provided by the regional offices. In an effort to develop some firsthand, objective data on regional office quality, The American Legion in 1998 established a quality review project. To date, our staff have visited five regional offices reviewed over one hundred recently decided Legion cases dealing with the issues of service connection, increased rating, and DIC. The purpose of this project is two fold. First, to evaluate the quality of adjudication and service provided veterans in that state. And, secondly, to observe the quality of work being performed by the American Legion service officers there and provide any needed assistance. In general, the number and types of errors found were consistent with the findings of the STAR report. Out of the one hundred plus claims reviewed, fundamental errors, in our judgment, were found in about thirty to forty percent. These were discussed with regional office officials and in some instances, immediate corrective action was taken. In others, further development and follow-up will be necessary. We have been generally pleased with the cooperation and response of regional office officials. Earlier this month, we met with Under Secretary Thompson and his staff to discuss the results of review project thus far.

Poor quality adjudication, regardless of whether it stems from a lack of proper training or supervision, too much work, or a lack of concern, not only wastes VBA's resources, but causes severe hardship for disabled veterans and their families. Cases from two of the offices visited illustrate this problem.

There is a case in which a veteran had a grenade explode in front of him in Vietnam. He sustained shell fragment wounds to face and was awarded the Purple Heart with a gold star. He left service in 1968 and, shortly thereafter, filed a claim for service connection for a hearing loss. The claim was denied and evidence relating to his wounds and Purple Heart was ignored. In 1996, he reopened the case for hearing loss and referred to his shell fragment wound to the face. The claim was denied and the veteran was told this time there was no linkage between the injury and the hearing problem. Again the Purple Heart was ignored. In November 1997, the veteran filed a claim for the disfiguring facial scar. Eight months later, benefits for the scar were granted, but only back to November 1997, rather than the date of his original claim in 1969. This case was brought to the regional office director's attention and within weeks the veteran had received a large retro active benefit check. Action was also taken to have the veteran's hearing examined and his claim readjudicated.

In another case, a Vietnam veteran was rated as fifty percent disabled for PTSD. He had filed a claim for an increased evaluation to include a total rating based on individual

unemployability. VA psychiatric examiners reported that he had been working at a salvage yard for a week, but received no pay. They described the veteran as having auditory hallucinations, seeing wood sprites, talked to the devil, and could read and broadcast thoughts. Testing showed his level of functioning as marginal. The opinion was that he was unemployable. The adjudicator at the regional office, however, determined that the medical evidence did not warrant an increase in the veteran's PTSD and that he was not unemployable. When we brought this case to the regional office management, the response was that no change would be made and the veteran could always appeal, since that was what the appellate process was for. They said he believed he was employed, but ignored the fact he was not being paid. They also ignored the fact that he was clearly delusional and possible to himself and others. Such arbitrary action and negative attitude, is clearly contrary to VBA adjudication guidelines and rating policy. This is not the kind of service veterans should expect or tolerate. The case was recently brought to Under Secretary Thompson's attention with the request that he look into the problems at that station.

Mr. Chairman, clearly VBA has many problems and they are working hard to correct them and provide improved service to veterans. One initiative, which is already showing positive results, is the Pre-Discharge Physical Examination Program. Under this program, VA adjudicators are at a number of military facilities to assist active duty personnel file a disability claim. Any needed medical examinations are conducted and the claim can be rated prior to their leaving military service. This program is intended to address VBA's need for accurate and complete medical records in order to fairly and properly adjudicate veterans' disability claims. It is also intended to make it easier for individuals to file a claim for VA benefits and, thus, facilitate their transition and readjustment to civilian life. This program makes good business sense, since a large number of new claims are filed within the first year or two after discharge from service. It appears to be working very well in meeting both VBA's need and veterans' needs. VBA is planning to continue expanding this program to many more military facilities in the US as well as overseas to assist those being separated in Europe and in the Far East. The American Legion is very supportive of this program and the goal of making VA benefits and services more accessible by moving the claims process back to where the individual is still on active duty, which was among the recommendations recently made by the Servicemembers and Veterans Transition Commission.

Mr. Chairman, a recent decision by the United States District Court for the Northern District of California on February 11, 1999, in the case of Nehmer v. the United States Veterans Administration further illustrates how many veterans have been harmed by arbitrary VA policies and procedures. This was the second favorable decision in the suit challenging VBA limitations on the payment of retroactive benefits in Agent Orange claims. The original lawsuit brought by the National Veterans Legal Services Program in 1987 resulted in the overturn of rules on how Agent Orange claims were to be adjudicated and provided for retroactive benefits where the originally claimed disease was later added to the list of recognized Agent Orange diseases. However, in implementing the Court's 1989 order, VBA imposed an adjudication rule in such retroactive claims by requiring that the original claim must have alleged that the disease or death was due to Agent Orange or been identified as a herbicide claim. The court threw out this logic. VBA must now readjudicate potentially thousands of previously denied Agent Orange claims that should have been correctly adjudicated in the first place. These veterans and their families and, in many instances, their survivors have endured great physical and financial hardship. This could have been avoided years ago, if VA had been honest and fair with veterans. In our opinion, VA's position in this case illustrates a clear disregard for the welfare and well-being of service disabled veterans and an unwillingness to follow their own rules and regulations, which require that the law be administered under a broad interpretation.

In conclusion, Mr. Chairman, The American Legion believes VBA is committed to bringing about needed changes in the claims adjudication system with the overall goal of providing quality service to veterans and its other stakeholders. The number and complexity of the problems that must be solved and the pressure of budget constraints make the task formidable. The American Legion is ready to support VBA's efforts to improve its operating efficiency and the quality and timeliness of its service. We also recognize that such ambitious plans naturally raise stakeholder expectations and there is a need to begin delivering on the promised improvements. We urge continued strong oversight of VBA programs and its business plan.

In our view, there are a number of priority areas that VBA must successfully address, if they are going to solve their quality problem. First and foremost, VBA must be honest and fair with veterans. Decisions must be accurate and proper. If unfavorable, the regional offices must be willing and able to tell them clearly and simply why the claim was denied and, most importantly, what evidence or information will be needed to have it favorable considered. Unless and until this is done, claims and appeals will continue to churn through the system unnecessarily and critically short resources will be squandered. In addition, VBA must know what its workers are doing and hold them accountable. This means implementing an accurate, reliable work measurement system as a means of providing management needed information on current operations as well as current and future resource needs. This must be accompanied by changes in the way employees and managers are evaluated and promoted with individual and organizational performance evaluations linked to the quality of work produced. The STAR program must be vigorously pursued and action taken based on its findings. Information technology programs need to be unified and a coherent modernization and integration plan must be put into place. Steps must also be taken to ensure there are adequate resources for training as well as provision for additional staffing which will be needed in the next three to five years in anticipation of the retirement of many experience decision-makers and a continued heavy workload.

Mr. Chairman and Members of the Subcommittee, that concludes this statement



Statement of

Veronica A'zera  
AMVETS Legislative Director

**S**  
**ERVING**  
**WITH**  
**PRIDE**

\_\_\_\_\_

for the  
House Veterans Affairs Subcommittee  
On Veterans Benefits Administration



\_\_\_\_\_

Thursday, March 25, 1999  
340 Cannon House Office Building

**A M V E T S**

NATIONAL  
HEADQUARTERS  
4647 Forbes Boulevard  
Lanham, Maryland  
20706-4380  
TELEPHONE: 301-469-9600  
FAX: 301-469-7924  
E-MAIL: [amvets@amvets.org](mailto:amvets@amvets.org)

Mr. Chairman, I am Veronica A'zera, national legislative director for AMVETS. We appreciate the opportunity to provide testimony to the House Veterans Affairs Subcommittee on Benefits regarding the state of the Department of Veterans Affairs (VA) Veterans Benefits Administration (VBA). Neither AMVETS nor myself has been the recipient of any federal grants or contracts during FY99 or the previous two years.

In essence, Mr. Chairman, the VBA is currently an organization in transition. We believe that the initiatives they are implementing, if funded appropriately, will restore the effectiveness of and confidence in VBA. Congress and more importantly, America's veterans expect and deserve no less. The leadership, managerial expertise, and commitment of Under Secretary Joseph Thompson and his principal staff members are providing, is essential to the Agency's long term success. We support his efforts.

Current trends, however, are troubling. What we do not see is a commitment from the Clinton/Gore Administration budget to keep faith with America's veterans and the promises made to them by a "grateful nation." Last fall, we forwarded a Critical Issues Report to the Office of Management and Budget (OMB) which addressed our major concerns. Included among them was recognition of VBA's inability to process veterans' claims in both a timely and accurate manner. Poor quality leads to a repetitious work cycle in which claims, returned as a result of errors and/or insufficient information, have to be reprocessed prior to a final determination. It has become a downward spiral. To avoid insurmountable backlogs, VBA staff has been forced to emphasize speed and quantity in claims processing instead of quality. At a time when reductions have occurred within the military, creating an expanded demand for VA services, and the addition of programs such as compensation for Persian Gulf War veterans suffering from undiagnosed illnesses, the challenges confronting VBA have become almost insurmountable.

Add to these challenges the fact that during the last six years the VBA work force has diminished by 19% - from 13,856 FTE to 11,200 today - and you define a system destined to fail. Today, VBA's workload has increased by 21%. We are unrealistically expecting fewer professional staff to do more.

Adequate funding is the key to correcting these problems. Not only must we increase VBA staffing levels; we need to invest in training and improve information technology and improve veteran access. At a time when millions of Americans are accessing the Internet for a variety of goods and services, VBA is still shuffling paper files from desk to desk and office to office. It is a grossly inefficient way to do business as we enter the 21<sup>st</sup> century.

We, therefore, recommend:

⇒Increase FTE in C&P by 400.

⇒Include \$5 million in the GOE appropriation for development of programs to train C&P personnel in redesignated work functions and responsibilities.

⇒Appropriate \$14 million to cover the costs of establishing VA pre-discharge claims processing services at military separation sites. I have personally visited the site at Great Lakes in the Chicago area and it is a good plan. It is a wonderful service for newly discharged veterans, but let's not forget about the, in some cases, veterans waiting years for an answer to their claims.

As you know, AMVETS has partnered once again with the Disabled American Veterans, Paralyzed Veterans of America and the Veterans of Foreign Wars to produce the Independent Budget (IB). In an effort to save time, I won't repeat all



the remarks made in the benefits section of the IB. I would ask this committee to refer to the IB for an analysis of VBA.

However, AMVETS would like to highlight the following recommendations to improve or preserve the integrity of these important benefit programs.

***Compensation and Pension***

⇒Benefits designed to compensate for lost earnings must be adjusted periodically to keep pace with increases in the cost of living. Congress has traditionally adjusted compensation and DIC rates annually. We thank you for your continued support in this effort.

⇒Integrity of the disability-rating schedule should be maintained. There should be no intrusion into the discretion exercised by the Secretary of Veterans Affairs in adopting or revising the Schedule for Rating Disabilities.

⇒Enact legislation to include in the statutory presumption for service connection of radiation-related disabilities lung cancer, bone cancer, skin cancer, colon cancer, posterior subcapsular cataracts, nonmalignant thyroid nodular disease, ovarian cancer, parathyroid adenoma, tumors of the brain and central nervous system and rectal cancer.

⇒Repeal the prohibition on service connection for smoking-related disabilities.

***Montgomery GI Bill***

⇒AMVETS has a resolution calling for the elimination of the \$1,200 contribution requirement by servicemen and women and authorizing universal transfer of unused benefits to the spouse and/or dependent child/children of the veteran, with the transferability at the sole discretion of the veteran beneficiary.

We recognize there are many improvements that need to be made to the current GI bill and we look forward to working with this committee on this issue. We are also apart of a taskforce formed by several veteran service organizations to examine the changes, which need to be made.

***Burial benefits***

⇒We testified earlier this year on the National Cemetery Administration to the full House Veterans Affairs Committee and I would like to have that written testimony added to the record. I believe it adequately addresses all the burial benefit issues.

In conclusion, VBA is definitely facing some major challenges, but they are not insurmountable. With sufficient funding, it is AMVETS opinion that an increase in FTE, some legislative initiatives, and the continued solid leadership of Under Secretary Thompson and his deputies, these problems will be successfully addressed.

We appreciate all the efforts this committee has made in the past and we look forward to working with you further.

**STATEMENT OF  
RICK SURREATT  
DEPUTY NATIONAL LEGISLATIVE DIRECTOR  
OF THE  
DISABLED AMERICAN VETERANS  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON BENEFITS  
UNITED STATES HOUSE OF REPRESENTATIVES  
MARCH 25, 1999**

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to appear before you to present the views of the Disabled American Veterans (DAV) on the operations of the Veterans Benefits Administration (VBA) of the Department of Veterans Affairs (VA). The effectiveness of benefits delivery is of primary importance to DAV, an organization whose more than one million members are service-connected disabled veterans and whose Women's Auxiliary takes a serious interest in and plays a major supporting role in our advocacy on behalf of America's disabled veterans.

Today, we have more than 25 million living veterans and approximately 44 million family members of living and deceased veterans. Our citizens highly value patriotic service in the Nation's Armed Forces. The depth of their appreciation is revealed in part by the comprehensive benefit programs created to meet the special needs of veterans consequent to that service. To meet this foremost national obligation, we must place the highest priority upon ensuring that these benefits are administered in a way that most effectively fulfills their beneficial purposes. The measure of how well we deliver on our solemn promises is how well we provide these services to our veterans, our most deserving citizens. Certainly, an effective delivery system is essential if these benefits are to serve their intended goals. Undue delay and inaccuracy in eligibility determinations defeat the beneficial purposes of even the most carefully crafted programs. Overall, VBA and many of its dedicated employees dispense a variety of benefits to veterans every day in a highly professional and effective manner. Unfortunately, for a variety of reasons—some of which I will discuss later—VBA is, at the same time, in some areas falling short in meeting the Nation's commitments to our veterans.

One of VA's three administrations, VBA is responsible for operating the nonmedical benefit programs. The array of benefits and services are designed to address the effects of service-connected disabilities and death, the needs of indigent disabled wartime veterans and their survivors, the various lost opportunities and disadvantages that result from the interruption of civilian life to perform military service, the insurability of veterans against death and disability, and the burial costs of veterans.

VBA furnishes these benefits and services to veterans and their eligible family members or survivors through a nationwide system of field offices. Program direction and control is performed at VA's Central Office (VACO) here in Washington, D. C. Form follows function in VBA's organizational structure. Because the major programs, or "product lines," naturally constitute the fundamental elements of this administration, VBA's organizational structure is built around the operational requirements of these benefit programs. They are (1) compensation, pensions, and related ancillary benefits, (2) vocational rehabilitation, (3) education programs, (4) housing programs, and (5) insurance programs. These business lines are represented in VACO by Compensation and Pension Service (C&P), Vocational Rehabilitation and Counseling Service (VR&C), Education Service, and Loan Guaranty Service. VA's Insurance Service administers its insurance programs at the Insurance Center, collocated with VA's regional office in Philadelphia, Pennsylvania. Until recently, all but Insurance Service had counterpart organizations in essentially all of VA's regional offices. With completion of VA's consolidation initiatives, only C&P and VR&C will be mirrored by full-service operations in the various regional offices. VBA has already consolidated processing of education benefit claims to four Regional Processing Offices (RPOs), housed in VA's Atlanta, Buffalo, Muskogee, and St. Louis regional offices. Loan Guaranty Service is consolidating most of its field operations to nine Regional Loan Centers (RLCs). The education and loan guaranty programs will retain some presence in the regional offices to perform necessary local activities. VBA has recently emulated the

Veterans Health Administration's creation of "Veterans Integrated Service Networks" (VISNs) by grouping VBA field offices into nine "Service Delivery Networks" (SDNs). While not an intermediate level of management for the substantive policy aspects of benefit programs, the facilities within a SDN cooperatively manage resources and service delivery to veterans in the geographic area of the SDN.

VBA is headed by VA's Under Secretary for Benefits. In addition to its field office operations and line management, VBA includes various associated staff functions. With its more than 11,000 employees, it is a large, geographically-dispersed organization, with responsibility for diverse benefits and laws.

Insofar as VBA can achieve economies of scale by the consolidation of education claims processing and home loan guaranties without diminishing the level or quality of services to claimants, its streamlining of operations is appropriate. To the extent realignments or consolidations achieve cost savings without tradeoffs in levels of service, they are justified. However, compensation and pension, and vocational rehabilitation and counseling, have innate differences that require direct and local personal service. Similarly, VBA must retain at all of its field operations personnel qualified to provide information and claims filing assistance for all of its benefits. VA's strategic plan appears to recognize the advantages and necessity of personal service because it envisions increasing the number of access points for veterans seeking benefits or claims assistance and puts new and increased emphasis on customer service. VA plans to establish satellite offices with out-based decisionmakers and is in the process of expanding its presence at military separation sites, where it accepts and processes claims for separating servicemembers. Information on veterans' benefits will be more widely available through automated telephone systems and the Internet.

Even more than evidenced by the structural changes of consolidation of some functions and the expansion of others, VBA is an organization in the midst of extensive change as it struggles to improve its performance. After years of doing business by essentially the same methods, widespread customer dissatisfaction, intensified outside scrutiny, and consequent revelations of inefficiency have forced initiation of comprehensive reforms. Nowhere is the source of claimants' frustrations greater, and the proportions of that inefficiency and the VA response to it more evident, than in the compensation and pension claims processes. After it discovered startling deficiencies through an in-depth and candid self-examination, C&P Service arrived at some sobering conclusions about its methods and its proficiency. In response, it developed a multifaceted plan to reengineer its business processes. The success of this Business Process Reengineering (BPR) plan depends heavily on the accomplishment of all of its elements because they are, to a great extent, interdependent.

The core problems VA identified through its study, were already perceived and well understood by many in the veterans' community. We knew, for example, that quality was the major problem—one that immediately adversely impacted on VA claimants who were erroneously deprived of benefits and one that seriously degraded VA's efficiency, and timeliness, by requiring repeat work to properly resolve claims. Several factors were responsible for this lack of quality, most notably: an institutional culture that did not value, or at least did not stress, quality as a foremost goal; management emphasis on quantity over quality, that is, a focus on production and artificial measures of outputs, known as "end products"; quality control criteria that did not accurately reflect accuracy of decisionmaking, adherence to law, and observance of established claims processing procedures; and a lack of accountability for, and mechanisms to enforce, quality. Incidentally, inadequate resources also must be blamed for contributing to the circumstances and environment that led to this situation, and inadequate resources have impeded C&P's ability to implement reforms and overcome the problems.

The solutions set forth in the BPR plan follow logically from the identified deficiencies. All elements of the plan are geared toward the objective of prompt, accurate, courteous, and efficient delivery of benefits.

A redesigned claims process is the centerpiece of the BPR plan. The new integrated claims adjudication procedure replaces a segmented, compartmentalized structure. The long-standing "assembly line" system is not conducive to the type of personalized service and

accountability for quality envisioned in the BPR plan. Decisionmakers have little or no direct interaction with claimants, and each employee in the sequential process is concerned only with his or her task and not responsible for the completion of the adjudication or quality of the whole product. Under the redesigned process, a more highly skilled and better trained team performs all activities necessary to complete the adjudication. The team works more closely with the claimant and representative and has ownership of the claim and accountability for its proper handling and disposition. A claimant who disagrees with the decision can have a "second look" by a decision review officer (DRO) who has the authority to change the decision on the existing evidence or upon consideration of new testimonial or documentary evidence. Should the claimant continue to disagree, the decision review officer will have ensured that the record is properly and completely developed and that the case is ready for review by the Board of Veterans' Appeals (BVA). Thus, this new system is designed to lead to the discovery of all pertinent evidence, enhance understanding between the claimant and VA, improve quality of the service and accuracy of the decision, and dispose of the claim or allow it to proceed to appellate review in much less time than the previous procedure. To make these adjudicators and decision review officers more skilled and proficient than adjudicators have been, the plan includes better information technology to assist in claims management and decisionmaking, more extensive training, and certification by testing and demonstrated competence. Quality will be measured more thoroughly.

As acknowledged in Volume 4, "General Operating Expenses," page 2-20, of VA's budget submission for fiscal year (FY) 2000, we cannot expect immediate results from this plan, however. VA having already lost so much ground in its efforts to get control over the large pending workload, it is important to understand that, because of the complexity inherent in compensation and pension determinations, correcting the systemic problems in VA's claims adjudication system is not susceptible to a quick remedy. Unlike most of the other benefit determinations, which involve application of simple, straightforward eligibility criteria, decisions on disability causation and degree require experienced and well-informed judgments that are cognizant of, and properly take into consideration, the many nuances of medical conditions and their implications in the individual cases. Quality cannot be improved and production increased until current decisionmakers are properly indoctrinated and retrained along with the infusion and proper training of substantial numbers of new claims adjudicators. In the short term, that may very well mean that we must tolerate protracted claims processing times, as well as repeat work.

Indeed, VA's timeliness has declined even further recently. VA statistics for the past seven years show that, after increasing from 3,405,413 claims in FY 1992 to 3,450,547 in FY 1993, the volume of C&P claims received has declined each year since FY 1994. In FY 1994, VA received 3,360,654 C&P claims. That number dropped to 2,279,009 in FY 1998. During the same period, the completed workload had decreased, however. The completed workload increased from 3,259,021 claims in FY 1992 to 3,440,154 in FY 1993, but has shown a steady decline in every year since, except FY 1996, and was down to 2,238,221 claims completed in FY 1998. Consequently, the pending workload is again on the rise after having declined for five successive years between FY 1992 and FY 1996. VA reduced its pending C&P workload from 538,135 claims in FY 1992 to 342,683 in FY 1996. Pending claims increased to 398,257 at the end of FY 1997 and 445,582 at the end of FY 1998. Claims are pending for longer times as a result. The percentage of claims pending for more than six months rose from 20% in FY 1996 to 33% in FY 1998. The percentage of claims pending for more than 1 year rose from 11.1% in FY 1996 to 16.4% in FY 1998. The average age of all C&P claims rose from 60 days in FY 1996 to 88 days in FY 1998. Of these, compensation claims requiring rating action took even longer. The average age of original compensation claims grew from 92 days in FY 1996 to 123 days in FY 1998. The average age of reopened compensation claims grew from 83 days in FY 1996 to 128 days in FY 1998. The average number of days to process a claim grew significantly during FY 1998. For original compensation claims, the average grew from 133 days in FY 1997 to 168 days in FY 1998. In January 1999, that average had grown to 205 days. For reopened compensation claims, the average days to process grew from 101 days in FY 1997 to 138 in FY 1998. That average had grown to 170 days in January 1999. These averages also significantly increased for dependency and indemnity compensation (DIC) and pension claims.

Within the C&P claims pending in the regional offices, the number and percentage of cases in an appellate status also continue to grow. At the end of FY 1996, of the 342,683 claims

pending, 74,573, or 22%, were in appeals status. At the end of FY 1998, of the 445,582 claims pending, 102,834, or 23%, were in appeals status.

VA projects the number of C&P claims will increase from 2,279,009 in FY 1998 to 2,311,870 in FY 1999. That makes all of these worsening statistics look even more troublesome, despite VA's projection that it will decrease its pending C&P workload from the 445,582 claims pending at the end of FY 1998 to 410,000 by the end of FY 1999.

While we already see the effects of the new quality measures, we do not see significant changes in the quality itself, and perhaps will not until new standards are imposed and enforced. Quality in claims development and decisions will determine the amount of repeat work and percentage of cases in appellate status.

In 1997, VA replaced its Quality Assurance program with its newly developed Systemic Technical Accuracy Review (STAR) program. An initial sample review under STAR, completed in December 1997, revealed a 36% error rate, or 64% accuracy, in rating actions. In November 1998, the accuracy for rating actions was 71.6% in the three SDNs for which the STAR review has been completed. VA's goal for FY 1999 is 75% accuracy. While these accuracy rates might appear shocking, we are encouraged that they represent an effort to be more objective and honest about quality. We believe they are evidence that C&P is working in earnest to assess and correct its problems. We would be much more disturbed if C&P continued to report, as it once consistently did, accuracy of 97% or higher, which was simply not a true measure of quality.

While we recognize that improvements in quality will, for the most part, be delayed until VA implements its training and other initiatives to raise the proficiency of its adjudicators, we believe VA could do more to improve quality now. Part of the quality problem is the institutional mindset and culture of indifference to quality and accuracy that is so widespread in VA field offices. VBA has communicated to its regional office management the depth of the problems, the urgency of the situation, and the change that must take place. We do not believe that message is being communicated, or adequately communicated, to decisionmakers, however. They seem oblivious to VBA's new vision and the necessity to properly apply all pertinent law and strive for technical accuracy. Arbitrariness and recalcitrance remain. Often they seem to lack knowledge or understanding of the law. What is worse, however, is their unwillingness to apply it when brought to their attention by our representatives.

We believe VBA will be unable to effectively enforce accountability by its adjudicators until C&P Service has line authority over them. In its August 1997 report to Congress, the National Academy of Public Administration (NAPA) attributed much of VBA's problems to unclear lines of accountability. NAPA found that a sense of powerlessness to take action permeates VBA. In turn, field personnel perceived VBA's Central Office staff as incapable of taking firm action. NAPA said that a number of executives interviewed by its study team indicated VBA executives have difficulty giving each other bad news or disciplining one another. NAPA concluded that, until VBA is willing to deal with this conflict and modify its decentralized management style, it will not be able to effectively analyze the variations in performance and operations existing among its regional offices. Neither will it be able to achieve a more uniform level of performance. Regarding C&P especially, NAPA concluded that the C&P director's lack of influence or authority over its field office employees would greatly hamper any efforts to implement reforms and real accountability. NAPA recommended that the Under Secretary for Benefits strengthen C&P influence over field operations and close the gaps in accountability. Until VBA firmly resolves to take the action necessary to bring about a change in attitudes and an end to the intransigence, its other efforts will likely fail to realize their full potential.

The availability of judicial review has given veterans a remedy for VA error and arbitrariness. However, judicial review has not uniformly had a beneficial effect on the enforcement of veterans' rights. Unfortunately, the Court of Veterans Appeals, renamed the United States Court of Appeals for Veterans Claims effective March 1, 1999, has, in our opinion, made a long line of erroneous decisions based on its interpretation of the meaning of the term "well grounded" as it applies to VA claims. This line of decisions imposes an unnecessary complication upon the VA claims process, which adds to the difficulty of claims adjudication and burdens VA claimants in a way Congress never intended. Some background information is essential to the understanding of the proper application of this principle and the intent of

Congress when it incorporated it in Public Law 100-687, the Veterans' Judicial Review Act (VJRA).

As is generally the case in proceedings before other administrative agencies and litigation before the courts, veterans, whose claims rest on certain facts material to entitlement, have the burden of proving those facts. Beyond that similarity, the VA claims process is very much unlike the proceedings in other administrative and judicial forums. Because we owe our very existence as a nation to our veterans, our citizens have never wanted veterans seeking benefits to be treated as ordinary litigants. Congress designed the system so a veteran entitled to compensation for disabilities incurred in the service of his or her nation, for example, would not be met by a passive, indifferent, resistant, or contentious bureaucracy, or have to pay a lawyer to get what the veteran is due. The VA claims process is unique in that the Government has special obligations to assist veterans in proving their claims and to actively work to ensure veterans receive all the benefits to which they are entitled. Throughout VA's history, the cornerstone of this benevolent system of benefits has been VA's duty to assist veterans in negotiating the claims process and gathering the evidence necessary to prove their entitlement. In that spirit of assistance and because veterans may be ill, seriously disabled, or ill-equipped to deal with public and private institutions holding their records, VA has had the obligation of requesting release of available records. That long-standing procedure has worked well for veterans and VA alike. Veterans are relieved of the burden of obtaining the records themselves, and VA can more promptly and efficiently process claims when it obtains the evidence itself.

Consistent with the goal of ensuring veterans receive benefits to which they are entitled without a burdensome process, veterans have not been required to prove their claims to a certainty, but only to submit enough evidence to demonstrate that their claims are well grounded. Congress thought the preservation of this liberal burden of proof and the duty to assist so important that it codified them into law when it enacted VJRA. Notwithstanding the history of these principles, the Court interpreted the statute as requiring a veteran to submit enough evidence to establish that the claim is well grounded before VA has any duty to assist. This defeats the purpose of the duty to assist because, for a veteran to obtain VA's assistance, the veteran must first do the very thing he or she needs assistance with. What constitutes a well-grounded claim under the Court's interpretation has been extremely confusing for VA adjudicators and veterans. Therefore, this court-imposed formality is counterproductive because it has complicated the process for all concerned.

DAV and the Veterans of Foreign Wars (VFW) recently filed an *amici curiae* brief in which we challenged the Court's interpretation of the rule on well-grounded claims. Because the administrative materials and legislative history so conclusively prove the Court wrong, in our view, we believe that we have a duty to the clients we represent to appeal all adverse VA decisions based on the Court's interpretation. We are providing a copy of our brief to all of our field offices with instructions to appeal these decisions. Regrettably, but unavoidably, that has the potential to substantially increase VA's appellate workload and increase the already large backlog of pending claims. We are unsure what the outcome will be in the Court of Appeals for Veterans Claims, but the situation is complicated by the fact that the Court's interpretation has been adopted by a higher court, the Court of Appeals for the Federal Circuit. As you know, the higher court's decisions are binding upon the lower court.

Given these circumstances and the possibility that the courts may be reluctant to admit that such a well-established line of their decisions is wrong, we urge enactment of remedial legislation. This year's *Independent Budget* includes that recommendation, and DAV has made it one of its legislative priorities. Congress could override the Court's interpretation through a simple amendment to section 5107, of title 38, United States Code.

In addition to designing the system to serve veterans and grant them all benefits due them without their having to pay part of their disability compensation or other modest benefits to lawyers, Congress designed the system to be informal and uncomplicated for claimants. It is intended that the responsibility for understanding the technicalities of the law rest with VA adjudicators, who are required to decide veterans' claims in accordance with all pertinent provisions of VA law. Permitting attorneys to represent veterans for a fee is inconsistent with Congress' desire that the system work for veterans in such a way as to avoid that expense for them. The principle that veterans benefits should go to veterans and not third parties is the long-

standing public policy underlying Congress' refusal to allow attorneys to involve themselves in the process for purposes of obtaining fees. By reason of its apparent lack of understanding of this public policy and its own desire to review a record like that produced in litigation rather than an informal claims record, the Chief Judge of the Court of Appeals for Veterans Claims has taken the extraordinary step of attempting to influence the policy by suggesting in an opinion that the law should be changed to permit attorneys to charge fees for representing veterans in the VA's administrative process. The proper way to ensure that this Nation's veterans receive the benefits to which they are rightfully entitled is to bring the VA system into compliance with the law as it exists, not give up on the system and allow it to become a litigation process in which veterans must pay lawyers to obtain their benefits. The DAV strongly opposes changing the law to permit lawyers to charge veterans fees for assistance in benefit claims.

Recommendations from other sources to change the system are also often misguided or seek to solve VA's problems of inefficiency by reducing benefits and services to accommodate that inefficiency. Some of these bad ideas have a tendency to be offered repeatedly. For example, in a hearing before the full Committee in May of 1997, DAV and several other veterans organizations provided detailed reasons why recommendations of the Veterans' Claims Adjudication Commission (VCAC) should be rejected. In its January 14, 1999, report, the Commission on Servicemembers and Veterans Transition Assistance recommended that Congress revisit VCAC's recommendations. The Transition Commission itself made some recommendations that masquerade reductions in or elimination of veterans benefits and services as ways to increase efficiency. We urge you to continue to reject these kinds of recommendations.

Although all of VBA is challenged by the necessity to provide better service with fewer resources, the other services in VBA have not faced difficulties of the magnitude and complexity of those faced by C&P Service. Each of the other services have performed in-depth self-examination as part of the strategic planning process, however. That self-examination and formulation of strategies to meet program missions and goals is an ongoing process, of course. While improvements are certainly possible and necessary, overall, we believe VR&C, Loan Guaranty Service, Education Service, and Insurance Service are doing a commendable job for the Nation's veterans and taxpayers. We continue to watch the general trend toward privatization of many of their activities with some hesitation, however. Lenders and educational institutions can and perhaps should perform a variety of functions such as underwriting and certification, but the nature and amount of responsibilities the Government can properly delegate to private concerns is limited. Eligibility determinations under VA laws must remain a responsibility of the Government. Veterans must continue to have meaningful recourse for erroneous actions and poor service. Appeals and other remedies are available when VA makes mistakes or provides poor service, but veterans and their representatives do not have the same remedies or courses of action when the matter in question is the responsibility of a private entity.

We hope that our statement is helpful to you. We appreciate the Subcommittee's interest in these issues and the opportunity to present our views.

STATEMENT OF  
 WILLIAM L. BRADSHAW, DEPUTY DIRECTOR  
 NATIONAL VETERANS SERVICE  
 VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE  
 SUBCOMMITTEE ON BENEFITS  
 COMMITTEE ON VETERANS AFFAIRS  
 UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

DEPARTMENT OF VETERANS AFFAIRS  
 VETERANS BENEFITS ADMINISTRATION'S  
 CLAIMS PROCESSING QUALITY AND WORKFORCE PROBLEMS

WASHINGTON, DC

MARCH 25, 1999

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you, Mr. Chairman, for inviting the Veterans of Foreign Wars of the United States (VFW) to participate in this hearing to discuss the very important topic of the current status of the veterans' claims processing system in the Veterans Benefits Administration. The specific focus on this topic is the "poor quality of claims decisions, a declining workforce, a declining workforce skill level, and an outdated benefits delivery process." With the exception of the last topic, these are items on which we have extensively testified in the past, with the most recent being June 10, 1998. The last subject, "an outdated benefits delivery system" a phrase we frankly do not understand its meaning. The problems we see with the VBA's processing of claims have basically nothing to do with the "delivery" system being "outdated" but rather, most definitely, in the implementation phase of that system.

The Veterans Benefits Administration continues to encounter serious problems in its ability to render quality, timely decisions in the adjudication of veterans' claims for benefits, especially those for compensation. Contributing to these problems is the escalating amount of appeals -- now around 100,000 -- to be processed in those offices, primarily in response to the number of remands from the Board of Veterans' Appeals.

In our opinion, integral to the Under Secretary for Benefits' approach to attack this problem of quality decision-making at the regional office level will be the successful accomplishment of the goals and initiatives espoused in the Veteran Benefits Administration's Business Process Reengineering (BPR) plan submitted as part of the VA's Fiscal Year 1998 budget and, more recently, incorporated in the VA's Strategic Plan. Specifically, it is the fiscal year 2002 vision to process all claims in an average 60 days, with a 97 percent accuracy rate, and no greater than a 20 percent BVA remand rate

However, despite all the efforts put forth by the VA, there are still major concerns. The BVA remand rate of 41.8 percent for fiscal year 1998 is only a slight reduction from previous years. That is still far from the fiscal year 2002 goal of 20 percent. And, the January 1998 Systematic Technical Accuracy Review (STAR) undertaken by the VBA indicated a 36 percent error rate for the core, rating-related adjudicative work done at the regional offices. Both of these figures certainly have caused us to pause from our previous optimistic assessments on the possibility of the VA achieving their BPR goals.

But, we still have hope for the VA. This optimism resides primarily in the many initiatives the VBA has undertaken to correct both quality and timeliness deficiencies. As we stated last June, three initiatives are absolutely critical to us. They are the Post-decision Review Process (and, particularly, the



Decision Review Officer program); the Pre-discharge Claims Development, Examinations and Ratings program for active duty military; and, the out-basing of experienced rating specialists in the VA medical centers.

The significant initiative that will eventually impact the most on the high remand rate and quality of regional office decision making is the Post-decision Review Process instituted as part of the VBA's BPR. This included the important, related decisions to delegate difference of opinion authority to the regional offices and the establishment of the Decision Review Officer (DRO). The VFW service officers at the twelve regional office test-site locations have universally praised the program as a means to expeditiously resolve contested claims, thereby drastically reducing the amount of appeals on VA rating decisions while providing better decisions. Initial statistics indicate that the number of formal appeals was reduced 59 percent from the prior year in regional offices with a DRO, compared to 21 percent in the non-DRO regional offices. That phenomenal figure is because of the earlier involvement by the DRO in informally communicating with the veteran and the representative, the proper requirements for successfully supporting a claim and, if need be, direct explanation of the reasoning for a denial of any claimed issues. This is really an expansion of the widely successful Hearing Officer program, as suggested by both the Veterans' Claims Adjudication Commission in their 1997 report and Congress in their review of that report.

After what everyone agrees was a successful test program at three Army installations, the VA is planning to expand the Pre-discharge Claims, Examinations and Ratings program to all military services tentatively up to an additional 20 sites in the continental United States, and overseas in Germany and Korea. This is a project that is already paying dividends for the government. There is little doubt that, in the long term, it will result in a significant improvement in the timeliness of claims processing. For example, the program between the Seattle Regional Office and Fort Lewis has been able to establish an average decision completion rate of less than 60 days from the discharge date for a final compensation rating. That figure is expected to go much lower as the regional office continues to refine the program. The ultimate goal is to give a rating to a veteran immediately upon his discharge.

Even more important is the quality of the rating decisions as part of the pre-discharge program. Improvement in quality is achievable because the VA, through the ready cooperation of the military, has a captive audience for their outreach briefings, immediate and fresh access to the service medical records, and direct communication with the applicants in assisting them in the proper techniques for filing a claim. This outreach also includes vocational rehabilitation counseling, Montgomery GI Bill processing, and loan guaranty eligibility certificate issuance.

The third initiative is one being done essentially on some regional office directors' own volition, and that is the out-basing of rating and adjudication personnel in VA medical centers. This initiative, which was first started by the Chicago regional office director, has objectively shown to basically eliminate the problem of inadequate and/or incomplete compensation and pension examinations. With inadequate examinations being the significant issue for most BVA remands, it would seem reasonable that all regional office directors will soon adopt this initiative.

Accordingly, these three initiatives, in our opinion, have put the VBA on the edge of a major breakthrough toward making the agency a model of government efficiency and service to its clientele. After all, these are programs geared to the theory of improving the access of veterans to the system. However, there is one major obstacle that can -- and will, if not checked -- sidetrack any further forward movement to this objective. The BPR initiatives just described have occurred, for the most part, through internal diversion of FTE resources and at a time when the Veterans Benefits Administration has also been suffering significant FTE reductions. (As an example, lack of available resources is the only reason given by regional office directors precluding their ability to out-base rating personnel in VA medical centers. Further, the greatest complaint with the DRO program is the lack of support staff, which is a problem that must be solved before there can be universal implementation of the program.)

Thus, we are absolutely convinced that inadequate staffing has significantly and negatively impacted on the VBA's quality problems. Statistics confirm this supposition. The VBA has gone from 13,856 FTE in Fiscal Year 1992 to approximately 11,200 presently, a 20 percent reduction in less than six years! (After all, improvement in the quality of decisions is only realistic with education, training and experience -- all commodities that are only available if one has sufficient time to do the right job.) This issue was also recognized by the National Academy of Public Administration when they recommended, in their August 1997 report on the VA claims processing problems, that the "FTE drain" in the VBA had to be stopped by at least stabilizing at the fiscal year 1997 level.

Indeed, what is immediately required is an infusion of additional FTE beyond that to replace normal attrition. The Fiscal Year 1999 *Veterans Independent Budget and Policy* provided justification for an increase of 500 FTE in the Compensation and Pension Service while maintaining FTE at the FY97 level in VBA's other components (business lines). We were highly encouraged last June when you, Mr. Chairman, seemingly recognized this and proposed a modest but vital increase of 175 FTE. Regrettably, the Congress eventually went along with the Administration's recommendation for a further overall 125 FTE reduction in VBA from the 1998 level as part of the fiscal year 1999 budget. This unfortunate swing of 300 FTE is now putting the VBA on the edge of the cliff toward a disastrous imploding of the system. Simply stated, the VBA does not have the people to do the job anymore.

Moreover, we also stated in our Congressional testimony last June 10 that our real belief was that at least 1,000 should be the appropriate figure if there is any hope to achieve the planned goals outlined in the VA's Strategic Plan for quality, timely decisions on veterans' claims. The additional 500 FTE we recommended must be used to expand the out-basing of rating veterans service representatives to those VA medical centers that perform a significant number of C&P examinations, to enhance the DRO program by providing adequate administrative support staff and additional DROs, and to recruit new veterans service representatives to rectify the past hiring freezes.

The Administration's Fiscal Year 2000 budget proposal on FTE for the VBA is not very good, either. Even though there is a recommendation for an increase of 440 FTE for the Compensation and Pension Service, that gain is accompanied by reductions, for example, of 115 in Loan Guaranty and 120 in Information Technology support. Overall, there is only a net gain of 164 FTE for all of VBA. Further, 100 of the FTE reduction in Loan Guaranty will be transferred to the Compensation and Pension Service only upon the acceptance of a contracting-out project. Consequently, most of the 440 increase in FTE will probably occur very late in the fiscal year, if at all.

Mr. Chairman, Congress must now immediately act and provide the necessary appropriated funding to reverse this deleterious personnel situation in the VBA if we hope to have any further success toward the BPR goals of improved claims timeliness, improved rating decision quality, and lower BVA remand rate. That does not seem to be asking very much. Even if we are talking about an additional \$200 million, in comparison to a projected \$1 trillion surplus, it is only two one-hundredths of one percent (.02%) of that surplus! Surely, to Congress, veterans must be worth that insignificant amount, particularly because veterans have sacrificed extensively since 1990 in the name of budget reconciliation and balancing.

Mr. Chairman, this concludes my testimony.

Statement of

**VIETNAM VETERANS OF AMERICA**

Presented by

**Bill Russo, Esq.**  
**Director, Veterans Benefits Program**  
**Vietnam Veterans of America**

Before The

**Subcommittee on Benefits**  
**Committee on Veterans' Affairs**  
**United States House of Representatives**  
**The Honorable Jack Quinn, Chairman**

Regarding

**Oversight of the Veterans Benefits Administration**

March 25, 1999

**Attachments**

**Biography – Bill Russo, Director, Veterans Benefits Program**

**Funding Statement – March 25, 1999**

## INTRODUCTION

Chairman Quinn and other distinguished members of the Subcommittee, on behalf of Vietnam Veterans of America (VVA), I am pleased to have this opportunity to present our views in regard to much needed oversight of the Veterans Benefits Administration. VVA is grateful to you for your leadership in holding this hearing to determine whether veterans are receiving vitally needed benefits and entitlements in a proper manner.

VVA strongly believes that it is the right of every veteran to have a compensation system that is uniform, straightforward, and fair, no matter where one currently lives in the country. VVA maintains that veterans have *earned* this right by virtue of their military service.

This claims adjudication system not only must be fair, it must appear to the veteran to be fair. Frankly, there is such a perception of bad history among veterans about VA claims at this point, the VBA must work all the harder at improvement of the system in order to demonstrate that it is fair and equitable.

An element of this perception of fairness is that the system be timely and be open. What we mean by this is that no veteran should have difficulty in discovering the status of his or her claim, or evidence pertaining to that claim. This should be a fairly basic element of any drive for reform or improvement in the system, yet VVA hears of difficulty in discerning the status of claims from individual veterans on almost a daily basis.

We would be remiss if we did not also address the "quality assurance" problem, which in lay man terms means that there is a grievous lack of consistency in the substance of decisions from VARO to VARO, and even from adjudicator to adjudicator within the same VARO. It would appear that there are unexplainable variances in the awards for virtually the same circumstances by the same adjudicator. These irrational variances are simply unacceptable, and foster disrespect for the entire process by the veterans subject to this system. It is the responsibility of the Undersecretary and the VA to take all steps necessary to address this key problem of consistency and "quality assurance" at the earliest possible date.

The issues discussed above are general issues that all of the very fine initiatives launched by the current leadership of the Veterans Benefits Administration (VBA) must seek to address in some meaningful manner

VVA hears not only from veteran advocates outside of VA about perceived problems with the VBA adjudication process, but often from physicians and other health-care providers who render care within the VA structure. These fine clinicians report that problems with timely and accurate adjudication have a negative impact on their efforts to provide proper medical care. There are several aspects to these reports. We note that for many veterans (if not indeed most), one of the primary reasons for seeking service connection for the onset of adverse medical conditions is this is perceived as necessary in order to receive the clinical care the veteran wants and needs. This perception appears to be particularly common among veterans and care providers to veterans who have need of the specialized services, such as treatment that may involve prosthetics or treatment for neuro-psychiatric

conditions, including Post-traumatic Stress Disorder (PTSD).

This perception may, in fact, become a reality of denial of care to veterans, at least for those veterans who are classified as "Category 7," if the Administration's draconian budget request for the Veterans Health Administration is enacted as submitted. Because of these worries, and other factors having to do with the nature of the VBA process, many of the psychologists, psychiatrists, and other mental health counselors tell us that *contact with VBA is virtually contra-indicated clinically* for veterans in treatment and recovery. These contacts with the local VA Regional Office of VBA are so often of such a nature to exacerbate symptomology of Post-traumatic Stress Disorder and other neuro-psychiatric wounds of war. In other words, the veteran in treatment is often significantly set back by contact with the benefits structure. While you and I know that these are two separate and distinct parts of the VA, to the veteran who is a "whole person" it is all VA, and so often disrupts the trust level with the clinician.

VVA believes that we can and must do better with the handling of claims. We must ensure that the process is both in reality and perception an equitable, consistent, and open process, which is rational and fair on a nationwide basis.

## REFORMING THE VBA

Vietnam Veterans of America is extremely encouraged by the reforms of the claims system which have been implemented by Under Secretary Joseph Thompson over the 16 months he has been in office. These are the programs which VVA is most interested in, which we urge VA to continue and expand.

### Balanced Scorecard

The most important reform is the way in which VBA evaluates its VARO's performance. The "Balanced Scorecard" measures performance not just in timeliness, as VBA has done for years, but in several other ways as well: accuracy, unit cost per claim, customer satisfaction and employee development. This approach is consistent with modern corporate thinking and, we believe, will better serve veterans and the VA itself.

Accuracy is obviously critical to the claims process, yet it has long been overlooked. A new emphasis on "getting it right the first time" is what the veterans service organizations have been suggesting for years. If VBA is successful in this effort, there will be fewer appeals, which will improve the timeliness of processing, both for original claims and appeals cases. Most important, veterans will get just, fair decisions.

### Pre-Discharge Claims

exams and help service members file benefits claims prior to discharge. There are several positive aspects to this initiative. It ensures that exams are done consistently, in accordance with VA rating requirements. It helps the service member and VA document his or her medical condition upon discharge. This process will allow VA to grant claims more quickly, giving the disabled veterans compensation to support them and their family. It will also make it easier for a veteran to prove a valid claim filed in the future and for VA to properly deny a fraudulent claim (i.e. claim for a traumatic injury which the separation exam did not record). This process will also provide VA and other medical researchers invaluable patient data.

### **TRIP Program**

Last year, VBA began a new program called "Training-Responsibility-Involvement-Preparation of Claims" (TRIP). The main goals of this program are improved training of veterans organizations staff to better access VA's computer systems and to better develop the evidence in veterans' claims. VVA has been an active participant in the joint VA-VSO meetings on TRIP over the past 8 months, and we are convinced that this program has merit. It will allow veterans service officers to file and monitor claims on-line. It will allow us on-line access to the various VA forms, making our work more efficient. Moreover, it will allow the VSO's and VA to work as partners in training our veterans service officers to provide the best representation possible and make sure veterans get all the benefits to which they are entitled.

### **Decision Review Officers**

Over the past year, VBA has launched pilot projects in 12 VARO's known as the Decision Review Officer (DRO) program. The DRO program is essentially an arbitration/mediation process; civil courts across the country have been using these methods to promptly resolve cases. The central point of the program is that the veteran and/or his representative are able to meet face to face with a VARO adjudicator. Unlike traditional VARO hearings before a Hearing Officer, these are informal meetings, with no transcript made. Many times the representative explains the facts and laws sufficiently that the DRO grants the claim. Other times the DRO explains what additional evidence is needed, the veteran supplies it, and the claim is ultimately granted.

The results of this pilot program are truly impressive. At the test stations, 62% fewer substantive appeals (which appeal the claim to Board of Veterans' Appeals (BVA)) were filed compared with FY1997. Sixty two percent fewer cases at the BVA would mean faster, and possibly more accurate, processing of appeals at that level. In addition, both our VVA Service Representatives and our clients are very satisfied with the DRO process. Therefore, VVA urges VBA to expand this program nationwide.

## PRESUMPTIVE SERVICE CONNECTION FOR HEPATITIS C

Last year, in an effort to determine how well VA is adjudicating hepatitis C claims, VVA reviewed selected Board of Veterans' Appeals (BVA) decisions denying service connection for hepatitis C. (This was the subject of our testimony to this committee last July 16.) What we discovered strongly indicated the need for a statute allowing presumptive service connection for hepatitis C. As reflected by the BVA decisions we discussed, the VA Regional Offices and BVA, and apparently some VA doctors conducting C & P exams, were very uninformed about hepatitis C. This led to wrongful denials, some of which were unfair to the sick veteran claimant.

The premise behind presumptive service connection is that in certain claims, often involving complex, technical scientific issues (such as radiation or dioxin exposure), or certain types of service (such as prisoner of war service), it would be unfair to burden the sick veteran with proving all the elements of service connection. Our analysis of selected BVA cases last year showed the need for a statute allowing presumptive service connection for hepatitis C. Veterans were being wrongfully denied service connection—and therefore health care—because they lacked the funds or the knowledge to obtain a doctor's opinion as to the etiology of their hepatitis C. Congress should help these sick veterans by passing appropriate legislation.

Hepatitis C is most often transmitted through blood, including transfusions and other medical procedures. The BVA decisions showed that some VA adjudicators do not recognize this medical fact. Hepatitis C has been found to have a latency period of at least 30 years, during which it may show no symptoms at all. The BVA decisions showed that some VA adjudicators do not recognize this either. Lastly, hepatitis C was not identified until the 1980's. A reliable test for hepatitis C was not available until 1991. Again the BVA decisions showed that some VA adjudicators do not understand these facts. In addition to being ignorant about the medical aspects of hepatitis C, VA generally did not offer assistance to a veteran who is not sufficiently educated and wealthy to obtain a medical opinion supporting his claim.

Although VVA was committed to seeing justice done for veterans with hepatitis C, what occurred at VVA's Leadership Conference later in July made the issue "hut home" for the organization's leaders and members. At the conference, 166 veterans took the hepatitis C test, and 19 tested either positive or "inconclusive" for hepatitis C. Among those who tested "inconclusive" was VVA National President George C. Duggins. Fortunately for him, the follow-up tests were negative for the disease. But after all re-testing was done, 14 veterans were found to have hepatitis C. This is an infection rate of 8.4%, compared to the infection rate of 1.8% in the general U.S. population. These findings left no doubt about the fact that hepatitis C was indeed a veterans' epidemic.

Following the VVA Leadership Conference, VVA began meeting with members of Congress and their staffs, pressing the need for hepatitis C legislation. One key question that arose is which veterans would be entitled to the presumption that they were infected during service. The simplest

answer was to use the VA's own lists of risk factors for infection, contained in a June 11, 1998 memo from the VA Under Secretary for Health, Dr. Kenneth W. Kizer. The memo ordered the VA medical facilities to conduct a blood test of any veteran with one of 10 listed risk factors.

A basic principle in veterans benefits law is that a veteran cannot get service connected for injuries or diseases resulting from "willful misconduct," such as drunk driving. VVA therefore recommended that the legislation not include intravenous drug or cocaine use, both of which are risk factors for hepatitis C infection. (Cocaine use can cause infection since small amounts of blood from the user's nose can be passed from the straw or tube to anyone sharing them) Although having multiple sexual partners is considered by VA doctors to be a risk factor, the legislation as drafted does not include this factor

Earlier this year, Senator Olympia J. Snowe (R-ME) introduced legislation (Bill No. S. 71) establishing presumptive service for veterans with hepatitis C. Rep. Vic Snyder (D-AR) introduced identical legislation (Bill No. H.R. 1020) in the House of Representatives earlier this month. The bill was co-sponsored by Representatives Lane Evans (D-IL), Christopher H. Smith (R-NJ), Bob Filner (D-CA), Corrine Brown (D-FL), Julia M. Carson (D-IN), Neil Abercrombie (D-HI), Carolyn McCarthy (D-NY), David Minge (D-MN), and Ronnie Shows (D-MS)

Last fall, Director of VA's Compensation and Pension Service Robert J. Epley issued a memorandum to all VA Regional Offices regarding hepatitis C claims. The main point of the memo was that if a veteran proves that he or she was exposed to one of the known risk factors for hepatitis C infection in service, and now has the hepatitis C virus, his claim is "well grounded." The memo goes on to instruct that since the claim is well grounded, VA will obtain a medical opinion as to whether the veteran was infected in service. (Presumably this is done pursuant to VA's "duty to assist.") If the VA doctor finds that it is "at least as likely as not" that the veteran was infected during service, VA must grant service connection.

While VVA certainly applauds VA for issuing this memo, we believe legislation is still necessary. First, this memo does not have the force of law (as would a statute or regulation). VA Regional Offices (VARO) may fail to abide by its instructions and the veteran has no right to appeal to BVA based on this failure. The current state of quality assurance within the VBA has been what can only generously be described as "uneven at best." Second, even if most or all of the VA Regional Offices follow the memo, VA's doctors may simply not be aware of the current state of knowledge about how hepatitis C is transmitted, leading them to render faulty opinions resulting in unfair denials. Thirdly, the VA will likely be deluged with hepatitis C claims over the next decade. Establishing the presumption by statute will significantly reduce the processing time for these (and therefore other types of) VA claims.

Getting these sick veterans service connected by the VA will give them and their families some money to live on (payments depend on the level of disability) and (paramount to most veterans) access to VA medical treatment. Early detection and treatment of hepatitis C, prevents liver disease, which would lower health care expenditures greatly. Most important, it will save veterans lives.



## **ATTORNEY REPRESENTATION FOR VETERANS**

### **Background**

The VA Regional Offices' (VARO's) implementation of the U.S. Court of Veterans Appeals' (now the U.S. Court of Appeals for Veterans Claims) decisions has generated a great deal of controversy over the years. The Court's Chief Judge, Frank Q. Nebeker, expressed outrage at VA's failure to implement the Court's decisions, in his opening remarks at its 1994 Judicial Conference. It is interesting to note that despite then VA Secretary Jesse Brown's promise at the conference, to improve VA's implementation, Chief Judge Nebeker testified to Congress in April 1997 that VA had made little improvements in implementing the Court's decisions at the VARO level. He made similar remarks at the Court's Judicial Conference this past September.

On a widespread basis, the VARO's continue to fail to follow the Court's decisions. This can be seen from a review of the BVA's FY 1998 statistics, which show that 17% of BVA decisions were reversals (at least of one of the claims appealed) and another 41% were remands (same caveat). The VBA's own quality review statistics (STAR program) reflect many chronic errors which violate Court precedent, such as inadequate medical examinations. VVA believes that one means of improving VARO decision quality would be to allow claimants the right to hire an attorney to represent them in their claim at the VARO, as discussed below.

### **The Need for Attorney Representation**

VVA has reason to be proud of its nationwide network of veterans' service representatives, all of whom are lay advocates that assist veterans in navigating the often labyrinthine processes of the VA adjudicatory system. VVA provides a comprehensive training program to those committed individuals seeking to become accredited service representatives, provides newsletters updating them on developments before the VA, and conducts periodic refresher training. VVA service representatives help veterans complete forms, gather and marshal evidence, represent veterans at hearings, and otherwise assist veterans in developing their claims. By and large, VVA's field representatives and those of other service organizations have done an excellent job in assisting veterans and should play a continuing part in the adjudicative process.

However, the time has come for Congress to broaden the scope of proceedings before the VA in which veterans can engage attorneys on a fee basis. The Veterans Claims Adjudication Commission Report states that fewer than one percent of represented applicants designate attorneys at the Regional Office and five percent are represented by attorneys at the Board of Veterans' Appeals (BVA) level, while 87.9 percent of represented appellants designate private attorneys before the Court. This disparity between attorney representation at the Court and administrative proceedings stems from the legal requirement that attorneys are prohibited from charging fees until a veteran's claims have first been denied at the BVA.

Both federal and state officials have recognized that involvement of attorneys at even the lowest levels of adjudication results in more effective presentations and thus more improved and fairer

dispositions by the administrative bodies. Accordingly, both Social Security and state workmen's compensation programs, neither of which is more complex than VA disability programs, encourage attorney participation throughout various levels of adjudication by providing fees to be paid out of past-due benefits.

The Veterans Judicial Review Act (VJRA) should be modified to encourage the participation of attorneys on a fee basis before the VA at the early stages of the claim process, at least after an initial denial by the VA Regional Office (VARO). Sound policy reasons support such a structural change. First of all, lawyers are trained and skilled to understand and apply regulations governing eligibility to veterans disability benefits and in the evidentiary means by which a claim can be established. The presence of such lawyers within the ranks of VA advocates will improve the speed and quality of adjudication and the overriding need for the VA to get it right the first time.

Introduction of lawyers at the VARO will have other beneficial results. Accredited veterans service officers are usually located in VARO's and VA medical facilities, where they can provide on-the-spot assistance to disabled veterans who need assistance in navigating the VA benefits system.

Veterans living in places distant from a VARO, and who are often prevented from traveling to such facilities due to their disability or lack of funds, are prevented from receiving face-to-face assistance from a service officer. There are very few locations, however, that do not have an attorney who will handle Social Security and workman's compensation claims. Adding veterans benefits to the disabilities which can be represented by counsel will mean that veterans will not have to travel to VARO's or to VA medical centers to receive assistance, since there could be shortly in place a system of attorneys skilled in veterans benefits proceedings, just as there already is a base of competent attorneys willing to represent claimants before the Social Security Administration and workman's compensation proceedings.

In addition, bringing attorneys into the process will relieve the caseloads of service organizations. Many service officers are so overwhelmed by their existing caseloads that they are unable to provide personal assistance to every claimant through each step of the process. An attorney who seeks to be compensated from a veteran's retroactive payment will have significant incentives, both financial and ethical, to assist his client in a way that will expedite the maximum payments allowable by law—a goal that the VA has explicitly adopted. Thus, the presence of attorneys at the regional level will also relieve overworked adjudication officials in discharging their duty to assist veterans presenting a well-grounded claim. Attorneys specializing in disability cases in other areas are skilled in marshaling often-complex medical evidence to present to the adjudicators, and their presence in the VA process will provide a service to a represented veteran and to the system as a whole.

#### **Attorneys: Bad Boys ?**

Will attorneys at the VARO's put the veterans' service organizations out of business? Clearly not. These organizations have accepted judicial review and realize its potential to help their members.

In fact, most of the major organizations have hired attorneys, who work alongside their non-attorney service representatives, to represent claimants at the Court. Moreover, some claimants will want to hire attorneys (i.e. those with legally complex cases) while others will stick with their veterans organization representative.

Have lawyers improperly taken advantage of VA claimants since the passage of the VJRA as predicted by some? There is no evidence that this has occurred. Certainly, the U.S. Court of Veterans Appeals' decisions have not revealed any widespread ethics violations by attorneys. Likewise, the 1996 study by Professor William Fox (Catholic University Law School, Washington, D.C.) of attorney practice at the Court did not reveal any negative impact of attorney representation of veterans. To the contrary, his data indicated that attorney representation greatly improved a claimant's chances of winning his case. In fact, Prof. Fox urged Congress to pass legislation allowing lawyers to practice at the VARO and BVA level, in order for the VA and Court decisional process to be "truly legitimate" and "truly accepted" within the mainstream of federal administrative law.

### Another Voice

Chief Judge Nebeker offered his views on attorney representation of VA claimants in his testimony to Congress in April 1997. Addressing the current law which prohibits an attorney from charging a claimant a fee until after BVA has denied the claim (at which point the claimant is generally prohibited from submitting any more evidence), he agreed with the frequently cited problem that a criminal defendant is more able to hire an attorney than a disabled veteran claimant, and implied he would support legislation allowing claimants to hire an attorney at the VARO level.

When VVA testified last June on the need to allow attorney representation at the VARO and BVA levels, we were a lone voice amongst the veterans organizations. (However, we believed that our position represents the views of most veterans.) Six weeks ago, however, the Chief Judge publicly, explicitly, and forcefully agreed that Congress should consider allowing veterans to hire an attorney at the VARO level. In the case of *In the Matter of the Fee Agreement of Kenneth B. Mason, Jr., in Case Number 90-920*, U.S. Vet. App. No. 96-1663, (January 22, 1999), the Chief Judge stated, "The Court's experience in other cases over the past nine years convinces me that the time is ripe for a reexamination of the role of attorneys in the benefits adjudication process..." He vindicated a number of the positions taken by VVA on this issue over the past year when he went on to state:

Another troubling aspect of representation has to do with the limited role lawyers are permitted (or may be paid) to play in the adjudication of claims for veterans benefits. When judicial review was established ten years ago, there was apparently concern on the part of Congress that opening the door to lawyer representation, even in a limited way, was so fraught with potential peril. Why the perceived need effectively to restrict lawyer representation by proscribing the charging of fees prior to a BVA decision and the oversight of fee agreements by the Court? In the absence of any empirical or statistical data, one can

only wonder whether Congress presumed that the bar would act unprofessionally or would replace the services offered gratis by veterans service groups? If the former, it is an unfounded indictment based on mistrust. If the latter, it is evidence of a desire to prevent the bar from trespassing upon protected turf. In either case, now that we have had nearly ten years of experience, a questioning of the basic premises is in order.

The Court continues to see many appeals where, if counsel were realistically permitted to represent a claimant during the adjudication process before a final BVA decision, an appeal would be unnecessary or even seen as futile by the applicant. However, with the present restrictions on lawyer representation, an error at the VA level may not be discovered until years later, where with counsel it might well have been prevented at the outset. Thus, restricting realistic access to counsel until after a final BVA decision can cause years of delay both in adjudication before VA and in discovering the error through appellate litigation, only to have the matter returned to VA for readjudication. This happens in many appeals.

Effectively limiting lawyer representation until after a BVA final decision and after oversight of fee agreements is, quite arguably, unnecessarily paternalistic. Such was the thrust of comments and questions by Mr. Evans and Mr. Hutchinson at a February 12, 1998, hearing before the House Veterans Affairs Committee (HVAC)

*Mr. Evans.* The court has indicated that a large number of unrepresented veterans before the court may be attributable to a claims system that "does not encourage attorney representation." Do you favor any actions that allow attorneys to collect fees, perhaps at an initial stage of their claim? For example, do you favor the practice of paying attorneys' fees directly from the veteran's passthrough award in order to encourage attorney representation, or any other practices that might encourage attorneys' participation in the process?

*Judge Nebeker.* I understand the history has been that the veterans' benefit system has not wanted to have—well, I will use the expression "lawyerfied" at the base level. Being a lawyer, I don't necessarily share that view. We certainly get a great deal of assistance from the volunteer lawyers that come before our court, and in any way that lawyers could help, and I think they can, at the administrative level, it would certainly make for a more just system, and I think, ultimately a more rapidly developing system.

Department of Veterans Affairs Budget Request for Fiscal year 1999  
Hearing before the Comm. on Veterans' Affairs, House of Representatives  
( Serial No. 105-28), 105th Cong. 45 (1998) (colloquy with Hon. Lane  
Evans, U.S. House of Representatives)

This further exchange addressed a similar point

*Mr. Hutchinson.* I practiced, to a limited extent, before coming to Congress, before the Court of Veterans Appeals and also the Board, and just to give you the benefit of my perception being an attorney in Arkansas. We have a high veterans population. Very, very few attorneys, probably less than five in Arkansas, have ever practiced before a court of veterans' appeals or actively do it; it might even be a shorter list than that. I can see good reason why they don't. You know, I handled a number of cases, but I don't think there was ever any money made, because of the stringent rules, the intimidation factor, and basically whether you hope to have a fee at some point or not, it winds up being pro bono. I did it because I thought the veteran needed some help, but it is really not a good system. It discourages attorney representation, at least in the rural areas, such as Arkansas. Maybe they all need to go to Washington, D.C. to get a lawyer, but I don't think that is a good system either.

You know, another observation is that it seems to me that you have a system that encourages veterans just to continue pursuing their case for year after year after year after year, and no one will tell them it is not a good case. To me there is a problem here, and because there are so many cases being filed, unrepresented, and they pursue them, and they keep clogging up the system, that the meritorious cases have a much more difficult time ever being heard. And, Judge, I would just like you to respond to that. I mean, am I missing the mark, totally, on this?

*Judge Nebeker.* No sir, you haven't. I think it is a conscious policy to discourage lawyer representation at that level. Now, whether that is a policy choice or what, I don't know. I see that that is, in fact, the case, and true, there is not a lot of money in many of these cases, but there sometimes is. By the time the lawyers get into our court, even on a pro bono basis, we do have a substantial number who get fees under the Equal Access to Justice Act. Now that requires, one, that they prevail, and two, that the position of the Secretary was not substantially justified. There is a high rate of awards of EAJA fees in our court, but you are absolutely correct, it is not lawyer friendly at all, until the lawyers get to our court.

Department of Veterans Affairs Budget Request for Fiscal Year 1999  
Hearing before the Committee on Veterans' Affairs, House of  
Representatives (Serial No. 105-28), 105th Cong. 51 (1998) (colloquy  
with Hon. Asa Hutchinson, U.S. House of Representatives)

To the extent that these colloquies demonstrate a Congressional interest in the issue of attorney representation of benefits claimants and the proper oversight role for the Court, I welcome them. The present law springs from a political judgment, influenced perhaps by both

benevolent and possibly vested interests, which is now more than a decade old. In view of the lessons learned, I too submit that it is time to revisit the worth of the present system and the reasons for it.

VVA has always fought for the right of veterans to hire an attorney if they so choose. VVA took the lead in pushing for veterans judicial review, even when we were the only veterans organization supporting it. Nearly a decade after its passage it appears that the Veterans Judicial Review Act (VJRA) has not provided enough freedom or incentive for attorneys to represent many veterans in their claims. Congress should now allow attorneys to be compensated for providing representation at the VARO level, or at least at the BVA, where evidence can still be added to the record. In addition to helping claimants at the VA level, such a change would encourage more lawyers to represent veterans at the Court level, where about two-thirds still go unrepresented.

VVA believes that veterans' advocates would be hard-pressed to assert that veterans and the families should not be given the freedom of choice to hire an attorney to represent them in their VA claim. Social Security disability claimants, illegal aliens fighting deportation, and of course, accused criminals, are all permitted to hire an attorney.<sup>1</sup> It is amazing that federal law actually still prohibits a veteran from hiring an attorney. We know of no other claimant for federal benefits restricted like this.

#### **A Compromise Position**

Some veterans organizations have opposed attorney representation at the VARO on the grounds that it would make the non-adversarial VARO claims system formal and adversarial. VVA does not agree with these assessments (similar fears raised regarding judicial review generally proved unfounded). However, even assuming these fears are accurate with respect to the VARO level, they simply do not apply at the Board of Veterans' Appeals. This is because the BVA is already a formal and adversarial process. By the time a claim reaches BVA, it has by definition been denied at least twice by the VARO, initially and in the Statement of the Case. Unlike the VARO's, BVA decisions are made entirely by attorneys (65 Board members and hundreds of staff attorneys). To prohibit the veteran from hiring an attorney at this stage, when the VA has already denied him and he is facing hundreds of government attorneys, is clearly an injustice. At the very least, Congress should allow veterans to hire an attorney at the BVA.

### **CONCLUSION**

Vietnam Veterans of America appreciates this opportunity to present our views on this matter of vital concern to veterans of all generations. VVA looks forward to working with the Committee on these important issues.

---

<sup>1</sup> Indigent criminal defendants are provided such representation at government expense.

## BIOGRAPHY OF BILL RUSSO, ESQ.

Since 1994, Bill Russo has served as Director of the Veterans Benefits Program of Vietnam Veterans of America (VVA). In this position, he is responsible for the training and management of more than 300 accredited Service Representatives nationwide, and supervises VVA's representation at the Board of Veterans' Appeals (BVA) and the federal courts. Under his leadership, VVA has increased its caseload at the BVA by over 400%, while continuing to win the highest percentage of cases of veterans service organization. In addition, Bill oversees production of VVA's renowned publications on VA benefits, which are provided to veterans and their representatives nationwide.

Previously, Bill worked from 1987 to 1990 as a law clerk and attorney for VVA Legal Services, advising VVA Service Representatives and representing claimants at the BVA. From 1990 to 1991, he then served as a staff attorney with the U.S. Court of Veterans Appeals Central Legal Members, analyzing veterans' cases for the Court's judges. From 1991 to 1994, he practiced civil litigation for a private law firm and spent his spare time representing a number of veterans on a *pro bono* basis.

In 1991, Bill received a Special Service Award from the U.S. Court of Veterans Appeals, for his work on the American Bar Association's study on pro se appellants at the Court. In 1994, he was selected by the American Bar Association's Young Lawyers Division for the "Profiles of the Profession" issue of *Barrister* magazine, for his pro bono work on behalf of veterans. In 1997, he received the VVA Government Affairs Distinguished Service Award for his legislative advocacy on veterans issues.

Bill serves on the Boards of the National Gulf War Resource Center and the Veterans Assistance Foundation, which runs transitional centers for homeless veterans. He also serves on the Advisory Committee for the ongoing American Legion/Columbia University Advisory Committee on Characterizing Herbicide Exposure.

During his career, Bill has argued before the U.S. Court of Veterans Appeals, testified to the U.S. Senate and U.S. House of Representatives Committees on Veterans Affairs, and published numerous articles regarding veterans law. In addition, he has been interviewed on *National Public Radio* and *BBC Radio*, and been quoted in *The Wall Street Journal*, *USA Today* and many other newspapers, on veterans issues.

Bill has trained state and county veterans service officers in Indiana, New York, Washington state and Wisconsin, the National Association of County Veterans Service Officers, the National Organization of Veterans Advocates (private attorneys) and numerous VVA service representatives.

Bill graduated with honors from the University of Maryland in 1985 and graduated from The George Washington University Law School in 1989. He is admitted to practice law in the District of Columbia, Maryland and Pennsylvania.



## ***Vietnam Veterans of America, Inc.***

1224 M Street, NW, Washington, DC 20005-5183 • Telephone (202) 628-2700

Faxes: Main (202) 628-5880 • Advocacy (202) 628-6997 • Communications (202) 783-4642 • Finance (202) 628-5881

World Wide Web: <http://www.vva.org> • E-mail: [71154.702@compuserve.com](mailto:71154.702@compuserve.com)

*A Not-For-Profit Veterans Service Organization Chartered by the United States Congress*

### **VIETNAM VETERANS OF AMERICA**

#### **Funding Statement**

**March 25, 1999**

The national organization Vietnam Veterans of America (VVA) is a non-profit veterans membership organization registered as a 501(c)(19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

#### **For Further Information, Contact:**

**Director of Government Relations**

**Vietnam Veterans of America**

**(202) 628-2700, extension 127**



**STATEMENT OF  
HARLEY THOMAS, ASSOCIATE LEGISLATIVE DIRECTOR  
PARALYZED VETERANS OF AMERICA  
BEFORE THE  
SUBCOMMITTEE ON BENEFITS  
OF THE  
HOUSE COMMITTEE ON VETERANS' AFFAIRS  
CONCERNING  
"VETERANS BENEFITS QUALITY AND DELIVERY SYSTEMS"  
MARCH 25, 1999**

Chairman Quinn, Ranking Democratic Member Filner, Members of the Subcommittee, on behalf of the Paralyzed Veterans of America (PVA), I appreciate this opportunity to testify regarding the many challenges facing the Veterans Benefits Administrations (VBA) delivery of quality veterans benefits. In the face of inadequate budgets, staff shortages, and VBA's constant state of flux, we must express our grave concern with VBA's ability to get the job done.

Many times veterans claims are summarily dismissed simply because the claimant has been unable to provide sufficient proof in developing facts pertinent to the claim. In many cases claim denial is due in no small part to lack of 'help' and direction in preparation of the claim. The requirement for VA to assist a claimant in developing facts pertinent to his claim is covered under 38 C.F.R. § 3.103 (1987):

"It is the obligation of the Veterans' Administration to assist a claimant in developing the

facts pertinent to his or her claim and to render a decision which grants him or her every benefit that can be supported in law while protecting the interest of the Government." It was clearly the intent 38 C.F.R. § 3.103 to insure that the VA's practice of making every effort to award a benefit to the claimant is not abandoned.

Current law also requires that a claimant for benefits, has the burden of submitting evidence sufficient to justify a belief that the "claim is well grounded." Unfortunately, the courts' perversion of the well-grounded claim principle provides a convenient basis to summarily deny an unknowing veteran's claim. Congress never intended that veterans' claims be denied on such sheer technicalities or contrived formalities.

#### **INADEQUATE STAFFING**

The processing of benefit, pension and compensation claims is one of the most chronic and serious problems facing VBA in fulfilling its responsibilities under the law. Faced with a declining workforce, primarily driven by inadequate budgets, can only continue to magnify problems relating to quality and timely execution of VBA's mission. Poor quality may be attributed to several factors, however, inadequate resources and staffing incapacitates VBA's ability for timely disposition of claims and, as a consequence, leads to huge backlogs and delays. This, in turn, shifts the emphasis to quantity, rather than quality in a feeble attempt to avoid insurmountable backlogs. Budget-driven staffing and funding levels have forced VBA to project new efficiencies to correspond to lowered resources. Theoretical at best, these new efficiency goals have been optimistic enough to meet lowered spending targets. These lowered goal targets have resulted, based upon contemplated new efficiencies, which have had little basis in fact, and almost no chance of realization.

By conservative estimates, VBA needs at least 400 additional full time employees to meet the real needs of adequate claims processing, and make up for past unwarranted

staffing reductions which were based on artificial and budget-driven considerations. Without these increases in full time employees, intolerable backlogs can only become worse.

#### **BUSINESS PROCESS REENGINEERING (BPR) plan**

In order to address the problems in claims adjudication, C&P have undertaken an ambitious redesign of the claims process. C&P will implement a new integrated computerized process. Under the old assembly-line process each individual in the sequence is responsible for only one individual step and lacks involvement with the completion or quality of the whole and final product. Under the new integrated system, a team will perform all activities necessary to complete the adjudication with one individual responsible for directing and ensuring that all necessary actions are taken.

Direct communication between the decision-maker and the claimant will create a better understanding about the specific nature of the claim and exactly what needs to be done to successfully resolve it.

Veterans Service Representatives (VSRs) will assist the claimant in filing the application for benefits, help to identify the issues, sources of evidence, and explain the process to the claimant. Making routine decisions on the claim, the VSR will then refer the claim to a Rating Veterans Service Representative (RVSR), if a rating is necessary. A claimant that disagrees with an initial decision may request a post-decision review process. This process is designed to provide prompt review by a highly knowledgeable Decision Review Officer (DRO) who would have full authority to change the decision, obtain additional evidence, or prepare the case for referral to BVA.

It is imperative that VA trains its VSRs, RVSRs, and DROs in their new job functions and responsibilities. PVA believes that without proper training, this new system cannot succeed and requests that Congress includes \$5 million in the GOE appropriation for the development of these training programs.

#### **EXPANSION OF SEPARATION SITE SERVICES**

VA's pre-discharge, examination, and rating project initiative is designed to routinely provide for prompt development and disposition of disability claims for separating service members. In order to provide these necessary services to veterans who do not separate near a VA regional office, it is estimated it will cost approximately \$10 million to develop the operations and infrastructure for this program at separation sites in the continental United States and abroad. PVA believes Congress should appropriate \$14 million to cover the costs of establishing VA pre-discharge claims processing services at military separation sites.

#### **LOAN GUARANTY SERVICE**

The mortgage industry relies on state-of-the-art information technology to effectively and efficiently accomplish automated underwriting of the loan process. The loan guarantee process provided by the VA requires the exchange of extensive information with lenders regarding loan origination and foreclosures. In order for VA to keep pace with demands placed on it by the modern business community, it is essential for VA to install state-of-the-art systems to automate its own processes and achieve the ability to electronically exchange data with lending institutions. Although funding has not been made available through the appropriations process, it is necessary for VA to move promptly and aggressively to ascertain these modern systems are implemented.

In order to fund the development of a VA Loan Information System, the Administration has proposed legislation to authorize a lenders' fee on loans guaranteed by the VA. For

each loan guaranteed, VA would collect \$25 from the lender. Under this proposal, lenders would be prohibited from passing the costs on to veterans. This processing fee would be a temporary measure and projected to last for approximately four-years, or until necessary funding requirements of \$15 million is accumulated. Although there is some danger of lenders devising creative methods to pass the processing fee to the veteran, we believe a \$25 fee would not impose any substantial burden on lenders. PVA believes this proposal is reasonable and necessary to provide a means to fund this essential initiative.

#### **BVA - AMENDMENT OF 38 C.F.R. § 19.5**

VA has declined to amend 38 C.F.R. § 19.5 (1998) to remove its erroneous provision that BVA is not bound by VA manuals, circulars, and other VA directives.

In a 1995 study entitled *"Veterans Benefits: Effective Interaction Needed Within VA to Address Appeals Backlog,"* the General Accounting Office (GAO) cited as a factor contributing to the backlog of appeals the lack of uniformity between BVA and VA's field offices in the interpretation and application of the law. GAO noted that, while the same laws and regulations bind both, they issue independent policy and procedural guidance and sometimes interpret legal requirements differently. Observing that "hundreds of individuals within these organizations interpret and apply laws, regulations, and guidance in adjudicating claims," GAO said: "This legal and organizational structure makes consistent interpretation of VA's responsibilities essential to fair and efficient adjudication but difficult to achieve." GAO noted that although "at least four studies have made recommendations" that VA coordinate its decision making to avoid these types of problems, "we found evidence that existing mechanisms do not always identify or are slow to resolve" such problems with adjudication. Assessing the effect of the lack of uniformity in interpretation and application of the law, GAO said: "These types of differences not only contribute to inefficient adjudication, but also inhibit VA's ability to clearly define its responsibilities and the resources necessary to carry them out."

Despite good reason to do so, VA has inexplicably declined to correct § 19.5, which erroneously provides: "The Board is not bound by Department manuals, circulars, or administrative issues." Section 19.5 thus provides that BVA will not operate under the same rules as VA field offices and therefore subjects claims decisions to two different interpretations and applications of law. This provision is contrary to statute and a well-established line of case law which holds that VA like other Government agencies, is bound by its own internal procedures and rules.

In 38 U.S.C.A § 501 (West 1991), Congress delegated to the Secretary the authority to prescribe rules and regulations, and issue "guidelines, or other published interpretation[s] or order[s]" on the nature, extent, and methods of submission of proof; application forms; methods of medical examinations; and manner and form of adjudication and awards. VA manuals are official Department instructions, which are binding on adjudicators under 38 C.F.R. § 3.100 (1998) and under provisions of the manuals themselves. Many of VA's actions, such as claims decisions and other official acts, are performed by the Secretary's subordinates and do not carry the Secretary's personal signature. They are nonetheless his acts for purposes of law. Under 38 U.S.C.A. § 512 (West 1991), Congress authorized the Secretary to sub-delegate the authority it delegated to him. Under that section, he may assign functions and duties to his officers and employees, and "all official acts and decisions of such officers and employees, and "all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Secretary." The issuance of manuals as binding instructions must be an authorized and proper act and must be deemed instructions of the Secretary. Otherwise, they would not be legal and valid. Under 38 U.S.C.A. § 7104(c) (West 1991), the Board "shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department."

Regulations and instructions of the Secretary have the force and effect of law. Because VA field offices are clearly bound by VA manuals and circulars, the failure of a field office adjudicator to follow them would constitute an error in law. Under statute, § 7014(a) (West Supp. 1998), BVA is charged with and legally obligated to correct errors

in law. When BVA refuses to follow, enforce, or apply a manual provision to correct its omission by a field office, BVA itself commits legal error. This has required veterans to appeal to CVA to obtain enforcement of rules in manuals in some cases. VA's refusal to amend § 19.5 to require BVA to follow and enforce VA manuals and other departmental instructions is indefensible.

PVA believes VA should amend 38 C.F.R. § 19.5 to remove its unlawful provision exempting BVA from VA manuals, circulars, and other Department directives, and absent timely action by VA, Congress should intervene to ensure this counterproductive problem is corrected.

#### **BVA'S PARTICIPATION IN DEFENSE OF ITS DECISIONS ON APPEAL**

VA refuses to discontinue the practice in which BVA members participate in the defense of their decisions before the Court. Attorneys defending the Secretary's decisions in the Court often consult with the Board. When the Secretary's counsel before the Court contemplates settlement of a case, the General Counsel's office seeks the concurrence of the Board. This type of discussion and consultation between appellate counsel and the BVA creates a situation in which the Board member has gone beyond decision-maker to being a partisan player with a position on one side of the issue. When the case is then returned to BVA on remand from the Court, the Board cannot function as an unbiased decision-maker in that case. An impartial decision-maker is a fundamental and essential element of due process.

In a similar situation, the United States Court of Claims, whose precedents have been adopted by the Federal Circuit, held that an administrative judge's "endeavors to influence and participate in the defense before [the Court of Claims] of the decision he wrote for the [Armed Services Board of Contract Appeals] overstepped the bounds of proper judicial conduct."<sup>1</sup> The Court of Claims explained that his interest in the defense of his decision and his ex parte contact with the appellate counsel for one of the parties

was improper and created at least the appearance of bias.<sup>2</sup> The court also held that, although canons of judicial conduct did not technically apply to members of administrative boards, the sensitive nature and adjudicatory duties of such boards require that the same principles should govern their conduct.<sup>3</sup> BVA personnel should therefore have no role in defending or settling cases, or otherwise consult with the Secretary's counsel relative to the merits or strategies for serving the Secretary's interest in opposition to veterans' interest when the relationship between the Secretary and veterans is adversarial. Therefore, PVA believes the Secretary of Veterans Affairs should direct the Chairman of the Board of Veterans' Appeals to discontinue Board members' consultation with VA General Counsel staff on cases in which BVA's decisions have been appealed to the courts.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions you or members of the committee may have.

---

<sup>1</sup> *Gulf & Western Indus. v. United States*, 671 F2d 1322, 1326(Ct. Cl. 1982).

<sup>2</sup> *Gulf & Western Indus.*, 671 F2d 1325-26.

<sup>3</sup> *Id.* at 1326.





**STATEMENT OF**

**THE RETIRED ENLISTED ASSOCIATION**

**PRESENTED TO THE**

**HOUSE VETERANS AFFAIRS COMMITTEE  
SUBCOMMITTEE ON BENEFITS**

**PREPARED BY**

**MARK H. OLANOFF, CMSgt, USAF (Ret)  
LEGISLATIVE DIRECTOR**

**25 MARCH 1999**

**DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS**

The Retired Enlisted Association does not currently receive, has not received during the current fiscal year or either of the two previous years any federal money for grants or contracts. All of the Association's activities and services are accomplished completely free of any federal funding.

Mr Chairman, Mr. Ranking member, honorable members of the Veterans Affairs Subcommittee on Benefits, The Retired Enlisted Association appreciates the opportunity to submit this testimony on behalf of 1.2 million military retirees and 400,000 disabled enlisted retirees.

Over a period of twenty or more years it is rare that an individual, regardless of their profession, does not become disabled to some degree, particularly when that profession often involves long and rigorous hours in inhospitable locations. Therefore, many military retirees have first hand experience with the claims processing system of the Department of Veterans Affairs. Unfortunately, a majority of these experiences are not positive ones. Filing a disability claim has become such a burdensome process, many veterans are frightened away. It is an understood fact among veterans that if you do not have a Veterans Service Officer working for you, your claim will sit on the bottom of a pile, sometimes for years. Veterans with service connected disabilities should not be discouraged from applying for their earned entitlement to disability compensation because they know that the system will be working against them. TREA was pleased to hear the Department of Veterans Affairs plans to hire more claims processors in fiscal year 2000. However, we remain skeptical that these additions will have enough of an impact to truly correct this problem. The most recent figures on claims processing show that the existing backlog makes the stated goal of 74 days for a rating-related action unlikely. Further, the increasing complexity, both medically and legally, will continue to have a significant impact on timeliness. The Board of Veterans Appeals currently renders a decision within 120 days of receiving an appeal. However, the total elapsed processing time for an appeal in the first quarter of FY 99 was 968 days, and this is an improvement from FY 98! A time-frame of nearly two and one-half years is not satisfactory. In its report to Congress in 1997, the Veterans' Claims Adjudication Commission reported, "a high proportion of repeat claims in the adjudication workloads, and suggested that these and the lack of delimiting dates for filing claims are a key to processing backlogs." TREA is pleased the VA is working to correct this delay but the fact remains that it still exists.

The General Accounting Office reported in March, 1998, that VBA, while making progress, was facing significant challenges in implementing the Government Performance and Results Act of 1993 (GPRA). This act required agencies to clearly define their

missions, set goals, measure performance and report on their accomplishments. In referring to VBA's FY 1999 business plan to carry out the GPRA, GAO stated, "...at this point, it is unclear exactly how VA expects reengineered processes to improve claims processing timeliness." (*General Accounting Office Report, Veterans Benefits Administration, Progress and Challenges in Implementing the Results Act*) Why, nearly 6 years after the passage of this act, can it possibly take 3 years to have a claim settled? Outside the Department of Veterans Affairs Headquarters is a quote from President Lincoln which reads, "To care for him who shall have borne the battle and his widow and his orphan." In reality, many who have borne the battle do not receive what they earned for fighting in that battle. The process of filing a claim needs to be reviewed to ensure that veterans who deserve compensation receive it in a timely and efficient manner.

The Retired Enlisted Association appreciates having the opportunity to submit this statement. We trust that you, as members of this Committee, will work to ensure the benefits that military retirees, and all veterans, have earned through their service to this nation.



ISBN 0-16-059483-9



9 780160 594830