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# VETERANS' BENEFITS

## Effective Interaction Needed Within VA to Address Appeals Backlog







United States  
General Accounting Office  
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**Health, Education, and  
Human Services Division**

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The Honorable John D. Rockefeller IV  
Ranking Minority Member  
Committee on Veterans' Affairs  
United States Senate

The Honorable Ben Nighthorse Campbell  
United States Senate

Veterans are waiting a long time for the Department of Veterans Affairs (VA) to decide their compensation and pension claims. If they appeal a VA decision, the wait is even longer, and many veterans will not receive benefits that they are entitled to until a final decision is made. In fiscal year 1994, 400 veterans died while awaiting VA's final decision.

This report, prepared at your request, discusses the need for organizations within VA that are involved in processing claims to increase cooperation and coordination so that impediments to processing appeals can be identified and resolved.

We are sending copies of this report to the Secretary of Veterans Affairs and other interested parties. The report was prepared under the direction of Ruth Ann Heck, Assistant Director, Health Care Delivery and Quality Issues. Other major contributors are listed in appendix II. Please call me on (202) 512-7101 if you have any questions.

A handwritten signature in cursive script that reads 'David P. Baine'.

David P. Baine  
Director, Health Care  
Delivery and Quality Issues

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# Executive Summary

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## Purpose

Veterans often wait many months for the Department of Veterans Affairs (VA) to decide their compensation and pension claims. In addition, about 40,000 veterans who annually appeal VA's decisions wait much longer. If a veteran appeals VA's initial decision, he or she will wait well over 2 years for a final decision, agency officials said. Thus, many veterans experience a significant delay in receiving benefits that they are entitled to.

Since 1990, several studies by different groups, including GAO, VA's Inspector General, and VA special task forces, have addressed the untimely processing of claims and appeals. Although the recommendations were wide-ranging, one area frequently cited was the need for the autonomous organizations in VA to work together to identify and resolve problems. Senator John D. Rockefeller IV, then Chairman of the Senate Committee on Veterans' Affairs, and Senator Ben Nighthorse Campbell asked GAO to report on the status of VA's appeals backlog and on VA's progress in implementing recommendations from the studies, especially those concerning interaction among VA organizations.

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## Background

Adjudication of veterans' claims and appeals is a complicated process. The process is designed to provide the veteran with every opportunity to substantiate a claim. The process begins at any of the Veterans Benefits Administration's (VBA) 58 regional offices (VARO) where adjudication staff marshal pertinent evidence and decide if the veteran is entitled to benefits. An important part of that evidence often is an examination conducted by physicians in the Veterans Health Administration (VHA).

If the veteran disagrees with the VARO decision, the veteran may appeal to the Board of Veterans' Appeals. The Board may decide the claim or remand (return) it to the VARO for further development and reconsideration. For 55 years, the Board's decisions were final. However, in 1988, the Veterans' Judicial Review Act created the Court of Veterans Appeals. Veterans may now appeal Board decisions to the Court.

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## Results in Brief

VA's appeals process is increasingly bogged down, and the outlook for the future is not bright. The act and Court rulings expanded veterans' rights but also expanded VA's adjudication responsibilities. VA is having difficulty integrating these responsibilities into its already complex and unwieldy adjudication process. Since 1991, the number of appeals awaiting Board action has increased by 175 percent and average processing time has increased by over 50 percent.

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The current legal and organizational framework—which involves several autonomous VA organizations in claims adjudication—makes effective interaction among those organizations essential to fair and efficient claims processing. A common theme of many study recommendations is the need for VA organizations to work together to identify and resolve problems. VA officials have not, however, implemented many of the recommendations, believing that other formal and informal mechanisms are effective.

Yet GAO found evidence that in spite of these mechanisms, problems are going unidentified and unresolved. For example, GAO found instances in which VBA officials were unaware of Board interpretations, guidance and practice were inconsistent with Board interpretations, and questions about interpretation had been raised but not resolved. Unless consistent interpretations are developed, VARO decisions will continue to be remanded, delaying benefits for some veterans and increasing the workload for the Board, VBA, and VHA. In addition, unless VA clearly defines its adjudication responsibilities it will not be able to determine whether it has the resources to meet those responsibilities and whether some new solutions may be needed, including amending laws defining VA's responsibilities, or reconfiguring the agency.

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## Principal Findings

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### Appeals Process Increasingly Bogged Down

Over 47,000 appeals were awaiting decisions at the end of 1994, and this backlog is likely to increase. Although the number of appeals filed has been decreasing slightly, the number decided by the Board has been shrinking rapidly—50 percent since 1991. Even more alarming, almost one-half of the Board's decisions are not final; they are decisions to remand the claim back to the VARO. Based on recent history, VAROS will again deny three-fourths of these claims and return them to the Board for action.

VA attributes much of its claims processing difficulties to increased responsibilities placed on it by the 1988 act and Court decisions, particularly the need to explain the “reasons and bases” for decisions and to meet VA's “duty to assist” the veteran in filing and proving a claim. VA officials also said that the act and Court decisions have placed greater emphasis on procedures, resulting in remands for failure to follow

technical procedures even though the final outcome was not expected to change.

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**Recommendations to Ensure Organizations Work Together Not Implemented**

Several studies have recognized the need for the autonomous organizations involved in adjudication to work together to resolve processing difficulties. For example, in 1990 GAO recommended that a focal point be appointed to ensure cooperation in resolving problems. Recommendations have been made by others for task forces and working groups to develop strategic plans, formulate guidance, and recommend improvements in processing procedures.

Although VA agreed to implement each of these recommendations, it did not do so. VA officials pointed to both informal and formal meetings of organization staff and officials as meeting the intent of these recommendations. Among other activities, they pointed to (1) monthly meetings by the Chairman of the Board, the Under Secretary for Benefits, and the Deputy Secretary of VA to discuss timeliness of claims processing and (2) efforts by Board, VBA, and General Counsel staff to inform VARO staff of Court decisions.

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**Autonomous Organizations Set Independent Adjudication Policies and Procedures**

Organizations involved in adjudication are independent of each other and report directly to the Secretary. Each is bound by the same laws and regulations but issues independent policy and procedural guidance. The Board, as established by law, is not a policy-making body. Yet Board interpretations of legal and judicial requirements can have implications for adjudication policies and procedures. For example, if those policies and procedures are not consistent with the Board's interpretations the number of remanded decisions will rise. Also, hundreds of individuals within these organizations interpret and apply laws, regulations, and guidance in adjudicating claims. This legal and organizational structure makes consistent interpretation of VA's responsibilities essential to fair and efficient adjudication but difficult to achieve.

GAO found evidence that VA organizations are not effectively identifying and resolving intra-agency impediments to efficient claims processing. GAO's limited review identified several instances in which VBA policies and practices were inconsistent with Board decisions. For instance, VBA officials were unaware that Board officials interpret Court decisions to require physicians to have the entire claim file so that an examination for disability compensation can be a fully informed (thorough) one. VBA's

guidance states that the file should only be provided in certain cases, such as those remanded by the Board.

If VBA and VHA policies and practices are not consistent with Board decisions, the likelihood that the Board will remand claims increases. Furthermore, different interpretations have different implications for the resources each organization needs to meet VA's responsibilities. Both Board and VBA officials expressed concern that they lacked the resources to carry out responsibilities according to the Board's current interpretation of laws and Court decisions. But a clear understanding of these responsibilities is needed for a meaningful analysis of the resources needed.

During GAO's review, VA took two steps that hold promise for improved interaction among VA organizations. VBA recently completed a study, assisted by Board staff, that identified a number of areas in which VARO actions were not in accord with Board interpretations and recommended that VBA, with Board assistance, develop guidance and training programs to clarify requirements. Also, VBA, VHA, the Board, and VA's Office of General Counsel recently appointed representatives to a permanent working group to address issues of adjudication timeliness and quality. These efforts could help ensure that problems are identified and resolved; however, in some cases resolution may need Department-level action.

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## Recommendation

GAO recommends that the Secretary of Veterans Affairs designate an official to direct efforts to identify and resolve intra-agency impediments to efficient processing of veterans' compensation and pension claims and appeals. This should be an ongoing effort, but the initial focus should be a joint effort by VBA, the Board, VHA, and if necessary the Office of General Counsel to ensure that VBA and VHA policies and practices and Board interpretations of VA's responsibilities are consistent.

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## Agency Comments

In a meeting on August 15, 1995, VA officials concurred with GAO's recommendation and said that the Deputy Secretary sees the identification and resolution of impediments to efficient claims and appeals processing as his responsibility. They said that actions to ensure identification and resolution of problems have been suggested in many past studies and that many of these ideas have been or will be implemented. Officials, however, did not identify any specific planned actions.

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**Abbreviations**

VA	Department of Veterans Affairs
VARO	Veterans Benefits Administration regional offices
VBA	Veterans Benefits Administration
VHA	Veterans Health Administration

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# Introduction

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In recent years the claims adjudication process within the Department of Veterans Affairs (VA) has been the subject of much concern and attention, both within VA and from others, including members of the Congress and veterans service organizations. In May 1995, veterans were awaiting decisions on over 450,000 compensation and pension claims and VA was taking over 5 months on average to process original disability compensation claims. Although these numbers represent some improvement over the immediately preceding years, no such improvement has been shown in appeals processing. At the end of 1994 over 47,000 appeals were before the Board of Veterans' Appeals. On average, veterans<sup>1</sup> could expect to wait almost 2-1/2 years from the date of their original claim to receive a decision on these appeals. Many veterans will, therefore, experience a significant delay in receiving benefits they are entitled to.

Over the last 5 years, numerous studies have made recommendations to improve VA claims processing and many of these recommendations have focused specifically on appeals processing. In response to these studies, recent legislation, and other management initiatives, VA has implemented many changes and plans more efforts to address problems at both its regional offices (VARO) and the Board. In spite of these actions, however, VA officials foresee continued problems with appeals processing.

Although the recommendations were wide-ranging, three areas were most frequently targeted. Appendix I summarizes recommendations and VA actions in two of these areas: (1) improving staff performance through training, guidance, and standards and (2) increasing process efficiency through actions such as automation, revised procedures, and increased staffing. Recommendations and VA actions in the third area—ensuring that VA organizations work together to identify and resolve problems—are the focus of this report.

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## Claims Adjudication Is Complex

The adjudication of VA disability compensation and pension claims, including adjudication of appeals, is a fairly complicated process, involving many organizations in VA and often a veterans service organization representative as well as the veteran. The process is one that seeks to ensure every opportunity for the veteran to substantiate the claim.

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<sup>1</sup>In some cases veterans' spouses and dependent children and parents are eligible for VA benefits. In this report the definition of veteran includes these other types of VA program beneficiaries.

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One of the 58 VAROS<sup>2</sup> in the Veterans Benefits Administration (VBA) first makes a decision about a claim after obtaining all available pertinent evidence, including oral evidence at a hearing if the veteran so requests. An important part of the evidence is often a physical examination conducted by physicians in the Veterans Health Administration (VHA), which operates the many medical centers and other health facilities in VA.

If dissatisfied with the VARO's decision, the veteran may file an appeal, which is decided by the Board, an independent organization within VA. The Board also may conduct a hearing if the veteran requests. The Board can allow or deny benefits or remand (return) the claim to the VARO to develop further evidence and reconsider the claim.

Before 1989, the Board's decision on an appeal was final. In that year the Court of Veterans Appeals, established by the Veterans' Judicial Review Act (P.L. 100-687, Nov. 18, 1988), began to hear cases. With the Court in place, the Board is no longer the final step in the claims adjudication process. Veterans who disagree with Board decisions may now appeal to the Court. Additionally, under some limited circumstances, either veterans or VA may appeal Court decisions to the Court of Appeals for the Federal Circuit.

Veterans appeal relatively few VARO decisions. In 1994, veterans appealed 8 percent of compensation and pension cases decided by the VAROS.<sup>3</sup> Of the cases appealed to the Board, about 17 percent are ultimately allowed by the VARO or Board when they consider the appeal.

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## Adjudication Problems a Continuing Concern

VA officials have recognized the critical problems they face in appeals processing and are making many changes in an effort to solve them (see app. I). Such changes could improve claims adjudication quality and timeliness; however, Board officials are skeptical about the extent to which implemented and planned changes will reduce the appeals backlog and processing time. In fact, the Chairman of the Board suggested that to solve the problems either significant additional resources must be committed or the process itself must be altered.

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<sup>2</sup>In 1988, responsibilities for adjudicating claims received at the Cheyenne, Wyoming, VARO were transferred to the Denver VARO.

<sup>3</sup>The number of cases appealed is less than the number of cases in which the veteran files a "notice of disagreement" with VA. This notice is the first step in the appeals process. In some cases, after the notice of disagreement, the VARO grants the benefits sought; veterans may also decide not to continue with the appeal if the VARO again denies the benefits at this point. VBA does not maintain data on the number of these cases for which benefits are granted.

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The Congress' continued concern about VA's ability to process claims led it to create, in November 1994, the Veterans' Claims Adjudication Commission. The Commission, with representation from both inside and outside VA, is charged with studying the entire adjudication process, from the beginning through final appeal, and making recommendations for improvements. The Commission is to submit its preliminary conclusions to the Congress in November 1995 and its final report with recommendations in May 1996.

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## Objectives, Scope, and Methodology

Senator John D. Rockefeller IV, then Chairman, Senate Committee on Veterans' Affairs, and Senator Ben Nighthorse Campbell asked us to review several aspects of the Board's processing of appeals. During our preliminary work we identified several recently completed reviews of VA's appeals process. We also determined that VA had made progress in implementing two types of recommendations frequently cited in these studies—those dealing with improving staff performance and with making the process more efficient—but substantially less progress in a third area, interaction among VA organizations responsible for appeals processing. In subsequent discussions with the requesters' staffs we agreed to focus our review on (1) the current state of appeals processing, including trends in timeliness and backlog, and (2) the extent to which VA has implemented study recommendations, especially those designed to help VA organizations work together to improve claims and appeals processing to better serve the veteran.

Through discussions with Board officials and others, we identified seven studies that included adjudication of veterans' appeals. The studies were completed between May 1990 and March 1995. The studies contained 89 recommendations. To better understand the intent of some recommendations and obtain further insights of those who had participated in the studies, in some cases, we also discussed the recommendations with members of the study groups.

We reviewed the following seven studies that evaluated aspects of the appeals process:

- 1990 GAO report, (Veterans' Benefits: Improved Management Needed to Reduce Waiting Time for Appeal Decisions (GAO/HRD-90-62, May 25, 1990) discussed the lack of timeliness in VA appeals processing.
- 1992 Task Force on the Impact of the Judicial Review Act of 1988 evaluated the effect of the Court on workload and timeliness.

- 1993 Blue Ribbon Panel on Claims Processing made recommendations to shorten the time it takes to make disability decisions, including appeals.
- 1994 Analysis of Board of Veterans' Appeals Remands (VBA's study of almost 700 remanded cases) sought to improve the timeliness of the service VA provides to customers who appeal a decision.
- 1994 Board of Veterans' Appeals Select Panel on Productivity Improvement developed recommendations to reduce appeal processing time.
- 1995 VA's Compliance With the Court of Veterans Appeals (a committee appointed by the Secretary of VA) investigated issues raised by the Court's Chief Judge.
- 1995 VA Inspector General Audit of Appeals Processing Impact on Claims for Veterans' Benefits reviewed the impact of appeals and the appeals process.

We also included in our review actions taken beyond specific study recommendations, including the Board's plans for reorganization and implementation of two key pieces of legislation that mandated or allowed changes in claims processing: The Board of Veterans' Appeals Administrative Improvement Act of 1994 (P.L. 103-271, July 1, 1994) and the Veterans' Benefits Improvements Act of 1994 (P.L. 103-446, Nov. 2, 1994). Among other things, these laws allowed single-member Board decisions<sup>4</sup> and required VAROS to place a priority on adjudicating appeals remanded by the Board. To determine the status of the recommendations and other actions, we interviewed officials of three VA organizations directly involved in appeals processing—VBA, the Board, and the VA Office of the General Counsel—in Washington, D.C. We also reviewed pertinent documents and records obtained from these organizations, as well as relevant VHA policies; VHA publishes the guidance used by its physicians in performing disability determination examinations.

Additionally, to provide examples of the adjudication process and problems identified in the studies, we reviewed a small sample (39) of appeals that the Board remanded during the period January 27 to 31, 1995. We selected the cases from the 290 that were remanded during this period.

Although the Board decides appeals about all aspects of veterans programs, including, for example, health care, home loans, and education, over 90 percent of appeals concern claims for disability compensation and pension benefits originally decided by VAROS. Therefore, we focused on

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<sup>4</sup>Before enactment of this legislation, Board decisions were rendered by a panel of three Board members.

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these types of appeals. The Board remands appeals to the agency of original jurisdiction, which could be organizations within VA other than VBA. However, because we focused on compensation and pension appeals, we refer throughout this report to VBA, which is the agency of original jurisdiction for these types of claims.

We did not assess either the efficiency of VA's claims and appeals adjudication operations or the impact that implementing the study recommendations would have on operations. Also, we did not independently verify, beyond reviewing VA central office documents, the extent or manner in which recommendations have been implemented.

We did our work in accordance with generally accepted government auditing standards from December 1994 through July 1995.

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# Appeals Process Is Increasingly Bogged Down

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Veterans are waiting increasingly longer times for their appeals to be decided. Both the number of appeals waiting to be processed and appeal processing times have grown substantially in recent years. Similarly, the percentage of cases remanded to VAROS for additional action has increased. The Board attributes much of this increase to additional responsibilities placed on VA and the Board in particular by the act and Court rulings.<sup>5</sup> These responsibilities are seen as especially difficult to integrate into an already complicated and lengthy process.

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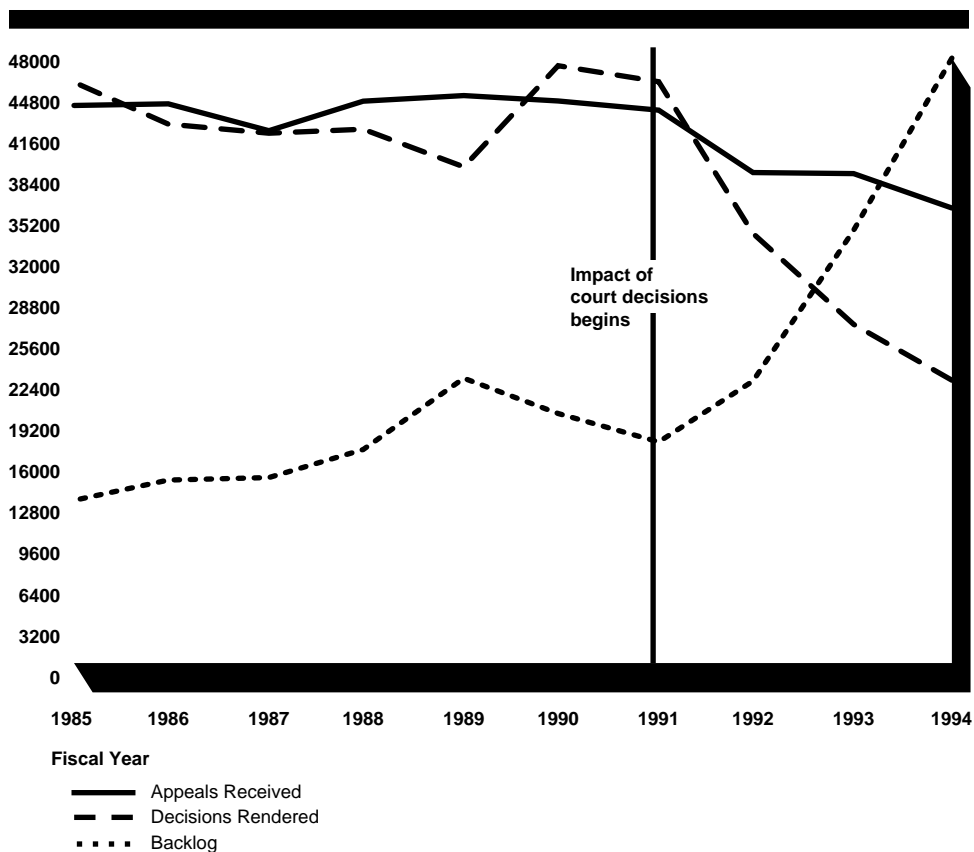
## Backlog and Processing Times Greatly Increased

The backlog of cases awaiting Board action has been increasing since at least 1985. However, as shown in figure 2.1, this increase began to skyrocket after 1991. Overall, the backlog increased by almost 175 percent, from about 17,000 in 1991 to over 47,000 in 1994. In large part this increase is due to the decrease in the Board's productivity—the number of decisions rendered annually. This decrease began about the time the Court began remanding cases to the Board for lack of completeness. Although the number of appeals received by the Board annually has decreased slightly in recent years, the backlog has grown substantially as the number of decisions the Board rendered decreased. The number of decisions dropped from about 45,000 in 1991 to about 22,000 in 1994. Given that the number of decisions rendered annually is significantly lower than the number of appeals being filed (about 35,500 in 1994), the backlog can be expected to continue to increase.

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<sup>5</sup>For example, as discussed later in this chapter, in response to Court decisions VA has had to substantially increase the level of detail included in its decisions and the amount of assistance it provides to veterans in filing claims.

Figure 2.1: Backlog Increasing as Board Productivity Falls



Appeals processing time is also on an upward course. On average, appeals decided in 1990 that were not remanded took about 16 months from the time the veteran notified the VARO that he or she disagreed with the VARO's decision until the Board made its decision. In 1994, an appeal took over 24 months to process, a 50-percent increase in 4 years. During a large part of that time the appeal is "in queue" at the Board, awaiting its turn. The portion of time the appeal was before the Board—after the VARO had reconsidered the appeal based on the veteran's notice of disagreement and certified the appeal to the Board—increased 100 percent, from 6 months in 1990 to 12 months in 1994. Board officials acknowledged that as the backlog increases the processing time will also rise. Unlike VBA, the Board has not established claims processing timeliness goals. VBA has established

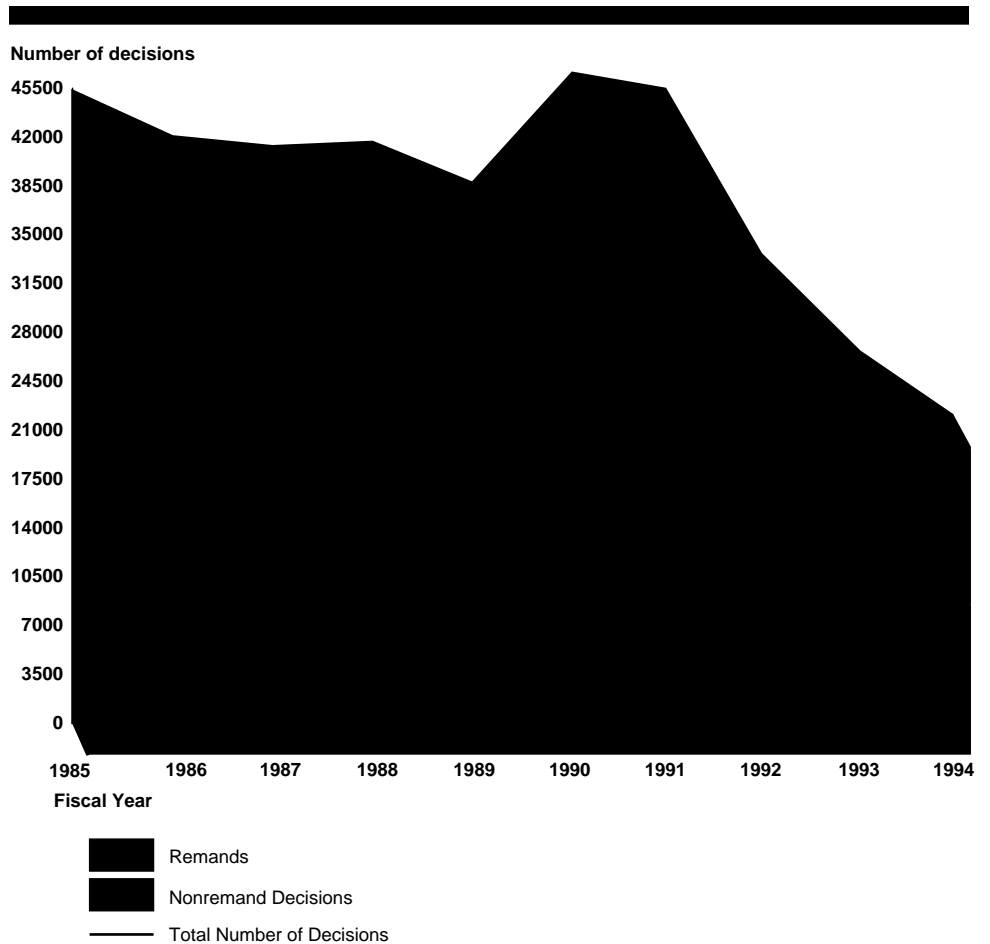


goals for some types of claims. For example, its goal for original compensation claims is 106 days. However, the Board has not established any similar types of goals.

Another measure of this increase is the Board's response time, defined as the number of days it will take the Board to render decisions on all pending appeals. The Board's response time rose from 240 days in 1992 to 781 days in 1994; as of July 1995, the response time for fiscal year 1995 was estimated at 694 days.

These statistics are even more alarming because about one-half the Board's decisions are not final. Increasingly, the Board is remanding cases to the VAROS for additional development and reconsideration. The percentage of cases remanded has increased substantially. Before 1991, about 20 percent of cases were remanded annually. This percentage began rising in 1991 to its current rate of about 50 percent. The number of remands peaked at about 17,000 in 1992; there were about 11,000 remands in 1994. (See fig. 2.2.) Additionally, in 1994, over 34 percent of appeals being remanded to the VAROS had already been remanded one or more times.

Figure 2.2: Percent of Cases Remanded Rose Rapidly After 1990



Remands can add substantially to Board workload. Board data show that about 75 percent of the cases remanded to a VARO are again denied and returned to the Board. Thus, about 8,000 of the 11,000 claims remanded by the Board in 1994 can be expected to be returned; this is about 20 percent of the 35,500 appeals the Board received in 1994. Furthermore, average processing time is higher for remanded cases and also has been rising. In 1990, the Board averaged just over 17 months to process a remanded appeal, but by 1994 the time had increased by over 60 percent to almost 28 months.

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## Claims Adjudication Process Can Be Cumbersome

The claims adjudication process in VA has evolved over many years and seeks to provide the veteran every opportunity to prove his or her claim and to obtain benefits. The basic process, which starts with filing a claim with a VARO, allows each claim up to five considerations, as follows:

- VARO staff decide whether to grant the benefits after obtaining and considering all relevant information, such as military service and medical records, and in most cases a physical examination by a VHA physician.
- If the veteran notifies the VARO that he or she disagrees with the decision, the VARO will reconsider the case and if it does not grant the requested benefits it will issue a statement of the case summarizing the reasons.
- If the veteran still disagrees, he or she can file an appeal. The VARO will again reconsider the case and if all claimed benefits still are not granted it will send the appeal to the Board. However, any amount granted by the VARO is received by the veteran while the amount under appeal is being decided by the Board.
- The Board makes its decision.<sup>6</sup>
- If benefits are still denied, the veteran can take his or her claim to the Court.<sup>7</sup>

But this process can become increasingly complex. At any time before a claim is appealed to the Court, the veteran can ask and will be given an opportunity for a hearing. If the hearing is before a VARO hearing officer, the hearing officer may also consider the claim and grant benefits if evidence in the hearing warrants. If the claim has already been appealed, a Board member would conduct the hearing and consider the evidence presented in arriving at a Board decision.<sup>8</sup> Much of this process, such as when veterans may receive hearings and from whom, is set forth in legislation and regulations.

The veteran may also introduce new evidence during the process, requiring VA to then obtain that evidence and decide if it is relevant and, if so, consider it in the decision. Under VA regulations, unless the veteran shows good cause, all new evidence must be submitted within 90 days

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<sup>6</sup>Under some circumstances the Board may reconsider its decision, for example, if the veteran requests reconsideration alleging that the Board made an obvious error of fact or law. Board data show that between January and June of 1995 the Board reconsidered about 100 decisions.

<sup>7</sup>Another consideration is possible; veterans may appeal some decisions of the Court to the Court of Appeals for the Federal Circuit. However, the circumstances allowing such appeals are narrow.

<sup>8</sup>In 1994, over 25,000 hearings were held by VARO hearing officers. An additional 2,700 hearings were held by Board members. The Board conducted about 4,700 hearings in 1993, but significantly reduced the number of hearings held in 1994 because of the backlog. The Board resumed a normal hearing schedule in July 1995.

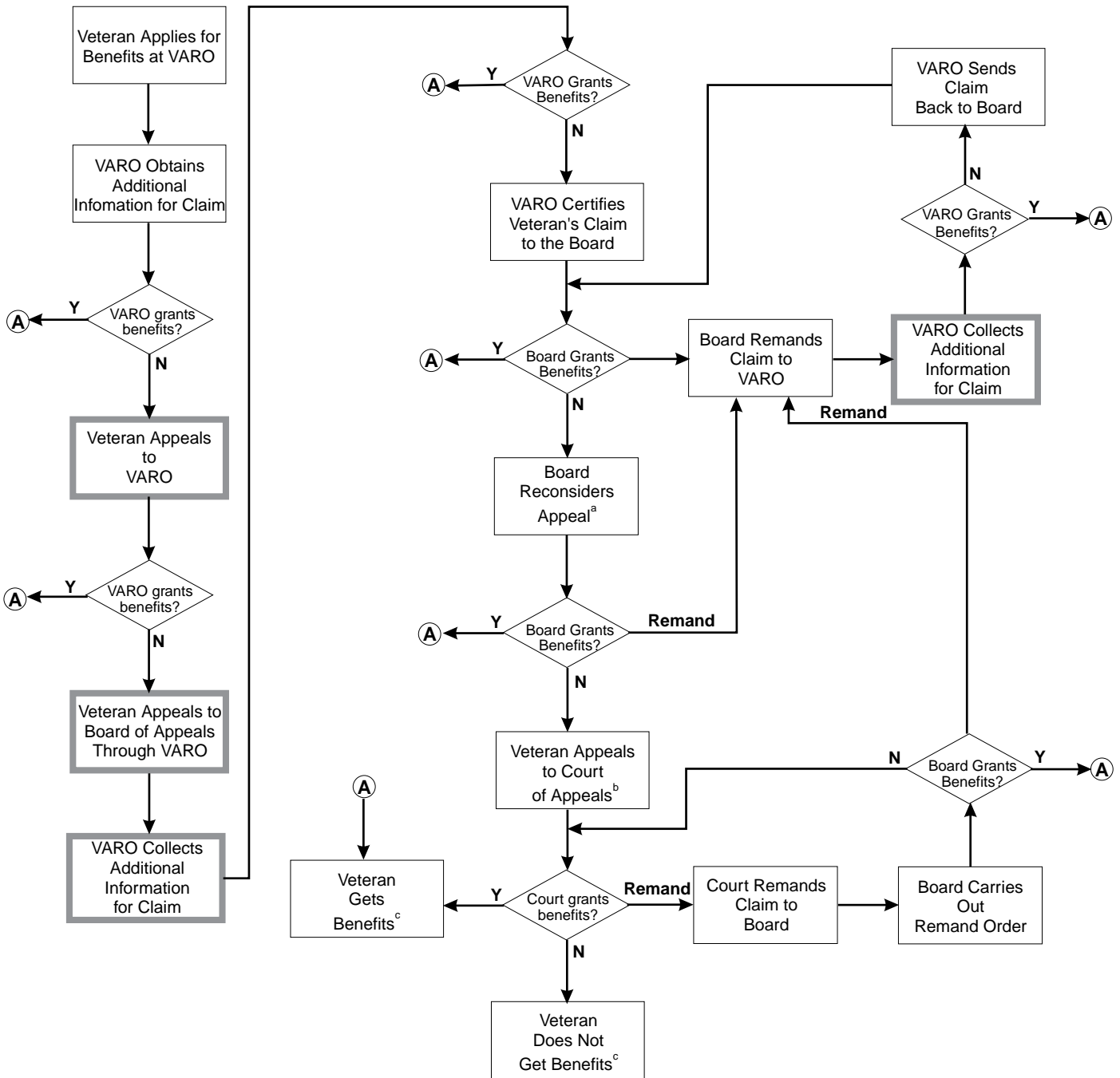
after the VARO notifies the veteran that his or her appeal has been forwarded to the Board. The Board is usually liberal in its interpretation of good cause, according to a Board official; thus, veterans frequently submit new evidence after the 90-day period.

Also, the veteran may claim a new or increased disability after the appeal is in process, in which case, unless the veteran waives his or her right for reconsideration, the VARO must complete any required additional development, often including a new physical examination, and then reconsider the claim. Again, the veteran's right to revise a claim during the adjudication process is set forth in legislation, regulations, and Court decisions.

Figure 2.3 illustrates this process. If the Board remands the claim to the VARO, much of the process may be repeated, since the remand usually will require additional development and reconsideration.

**Chapter 2  
Appeals Process Is Increasingly Bogged  
Down**

**Figure 2.3: The Claims Adjudication Process**



**▭** Indicates that at these points a veteran may submit new evidence or claim a new disorder, which sends case back to VARO, or veteran may request a VARO or Board hearing.

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<sup>a</sup>Reconsideration is not necessary before the Court reviews a veteran's claim.

<sup>b</sup>A new appeal is not needed if the claim has already been reviewed by the Court.

<sup>c</sup>In some cases the veteran or VA may appeal to the Court of Appeals for the Federal Circuit.

Additionally, even if the veteran has received a final decision on a claim he or she may seek to reopen the claim with the submission of new and material evidence. This is considered a new claim in VA's processing system. Board officials pointed out that even if the evidence is not new and material a decision by both VBA and, if the decision is appealed, by the Board is required to adjudicate the claim.

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## Officials Cite the Act and Court Decisions as Key Factors in Increased Board Workload

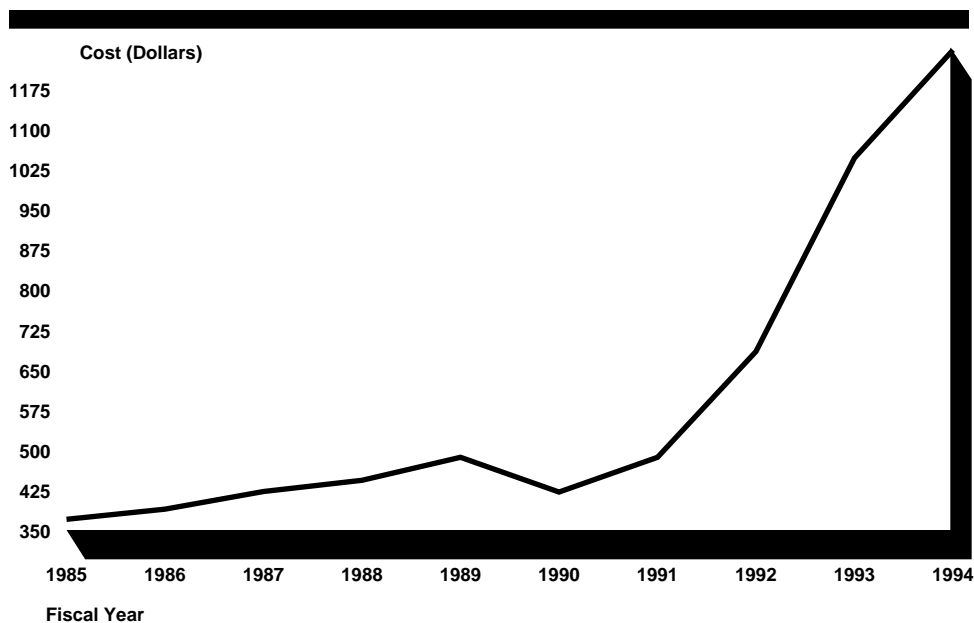
VA officials stated that increased responsibilities imposed on VA by the 1988 act and Court decisions have contributed directly to the substantial increase in claims and appeals processing times as well as to the increased number of remanded decisions. Board officials stated that the impact of the act and the Court began to be felt in 1991, after the Court began issuing decisions in 1990.

Officials cited increased responsibilities in two areas as having the greatest impact: the need to fully explain the reasons and bases for decisions and VA's duty to assist the veteran in filing a claim.<sup>9</sup> Board officials point to the expanded requirements to explain the reasons and bases for their decisions as one of the key reasons for the 50-percent reduction in Board productivity. They noted, for example, that these requirements, such as specifically discussing the merit and weight given to each item of evidence, have substantially increased the complexity of each decision in terms of both its length and the time it takes to prepare it. The decrease in the Board's productivity is also reflected in a substantial growth in the per-case costs that the Board incurs to process appeals. As figure 2.4 shows, the Board's per-case cost was relatively stable until 1991, when it began to increase rapidly. The costs grew from about \$400 in 1990 to \$1,250 in 1994.

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<sup>9</sup>The Chairman cited additional factors related to the act and Court decisions that have negatively affected timeliness, such as (1) the need to obtain outside medical opinions and do more medical research as a result of decisions limiting the Board's long-standing practice of using Board physicians' medical opinions; (2) an increase in the number of Board hearings—many outside of Washington, D.C., to which Board members must travel—as a result of provisions in the act giving veterans the statutory right to such hearings; and (3) new responsibilities to review attorney fee arrangements, again established by the act.

**Figure 2.4: Per-Case Cost of Board  
Decisions Rising Rapidly** (Fiscal Years  
1985-94)



The increased duty-to-assist requirements fall heaviest on the VAROS, which have primary responsibility for developing claims. However, given that the failure to comply with some aspect of duty to assist is a reason for the majority of remanded cases, the Board, too, feels the impact. Data from the February 1994 VBA remand study show that 60 percent of the remands involved the need to accomplish additional case development; that is, in the Board's view, VAROS had failed to satisfy their duty-to-assist responsibilities by not making sufficient effort to obtain some type of evidence in support of appellants' claims. Board data also point to the substantial impact of the duty-to-assist requirement. The data show that claims are remanded, on average, for 2.6 reasons. The Board categorizes these data into 20 reasons; only 4 are cited in over 20 percent of the cases and 3 of those directly relate to duty-to-assist requirements.

**Table 2.1: Major Reasons for Board Remands**

<b>Reasons for remand</b>	<b>Percent</b>
<b>Duty-to-assist requirement</b>	
Medical exam	70
Evidentiary development - VA records	45
Evidentiary development - private medical records	45
<b>Due process development</b>	
Additional issues for consideration by the agency of original jurisdiction	20

Source: Board data from April 1, 1994, to March 31, 1995.

Officials also noted that both the act and Court decisions have placed greater emphasis on procedural requirements, resulting in remands for failure to follow technical procedures. The following case serves as an example. A veteran’s ex-wife was appealing a VARO decision not to apportion part of the veteran’s pension for the period of time they were separated before their divorce. The VARO denied the ex-wife’s claim because the veteran had provided financial support during that time and apportioning his benefits would have caused an undue financial hardship. The Board remanded the appeal, directing the VARO to comply with contested claim procedures by notifying the veteran of the appeal. Yet the claim file indicates that the veteran was aware of the appeal, because his representative provided evidence to the Board at an informal hearing on the appeal.

Board and VBA officials agree that in many of these cases the likelihood of a change in the decision—that is, in the veteran being granted benefits—is virtually nonexistent. In the past, officials said, the Board often would not have remanded such cases because the final result would have been the same. Now, with the possibility of judicial review before them, the Board does remand the case to ensure all necessary procedures are followed.

Finally, both Board and VBA officials said that cases often are remanded so that the VARO can apply a new rule—that is, a rule articulated by the Court after the VARO makes its decision but before the Board closes the case. Court decisions must be applied to all pending cases. Thus, even if the VARO applied the law appropriately at the time that its decision was made, if an applicable Court decision is issued before the Board makes a final decision, the Board will remand the case to the VARO to apply the newly stated requirements. For example, in one case a VARO denied death compensation to a veteran’s wife based on VA regulations that were in effect at the time. While the case was pending before the Board, the Court



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held that a portion of the regulation used in deciding the case was invalid. Therefore, the Board remanded the case. Data available from the Board indicate, however, that this is a relatively infrequent occurrence. No more than 6 percent of the cases remanded were because of laws, regulations, or Court decisions that became effective after the VARO's decision.

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## Current Process May Contribute to Problems

Some officials we spoke to see the process itself as part of the problem, and the studies we reviewed made several recommendations to change various aspects of the process.<sup>10</sup> Legislative or regulatory changes are needed before these recommendations can be implemented, however, and in some cases concerns have been raised about the possible negative impact on veterans seeking benefits.

One recommendation limits the time in which the veteran may introduce new issues to the appeal. The Inspector General found that allowing veterans to introduce new evidence and issues at virtually any time in the appeals process caused significant delays in many cases. In March 1995 he recommended that veterans not be allowed to add new issues or evidence once the VARO certified the appeal to the Board; a new appeal would have to be filed on new issues. A recent VBA study of a small sample of appeals seems to support the potential benefit of this recommendation. The study found that in all cases the hearing officer's decision was correct (over one-half the cases had a VARO hearing); only after the hearing and after new evidence and issues had been included were problems found. VBA is currently considering how to implement the Inspector General's recommendation, including deciding if a legislative change is necessary.

Another recommendation seeks to change the process in another way. The Board's Select Panel on Productivity Improvement called for the Board to obtain the evidence needed to decide appeals. Thus if additional information were needed, the Board would obtain it directly from the source rather than remanding the claim back to the VARO to get it. This recommendation is intended to reduce the time spent preparing cases by eliminating the need for formal statements between the Board and VAROs about additional required evidence. In addition, the chairman of the panel

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<sup>10</sup>As part of our study of VBA's systems modernization we also have expressed concerns that VBA has not adequately assessed its business processes to identify ways the adjudication process itself could be improved. We are currently working, with VBA's support, to conduct a business process analysis of claims (not appeals) adjudication, with an aim to identifying alternative processing approaches. For further information see: Veterans' Benefits: Acquisition of Information Resources for Modernization Is Premature (GAO/IMTEC-93-6, Nov. 4, 1992); Veterans' Benefits: Redirected Modernization Shows Promise (GAO/AIMD-94-26, Dec. 9, 1993); and Veterans' Benefits Modernization: Further Service Improvement Depends on Coordinated Approach (GAO/T-AIMD/HEHS-95-184, June 22, 1995).

noted that the suggested change would use Board members and staff attorneys to prepare decisions, rather than VARO staff who are not attorneys, and thus better ensure that the decisions meet the Court's requirements. VA is drafting revised regulations to enable it to test this approach.

Another recommendation by both the Select Panel and VA's Inspector General is to allow VARO hearing officers to conduct hearings for the Board. The studies point to several positive benefits of this change, including a reduction of travel costs for Board members and the opportunity for more cases to be resolved in VAROS. A legislative change is needed to implement this recommendation.

The Inspector General also recommended eliminating the requirement for statements of the case for disability claims. Currently, VAROS must prepare a statement of the case for each claimant who initiates an appeal. The purpose of this statement is to aid the claimant by describing the issues on appeal and summarizing the evidence of record, applicable laws and regulations, and reasons for the decision. The report suggested that VA's responsibility to provide the claimant with the legal citations on which the decision is based could be met by including those citations in the rating decision rather than in the statement of the case as is currently done. Again, a legislative change is needed before VA can implement this recommendation.

Concerns have been raised about some of these recommendations, most frequently focused on the potential negative effect on those seeking benefits. Both veterans service organizations and VA's Inspector General disagree with the recommendation to have the Board obtain information directly, concerned that already overburdened Board staff would get further behind. While this concern might be overcome by adding staff to the Board, perhaps from VAROS, some veterans service organizations were also concerned that this recommendation would eliminate one step in the process that could allow cases to be granted by VAROS. Likewise, the Disabled American Veterans representative on the Select Panel disagreed with the recommendation concerning hearing officers, stating that it would prevent the appellant from having the hearing before the person who would decide the case.

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## Conclusion

The appeals process is very cumbersome and additional efforts to identify ways to streamline it are warranted. The studies of the appeals process

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**Chapter 2**  
**Appeals Process Is Increasingly Bogged**  
**Down**

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included in our scope did not fully review the process itself, much of which is legally mandated. In addition, some of the process changes recommended in recent studies may be seen by many as reducing veterans' rights. Decisionmakers will have to weigh the benefits of providing individual veterans with unlimited access to the system against the impact that access has on the system as a whole and all veterans seeking benefits from VA.

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# Interaction Among VA Organizations Needed to Ensure Effective Service to Veterans

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Since 1990, at least four studies have made recommendations aimed at ensuring that VA organizations work together to improve claims and appeals processing to better serve veterans and their families. VA officials point to a number of formal and informal meetings and working groups that they believe meet the intention of the studies' recommendations.

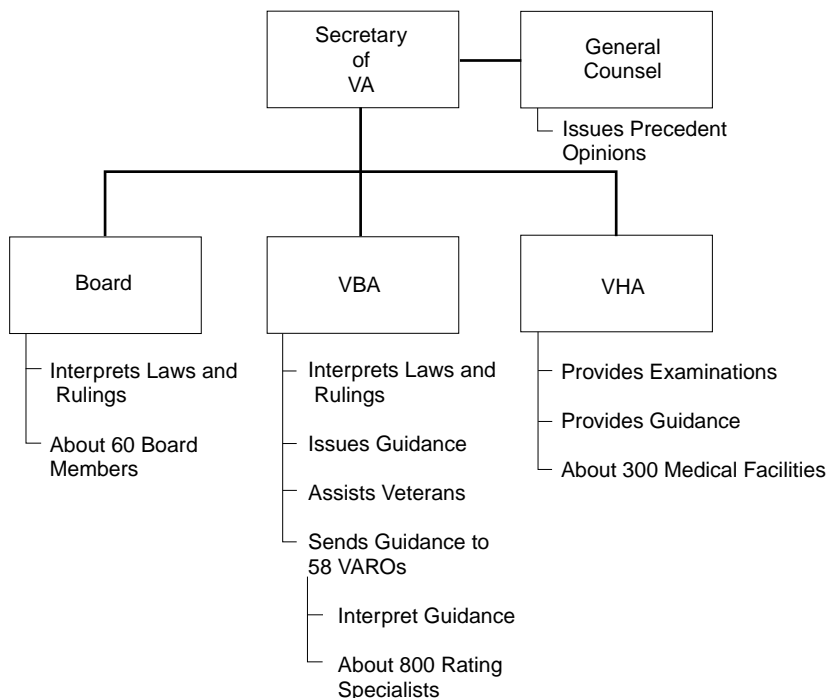
However, we found evidence that existing mechanisms do not always identify or are slow to resolve important problems in adjudication—problems that require input from several organizations to attain resolution. Our work, for example, identified several areas in which different organizations either interpreted or applied laws and regulations differently. 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. Lack of agencywide consensus about its responsibilities, in turn, inhibits VA's ability to identify meaningful solutions to the current claims and appeals processing difficulties. Meanwhile, veterans wait longer and longer for decisions on their claims.

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## VA Organizations Operate Independently

The Board, VBA, and VHA are independent of each other and report directly to the Secretary. All are bound by the same laws and regulations, but they also issue independent policy and procedural guidance. Guidance issued by one does not apply to the others. Although VHA and VBA provide guidance for claims adjudication by the 58 VAROS through VBA's claims processing manual and VHA's physicians' guide for conducting examinations, the Board is not involved in developing or reviewing that guidance. VA's Office of General Counsel, which also reports directly to the Secretary, may issue precedent opinions that also are binding on all VA organizations, including the Board. (See fig. 3.1.)

**Figure 3.1: Relationships of Adjudication Organizations**



There is no one place where the Board’s interpretation of laws, regulations, and Court decisions is set forth and available for other VA organizations to use in establishing policies and procedures.<sup>11</sup> The Board’s role is to render decisions about the legal adequacy of VA’s implementation of laws and regulations, including Court decisions, in specific cases. Its legal authority does not include setting policy or issuing rules for VA claims adjudication. As legally constituted, each of the Board’s approximately 60 members is responsible for drawing individual conclusions from Court decisions and laws. To state specific interpretations about adjudication requirements to which all Board members are bound would, according to Board officials, be beyond the Board’s authority.

Yet individual Board remand decisions—which set requirements for VBA and VHA actions in specific cases—can have broader implications for VBA and VHA practices in many areas of claims adjudication. A 1991 memo from the Board Chairman to Board members recognizes this reality. In it he

<sup>11</sup>Board officials pointed out, however, that Board decisions are available on CD-ROM and this database could be used to analyze Board findings and identify trends in interpretations.

identified several areas in which VARO adjudication procedures were inconsistent with instructions given to VAROS in remand decisions. The Chairman indicated that Board members needed to fully explain the reasons for actions required in remands so that VARO staff themselves could apply such reasoning to similar cases. For example, the Chairman noted that

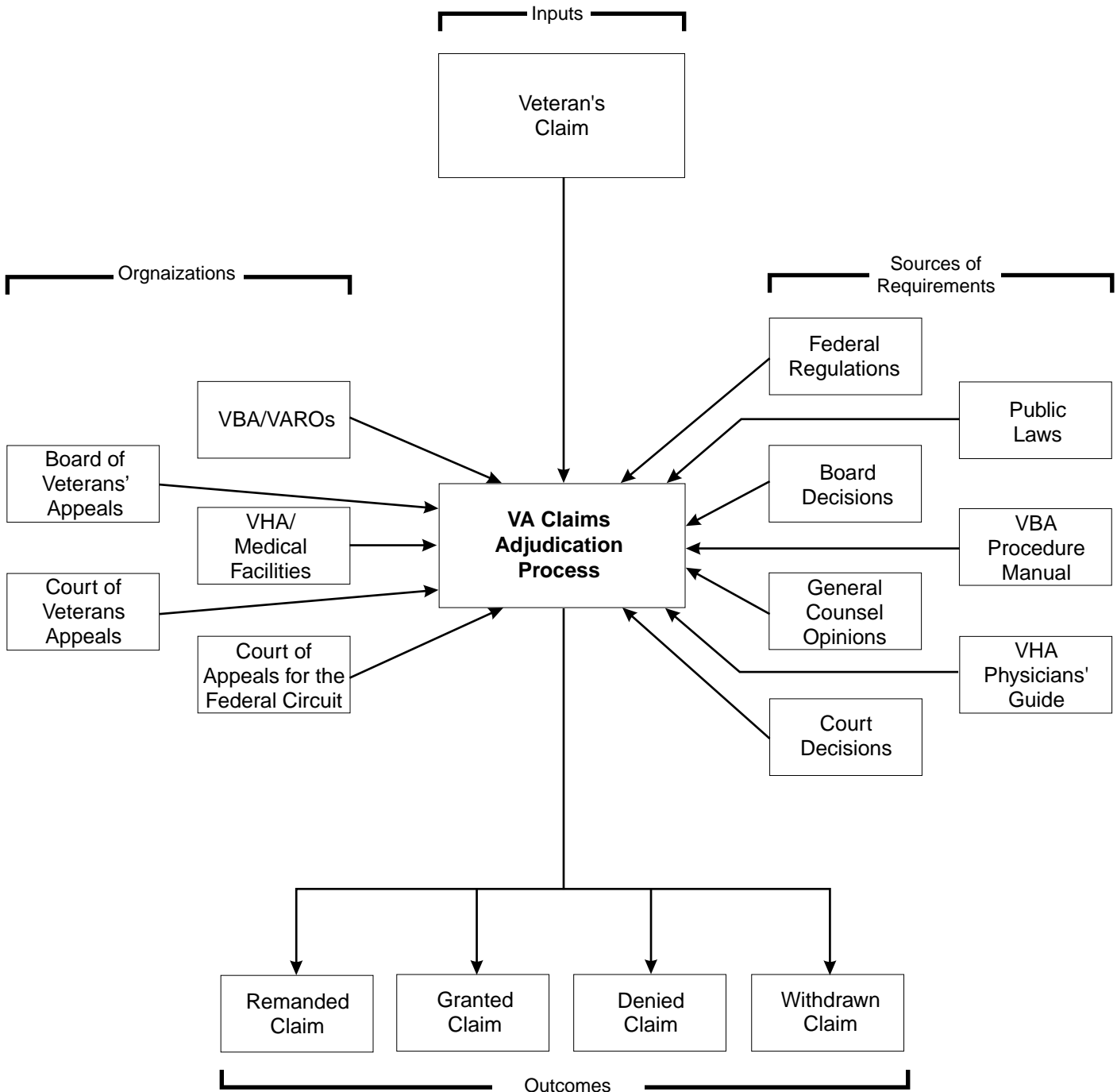
“Articulating the reasons(s) for providing the claims folder to the [physician conducting the disability examination] will better enable the [VARO] to discern the situations in which it is necessary to do so in other cases, thereby eliminating the necessity for remand for reexamination when the claims folder had not been available to the [physician].”

VA headquarters does not have a central point that reviews Board remands or reversals on an ongoing basis that could identify trends in Board interpretations of Court decisions that signal the need for changes or clarification in adjudication policies and procedures. Soon after a Court decision affecting how VAROS adjudicate claims is issued, a teleconference is held with staff from each VARO and representatives of VBA, General Counsel, and the Board. Additionally, VBA, in consultation with General Counsel staff, puts out written guidance shortly after such Court decisions. This written guidance has limitations, however. First, the Board does not participate in developing it. Additionally, the full impact of Court decisions may not be immediately clear so that this written guidance may not capture all needed changes. Board interpretations of Court decisions can evolve over time as individual Board decisions more fully or clearly articulate the principles included in specific Court decisions. Currently, these Board decisions are sent directly to the VARO responsible for the initial decision. Under current procedures, therefore, staff in each of the 58 VAROS independently implement Board decisions. One of the conclusions of the recent report from the Secretary’s Court of Veterans Appeals Fact-Finding Committee—that VARO staff do not understand the underlying legal principles of Court decisions and, therefore, cannot apply them in “similar” cases—suggests the current approach has not been effective.

Figure 3.2 depicts the complex framework of the adjudication process. Many different organizations or agencies are involved, including 58 VAROS and nearly 60 individual Board members, and they have requirements or guidance placed on them from many different sources.

**Chapter 3**  
**Interaction Among VA Organizations**  
**Needed to Ensure Effective Service to**  
**Veterans**

**Figure 3.2: The Framework of VA's Benefit Claims Adjudication Process**



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## Recommendations for More Interaction Not Implemented, Other Actions Taken

Four of the studies that we reviewed raised issues that related to the need for organizations within VA to work together to improve claims and appeals processing. VA does have a variety of communication mechanisms and is cognizant of the importance of having all the organizations working together to support the veteran. However, VA has not implemented specific recommendations aimed at improved interaction, believing that existing mechanisms fulfill the intent of those recommendations.

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## Studies Recommend Formal and Ongoing Interaction Among VA Organizations

As early as 1990, we identified and reported unresolved problems in appeals processing that involved more than one VA organization. We recommended that a focal point be established to lead efforts to resolve problems and obtain cooperation among the VA organizations involved in the appeals process. In 1992, VA's Task Force on the Impact of Judicial Review recommended that representatives from organizations in VA work together in a small group to develop strategic, coordinated initiatives responding to judicial review. This type of concern was echoed more recently by both the May 1994 VBA Analysis of Board of Veterans' Appeals Remands and the June 1994 Board of Veterans' Appeals Select Panel on Productivity Improvement. The VBA analysis recommended that an active working group be established with representatives from the Board, VBA, and where appropriate VHA to address problem areas so that VA as a whole could provide better service to the veteran. Likewise, the Select Panel recommended that a steering group composed of VBA, VHA, the Board, and veterans service organizations meet at least quarterly to recommend changes concerning the quality and timeliness of claims processing.

Some officials we spoke to also suggested that the organizations may have difficulty working together to resolve issues, especially those that directly affect individual organization resources. Some suggested that a broader organizational restructuring may be needed. For example, staff familiar with VBA and Board activities suggested that working groups comprised of representatives of equal status—that is, without designating someone to be in charge—are ineffective. Likewise, the chairman of the Select Panel on Board Productivity noted that someone above each of the organizations needed to be involved to ensure resolution of problems.

Others familiar with the system also suggested a variety of changes. The Chief Judge of the Court, expressing dissatisfaction with VARO implementation of Court decisions, suggested that VAROS should be placed directly within the chain of authority of the Court. Likewise, an official in VA's General Counsel suggested that Board members be stationed in the



VAROS, improving communication and reducing processing time. Similarly, the chairman of the Select Panel on Board Productivity suggested that the introduction of the Court created an entirely new set of circumstances and that the Board's role may need to be fundamentally changed. He pointed out, for example, that as the process is currently structured, the Board and VBA hand appeals back and forth to each other and neither organization is held accountable for the total action. The Chairman of the Board has also noted that since the Court became operational the Board's role is a hybrid—on the one hand judging VARO decisions and on the other making its own decisions about appealed cases. While not suggesting a specific resolution of the issue, he has suggested that it may be necessary to redefine the Board's role.

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**VA Officials Point to  
Extensive Communication  
Among Organizations**

Officials pointed to a variety of formal and informal communications involving organization officials and staff. Most involve at least VBA and the Board and concern claims adjudication.

In general, VA officials noted that representatives of the VA organizations meet frequently as the need arises. They also pointed out that many of the authors of the studies we reviewed were representatives from several key VA organizations, thereby assuring that they worked together to identify problems and solutions.

More specifically, in the fall of 1994, the Deputy Secretary of VA started holding monthly meetings with the Chairman of the Board and the Under Secretary for Benefits to discuss claims processing issues. The Chairman of the Board also noted that he meets with VA's General Counsel and the Under Secretary for Benefits as needed to iron out any problems that come up. Although VA never established a focal point as we recommended, the Chairman said that the meetings between key officials, in essence, ensure a focal point for agency actions in appeals processing. He could not identify specific policy or procedural changes resulting from these meetings, explaining that the meetings would be only a part of the process for developing such changes.

VA officials told us that the ongoing, formal strategic planning process—preparing a written strategic plan—does not include a focus on responding to requirements of judicial review. They said that this recommendation, which was made in September 1992, was not considered pertinent when the new administration took over in January 1994 with new strategic planning priorities. However, the Chairman again pointed to

the meetings of key organization officials as, in essence, constituting a strategic planning forum. The Chairman suggested that under earlier administrations the key VA organizations were, perhaps, less willing to work together, but that the current Secretary has put a priority on VA organizations working together to serve the veteran. He also said that actions such as those taken as part of the budget process and in response to the Select Panel recommendations demonstrate that VA is, in fact, addressing issues resulting from judicial review.

Likewise, the working groups recommended by the VBA Remand Analysis and the Select Panel were not established, even though officials in both VBA and the Board had agreed to do so. VA officials reiterated that many meetings already occur between representatives of the organizations. Officials cited triad meetings—monthly meetings of staff from the Board, VBA, and General Counsel—as especially significant. Officials said that these meetings are intended to resolve intra-agency issues. Staff members who attend these meetings told us that the primary focus of the meetings is on individual cases, for example, agreeing on a Department position on a claim appealed to the Court, rather than on more general procedural or policy issues. VA officials pointed out, however, that the need for policy or procedural changes can be identified from discussions of individual cases and provided an example of a procedure that was worked out between the Board and VBA at those meetings. (It dealt with whether the Board or VBA would notify the claimant about a particular type of Board decision.)

VA officials also said that they were reluctant to establish working groups such as that recommended in the Select Panel report to identify problems because doing so would duplicate the efforts of the Veterans Claims Adjudication Commission. The Commission is charged with making recommendations to improve VA's claims adjudication process. Commission officials told us that they were sympathetic with VA's reluctance to devote resources to yet another study of the claims processing issue or to develop solutions now that might be overcome by recommendations of the Commission. However, they were uncertain about the extent to which their study and recommendations would include the overall organizational structure or interaction among the various VA organizations responsible for claims adjudication. They also said that it may be inappropriate for VA to postpone actions to identify and resolve ongoing problems pending the Commission's report.<sup>12</sup>

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<sup>12</sup>These officials also said that it was highly unlikely that their study or recommendations would resolve questions of differences of interpretations of VA's responsibilities, such as those discussed in the following sections.

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## Organizations’ Interpretation of Some VA Responsibilities Are Inconsistent

A key area requiring cooperation and communication among VA organizations is ensuring consistent interpretation and application of legal requirements within VA. Doing so is critical to fair and efficient claims adjudication. Yet despite the extent of ongoing discussions, we found evidence that organizations continue to interpret some requirements differently. For example, we found differences in interpretations in several aspects of VA’s duty to assist veterans in filing claims. Two major areas of concern relative to VA’s duty to assist are the sufficiency of documentation and adequacy of medical examinations required to support a veteran’s claim.

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## Officials Have Different Views About Requirements for Documentation

VBA officials have indicated concerns about the Board’s interpretation of VA’s responsibility to assist veterans in developing their claims as stated in some cases remanded to VAROS. In discussions with us, for example, they questioned Board directions to (1) try repeatedly to obtain information from sources such as the Social Security Administration and the military services, (2) solicit from the veteran information about all records that might possibly exist rather than relying on the veteran to identify pertinent information and records, and (3) obtain records that officials know will not support the veteran’s claim.

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## Case Study Example

One case we discussed with VBA and Board officials demonstrates some of the concerns that VBA raised.

The veteran maintained he was struck in the back by shrapnel during an explosion on a ship in November 1944 or February 1945. He said that he sought treatment in sick bay and has suffered from back problems since his discharge. The veteran filed for disability in 1946, but was denied service connection because the condition was not shown during service. The decision was not appealed and became final.

In October 1991 (45 years after the initial claim was denied) the veteran filed to reopen his claim. He requested a VA examination but did not submit additional evidence. The claim was denied in November 1991.

The veteran appealed in July 1992, at which time he submitted new evidence, including service personnel records that indicated that he had a scar on his back before entrance into the service.

At a Board hearing in December 1992, the veteran submitted additional evidence, including a statement from a service friend and evidence of other care received from private medical providers. The friend said that he remembered hearing that the veteran was hit with shrapnel during an explosion.

The Board remanded the case to the VARO in January 1995. The following summarizes the actions required by the Board in this remanded case and comments by VBA and Board officials. Those comments highlight some of the potential areas of disagreement.

**Board Remand  
Action 1**

The VARO should request from the veteran as much detail as possible about the explosion and injury, such as dates, times, units, and the names of others involved. The VARO should prepare a summary of the veteran's account and send it to the service department or the official depository of U.S. Navy records. The VARO should request a search to ascertain whether there is evidence to corroborate the explosion and location of the veteran at the time of the explosion.

**Officials' Comments**

VBA officials said that they normally would not request this detail from the veteran. If the veteran volunteered the information, they would record it and verify it, if possible.

Board officials said that although the records requested do not specifically support the claim, they could help support the veteran's general credibility.

**Board Remand  
Action 2**

The VARO should make additional attempts to obtain copies of Daily Sick Reports or any other document from the veteran's service unit for the dates of treatment he reports.

**Officials' Comments**

VBA officials said they would not normally obtain these records; Daily Sick Reports only show that the service member reported to sick bay, but do not give details about the case.

Again Board officials said the information would help establish the veteran's credibility.

**Board Remand  
Action 3**

The VARO should request from the veteran the names and addresses of all health care providers who have treated him for a back disorder since his discharge. After securing the necessary releases, the VARO should obtain copies of all treatment reports and hospital treatment folders not already

on file. If any records identified by the veteran are not available, that fact and the reason(s) should be annotated in the claims folder.

**Officials' Comments**

VBA officials said that they would not seek this information and normally would not obtain these records. They believe that the issue is service-connection, not whether the veteran currently has a disability.

Board officials noted that under Court decisions, VA has a duty to assist the veteran in developing the facts pertinent to a well-grounded claim, including all medical evidence, even where the additional evidence submitted is inadequate to reopen the claim.

**Board Remand**  
**Action 4**

After actions 1 through 3 have been completed, the veteran should receive a VA examination to determine whether he has residuals of a shell fragment wound to the back. A copy of this remand and the claim folder must be made available to and reviewed by the examiner before the examination. The examiner should render an opinion as to the probability that any current back disorder is the result of a shrapnel wound to the veteran's back during service. The examiner should provide complete rationale for all opinions and conclusions reached.

**Officials' Comments**

VBA officials said they do not believe a new exam is pertinent to the issue and if ordering an exam they would not normally provide the claim file or seek the medical opinion specified by the Board.

Board officials said that the veteran requested a VA exam and VA's duty to assist includes the duty to conduct a thorough and contemporaneous exam. They also said that because the Court has ruled that the Board must have independent medical opinions, they need the VHA physician to state an opinion about the relationship of any current disability to the alleged service incident. Also, a thorough exam, as defined by the Court, includes the review of the entire file by the physician.

**Board Remand**  
**Action 5**

The VARO should formally adjudicate whether new and material evidence has been submitted to support reopening the claim.

**Officials' Comments**

Both VBA and Board officials agreed that before the 1988 act and several Court decisions, the Board would not have remanded this case. The Board would have determined if the evidence was new and material and if not would have upheld the region, even though the VARO may have neglected to articulate its decision as to whether the evidence was new and material.

VBA officials said that the type of development required by the Board in this and other similar remand decisions is, in many cases, either futile (since the requested records will not be found) or is not pertinent to the specific issue at hand. Board officials agreed and also said that even when the additional requested evidence is obtained, the benefits are often not granted. However, they stated that the additional development is needed to meet the act's requirements for duty to assist as interpreted by the Court. They stated that VA cannot tell before reviewing the documents if the benefits would be granted and, further, that Court decisions do not limit VA's responsibility for development (part of VA's duty to assist) to cases where the benefits might be granted. They said that they could not tell which cases might be appealed to the Court and, therefore, they believed VA must Court "proof" all decisions. Thus this level of development is needed to ensure that the Court will not remand a decision to the Board.

In a meeting with both VBA and Board officials, VBA officials stated that they did not know of any general disagreements they had with the Board's interpretations but that they did disagree in individual cases such as that cited above. However, they also told us in a separate meeting that although this case is somewhat atypical in terms of the number of actions required, it is typical of the types of actions seen in many of the remand decisions. They said that they would not follow the procedures outlined in this remand in other cases unless again directed to do so in a remand decision; current regulations do not require them to do so. Given this, it seems unlikely that the goal stated in the 1991 memorandum by the Chairman—that VBA staff will use remanded decisions to understand and apply the legal principles to like cases—will be met in these types of cases.

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### **Officials Disagree About Requirements for Medical Examinations**

One aspect of duty-to-assist requirements demonstrates the existence of this disagreement and its impact—the requirements for medical examinations. As discussed in the case study above, Board officials indicated that they have interpreted Court decisions since 1991 to require that in the majority of cases physicians conducting disability compensation medical examinations have the entire claim file so that the examination can be a fully informed (thorough) one. In contrast to this requirement, however, guidance used by VBA adjudicators in requesting examinations specifically states that, normally, physicians will not be given the claim file. Officials from VBA said that no one has clearly defined what is necessary for a thorough examination and that VAROS may be accepting a somewhat lower standard for thorough than the Board.

Similarly, during our discussion with VBA and Board officials about the above case, Board officials indicated that for essentially all cases in which service connection is an issue, the Board needs the physician to state an opinion about the likely relationship of any current disability to events that occurred while in service. However, the guidance provided to VHA physicians does not state that such opinions should be included. The Secretary's Court of Veterans Appeals Fact-Finding Committee also discussed this problem, noting that the VHA physician's role in the disability claims process has been changed and expanded by the Court. The Committee concluded that

"Physicians clearly must be assisted to better understand their role in the adjudicative process and the legal implications of their statements."

This example demonstrates another troubling aspect of interaction among the organizations. VBA officials were apparently unaware that the guidance did not conform to the Board's interpretation of an adequate examination. When we raised this issue during our review, VBA officials said that they had not heard the Board indicate that the law required the claim file to be available for virtually every examination or that an opinion about the origin of any disability be stated.

Other medical examination issues concerning inconsistent interpretations have also been long-standing concerns. One relates to how current a medical exam needs to be for cases sent to the Board. In 1990, we reported that VAROS were using different standards; some delayed decisions to obtain new exams for appealed claims, others did not. We recommended that VA provide VAROS guidance on this issue. The 1991 Chairman's memorandum to Board members pointed to additional issues related to inconsistencies between Board interpretations of requirements and VARO staff practices. These included the need for examinations by specialists, the need for the physician to review the entire claim file before completing a physical examination, and the need for VARO's to "try again" to obtain information. And, again in 1994, the VBA Analysis of Remands recommended that the Board and VBA work together with an immediate aim of developing guidance on medical examinations, including guidance on age of examinations and need for specialty examinations, issues raised in 1990 and 1991.

Having VBA policies and practices that differ from Board interpretations contributes to inefficient claims adjudication and to the remand rate. However, Board officials cautioned that appeals may be remanded for

several reasons and changing policies and practices in the areas cited above may not affect the remand rate overall. For example, even if the claim file has been provided and an opinion expressed, if the examination was inadequate for other reasons, such as needing a specialty examination, the case would be remanded.

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## Concerns and Inconsistencies Are Resolved Slowly, If at All

VA's Office of General Counsel can issue interpretations of VA's responsibilities that are binding on all VA organizations, including VBA and the Board. However, VA organizations have been slow to identify questions needing General Counsel opinions and slow to seek resolution once they have been identified.

If questions about interpretations arise between the Board and VBA or VHA or if requirements need to be clarified, the organizations involved can request a precedent opinion from the VA General Counsel. In addition to the laws and regulations, each of the organizations is bound by these General Counsel precedent opinions.<sup>13</sup> However, for issues to be raised to the General Counsel, they must first be identified as problems. As discussed above, these inconsistencies are not always identified under the current organizational structure and adjudication process.<sup>14</sup>

But even after problems are identified, the agencies are slow to react. For example, although we pointed out the need for guidance on currency of examinations in 1990, VBA did not request and receive a General Counsel decision on this issue until 1995. A Board official indicated that although the issue of age of the examination was raised in 1990, the issue did not have any significant impact on claims and appeals processing until much later, at which time a General Counsel opinion was requested and obtained. However, the May 1994 VBA Remand Analysis raised concerns about Board directions concerning age of the examinations (that is, the Board was remanding cases because the examination was old), yet it took until February 1995 for VBA to seek a General Counsel opinion.

The 1994 VBA Remand Analysis itself demonstrates other difficulties in interaction among VA organizations. Although the study was completed in May 1994, VBA did not send a copy of the report to the Chairman of the

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<sup>13</sup>Organizations are also bound by instructions from the Secretary, though in our discussions VBA, Board, and General Counsel officials all pointed to General Counsel opinions as the mechanism for resolving differences in the issues we were discussing.

<sup>14</sup>For example, it was not until after our discussion of the issue of providing the claim file to physicians conducting examinations that VBA requested a General Counsel precedent opinion to clarify the requirement. VA's General Counsel issued the opinion in July 1995.



Board until late August 1994, with a letter apologizing for forgetting to send the study.<sup>15</sup> The Chairman immediately responded, agreeing to the recommendation to establish a working group to develop guidance on adequacy of examinations, but no such group was formed. Neither Board nor VBA officials could provide a reason why it was not established but suggested, perhaps, that no one took the lead.

Likewise, some issues raised in the Chairman's 1991 memorandum apparently are still not resolved. For example, the Chairman indicated that procedures about obtaining specialty examinations were not always consistent with Board interpretations, yet one recommendation of the 1994 VBA remand study was that VBA and the Board needed to develop guidance on this issue.

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## Lack of Clearly Defined Requirements Hinders VA's Ability to Assess and Solve Appeals Processing Difficulties

A clear and consistent agencywide interpretation of VA's responsibilities is essential to resolving the claims adjudication dilemma. Additionally, a clear understanding of VA's responsibilities is necessary for a meaningful analysis of the resources needed to meet those responsibilities and, in turn, for developing solutions to overcome problems, including resource constraints.

Both Board and VBA officials have indicated concern that their organizations do not have the resources to meet the requirements set forth in the act, especially Court and Board interpretations of those requirements. An official in the Office of the Secretary stated that he is not yet convinced that resource limitations cannot be overcome by improved efficiencies and other initiatives, but other officials in the organizations responsible for claims processing are less optimistic. A meaningful assessment of needed resources, however, is not feasible without a clear understanding of responsibilities.

Board officials emphasized to us that although continued and improved interaction among VA organizations is important, they believe it is unlikely to solve the appeals adjudication backlog. Board officials are concerned about the resources the Board must invest to meet requirements set forth in the act and Court decisions. They pointed to increased responsibilities, especially the requirement to fully explain reasons and bases, for the Board's substantially reduced productivity. The Chairman stated that in

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<sup>15</sup>VBA also stated that it had, with Board assistance, conducted two other remand studies (in December 1994 and February 1995). Board officials said, other than providing the remand files, the Board was not involved in the study and was never informed of VBA's findings. VBA officials explained that the studies had been inconclusive and there were no results to communicate to the Board.

spite of the many initiatives under way to improve Board efficiency (see app. I), without substantial increases in staffing, he did not expect the backlog of appeals to be appreciably reduced. He said that even with added resources it would take many years to get the backlog to a manageable size.<sup>16</sup>

Likewise, VBA officials stated that their organization does not have the resources to apply the requirements set forth in some Board remands to all like cases. According to officials, the remands often require substantial time and resources for development. For example, officials noted that the development required in the above case study would require substantial resources even for that one case. Similarly, during our discussion with Board and VBA officials concerning the need for the VHA physician to have the claim file, VBA officials said that doing that in most cases raises resource issues, including the time it takes to transfer the file and the difficulty in keeping track of the file once it leaves the VARO.<sup>17</sup> VHA also may have difficulty meeting this requirement. For example, the Secretary's Court of Veterans Appeals Fact-Finding Committee reported in February 1995 that VHA often uses contract physicians to perform the physical examinations on veterans claiming disability compensation. The report noted one such physician as saying that VA did not pay him enough to spend the time it would take to review the claim file, even if VBA sent it.

The impact that various interpretations of requirements has on resources underscores the need for organizations to agree on what those requirements are. Board decisions directly affect VARO and VHA workloads; for example, remanded decisions specify activities for VAROS in individual cases and can require additional examinations by VHA. More generally, Board decisions—interpreting requirements set forth in law and Court decisions—can expand the level of effort VAROS must expend in assisting veterans in filing claims. Similarly, VARO actions directly affect Board workloads. For example, the increase in the number of remands increases the Board workload in the form of claims returned for a second Board review. Yet under the current legal and organizational structure, neither organization has any responsibility for the amount of work it “causes” for the other. A Board official said that the Board—like the Court—decides

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<sup>16</sup>The Department, recognizing the need for more staff, included a small increase (28 staff) for the Board in the 1996 budget request. The Congress was still considering VA's budget request in September 1995.

<sup>17</sup>Keeping track of claims files is a recognized problem in VA. Systems are being developed to better track them, but officials noted that these systems would allow the VARO to know what VHA facility it had sent the file to, but would not necessarily ensure it could be retrieved easily.

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cases on their merit and the Board cannot legally change its interpretation of the law because it is administratively inconvenient or infeasible for VBA.

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## Recent Actions Could Serve as Critical First Steps

In May 1995, after several discussions we had with VBA and Board officials, VBA initiated two actions that could represent important first steps in improving interaction among the VA organizations and, in turn, service to veterans. But much remains to be done to bring effective closure to these efforts.

First, following a suggestion we made in April 1995, VBA conducted a study, with assistance from the Board, to determine how well VAROS are complying with Court precedent and procedural guidance. The study, completed in June 1995, identified areas where VARO actions were not consistent with Board interpretations and recommended that guidance to VAROS be improved. But the study also confirmed our concerns about the complexity of the appeals process and supported the need for continued cooperation between the Board and VBA staff in developing guidance and interpreting requirements.

VBA's second action may provide a forum for this cooperation. On May 15, 1995, the Under Secretary for Benefits asked the Under Secretary for Health, the Chairman of the Board, and the General Counsel to appoint representatives to a permanent working group to address and resolve claims processing problems. The Under Secretary pointed to information we supplied about failure to implement previous recommendations calling for intra-agency efforts as the impetus for establishing this group. The working group held its first meeting on July 13, 1995.

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## Study Finds No Difference in Organizations' Interpretations but Sees Need to Clarify Guidance

For the May 1995 study, Board staff attorneys and VBA staff independently reviewed a small sample of appeals recently certified by VARO staff to be ready for Board consideration. (With the current backlog of appeals, the Board would not expect to officially review these claims for another 2 years.) VBA recognizes that this was not a statistically representative sample, but sees it as a sufficient number to identify any frequently occurring problems. Both staffs reviewed 115 appeals.<sup>18</sup> A single claim can be appealed on several issues. VBA staff identified 185 separately appealed issues in the 115 claims; Board staff identified 193 issues. There were 166 issues that both staffs identified and reported on. They reviewed the appeals separately, then met to discuss general observations.

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<sup>18</sup>VBA selected two appeals from each VARO. Of the 116 cases, 115 were reviewed.

VBA concluded, based on the Board staff results, that if these cases came to the Board now, about 42 percent of the appeals would be remanded, a somewhat lower percentage than the 1994 rate of about 48 percent, but still troubling.<sup>19</sup> The reviewers identified areas in which they believe guidance to VAROS needs to be clarified. Key areas include failure to address issues, inadequate development, inadequate examinations, failure to assess all medical evidence, inadequate handling of new and material evidence issues, failure to issue supplemental statements of the case when appropriate, and improper identification of issues. Officials stated that the problems occurred because VARO and VHA staff failed to follow existing guidance, not because guidance was inconsistent with Board interpretation of requirements or Board and VBA staffs' judgment varied.

The study recommended that guidance be improved and, in several instances, sought participation by organizations other than VBA to do so. Two recommendations involving the Board are for development of (1) a checklist for use by VARO staff in certifying an appeal as ready for Board review and (2) a training program on appeals.<sup>20</sup> The Chairman of the Board has agreed that to the extent resources permit the Board will work with VBA in implementing the recommendations that included the Board. The study also recommended that a focus group of VHA physicians and staff review the issue of inadequate examinations, which this study again found to be a significant problem. The study report notes that using the expertise of VHA physicians will provide VBA and the Board valuable information on the examination process and that working in unison will result in the quality examination necessary.

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**Continued Focus on  
Interpreting  
Responsibilities and  
Resolving Problems Is  
Critical**

The VBA study of certified appeals identified significant issues and could serve as a solid basis for intra-agency action and an initial focus for the newly established permanent working group. But the study results themselves point to the difficulties that VA may face in providing an agencywide interpretation of key responsibilities; they indicate that VBA and Board reviewers may have seen requirements with regard to some responsibilities differently. Likewise, the study itself was of limited scope and may not be sufficient to bring to light all significant problem areas.

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<sup>19</sup>The data may actually show the potential for an increase in the remand rate. Board staff emphasized that they did only a cursory review of the appeals and a full review might identify other problems. Also, overall, at least one of the groups of reviewers cited a high or moderate chance for remand in 64 percent of the appeals.

<sup>20</sup>VBA also has sent to each VARO a list of tips on avoiding remands prepared by the Board. This list, though providing limited explanations for actions included, covers many of the issues identified in prior reviews of remands and this review of recently certified cases.

Although Board and VBA reviewers apparently agreed on key areas needing attention, their views of specific appeals were in some cases very different. For example, for almost one-third of the 166 issues both groups assessed, one of the groups cited a high or moderate chance of remand and the other cited no chance. For 17 percent of the issues the difference was between a high chance and no chance. Similarly, although both Board and VBA reviewers individually concluded that about one-half of the issues had no chance of being remanded, they were often different issues. They both saw no chance in only 26 percent of the same issues.

In some cases the reviewers even identified different issues as being under appeal; overall, VBA staff identified 19 issues that the Board did not identify and Board staff identified 27 issues that VBA did not identify. Although in some cases this resulted from one or the other separating out issues that the other combined (4 individual orthopedic issues as opposed to 1 combined issue), in others, very different issues were involved.

These results raise questions about the consistency with which VBA headquarters staff and Board staff view legal requirements. Although the two groups agree on the broad requirements, such as the need to better develop claims, meet duty-to-assist responsibilities, and ensure adequate examinations, they may not agree on the specifics of how or when to apply these requirements. For example, both raised issues of how the VAROS handled new and material evidence issues, but not always on the same appeals.

These are important issues. If staff work together to discover the reasons for different assessments of cases, they may be able to more clearly identify and communicate what is required in different types of situations. Their review of the same cases may also provide a consistent basis for discussion to help to develop guidance that can be clearly understood. However, this study by itself may not be sufficient. This one-time effort will not identify problems that might arise over time as Court and Board interpretations are further developed through individual decisions.

Additionally, review of completed Board remands also may be needed. A review of recently certified appeals, as was done in this study, can provide a better picture of the adequacy of current VARO actions but may not surface differences between the organizations with regard to all issues. The case study cited earlier serves to demonstrate this possibility. Even if both parties agreed that the case should be remanded and an examination obtained, VBA officials disagreed with some of the specific actions the

Board required as part of the remand, such as soliciting information on all past health care providers and obtaining those records. We found disagreement about these types of actions—which may not be the cause of the remand but are specified in Board decisions as actions required. Actions such as these can have a significant impact on the resources as well as the time necessary to adjudicate the appeal. These resource and timeliness issues also have implications for other claims if they are to be applied in like cases.

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## Conclusions

VA's current legal and organizational structure, the complex nature of the claims adjudication process, and the current fluid environment brought about by the Veterans' Judicial Review Act and the Court make effective interaction among VA organizations imperative. Although the Board, VBA, and VHA have unique roles, they are intimately linked in the claims and appeals adjudication process. VA has many internal forums for interaction among these organizations, but greater effort is needed.

There are many procedural and interpretive areas in which multiple VA organizations are involved. Ensuring clear and consistent interpretation of VA's adjudication responsibilities, such as duty-to-assist requirements, is one obvious area needing the involvement of all the organizations involved in adjudication. If VBA and VHA policies and practices and Board interpretations of legislative and judicial requirements are not consistent, the likelihood of remands and reversals and the resulting inefficient claims processing increases. VA needs to clearly define what it believes is required and do so in a way that ensures that the Board, VHA, and VBA follow requirements consistently. Because Court and Board interpretations evolve over time, this must be an ongoing process.

The recent VBA and Board review of appeals certified as ready for Board review by VAROS is a solid first step in identifying issues that currently require clarification. Ensuring resolution of these issues could be an important focus of the recently established permanent working group. The Claims Adjudication Commission also offers the possibility of recommendations for significant improvement, having looked at the adjudication process in its entirety, not just from one organization's perspective.

But difficulties are likely to remain. VA organizations have agreed to work together and to clarify guidance in the past, but these actions were not always completed. It is also unlikely that the Adjudication Commission

recommendations will address the detailed problems we found in interpretation of VA's responsibilities. And, short of action to substantially alter the organizational structure of VA—for example, to abolish the Board or consolidate claims adjudication functions into a limited number of VAROS—the need for effective interaction among VA organizations will continue.

Both the historical and current difficulties in interaction reinforce our 1990 recommendation that a focal point be established for the appeals process as a whole. The nature of the current problems and possible solutions suggest that the only way to ensure that intra-agency issues are identified and resolved may be for that focal point to be designated at the Department level. Such a focal point could help the Department ensure that at this time and in the future promised cooperation leads to closure. More importantly, the appeals process faces significant difficulties; clearly defining responsibilities is a beginning step, not a full cure. If responsibilities, once clearly defined, are such that one or more of the organizations does not have the resources to carry them out, new solutions will be needed. They could include amending legislation to reduce or at least better define VA's responsibilities, obtaining more resources, or reconfiguring the agency. The nature of the problems and of their possible solutions suggests the need for active involvement above the level of the autonomous organizations—each of which views the claims and appeals process in terms of its unique responsibilities and capabilities.

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## Recommendation

The Secretary of Veterans Affairs should designate a Department-level official to monitor actions by the Board, VBA, and VHA to identify and resolve intra-agency impediments to efficient claims and appeals processing. This individual should be charged with making recommendations to the Secretary, if necessary, to ensure resolution of problems. The recently established permanent working group could serve as the focus of these monitoring efforts and the designated official could report to the Secretary and make recommendations about problems that the working group is unable to effectively resolve.

A first priority of this official should be monitoring the progress of the organizations in implementing the recommendations of the VBA study of recently certified appeals and ensuring that VBA and VHA policies and practices are consistent with Court and Board decisions. These efforts should be ongoing to ensure such consistency, obtaining General Counsel

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opinions where needed and to ensure that any resource or organizational difficulties are identified and resolved.

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## Agency Comments

In a meeting on August 15, 1995, VA's Chief of Staff, the Under Secretary for Benefits, the Chairman of the Board of Veterans' Appeals, and other key officials commented on a draft of this report. The VA officials acknowledged that appeals processing is one of the most serious problems currently facing the agency. They stated that they concurred with our recommendation and that the Deputy Secretary sees clearly identifying and resolving problems with the claims adjudication process as his responsibility. They see the recommendation as reemphasizing the importance of efforts under way by the Deputy Secretary and other key officials to solve this problem.

The officials said that they have been focused on the overall issue of VBA/Board timeliness for some time and that efforts to improve the timeliness of VARO claims processing have been successful. They said that emphasis and resources will continue to be devoted to improving VBA timeliness, but that increased attention now has been placed on the Board and on the VBA/Board interface. The officials indicated that they are committed to reducing appeal processing time significantly. They noted that three presidential appointees confirmed by the Senate are directly responsible to the Secretary and Deputy Secretary for taking the steps necessary to improve timeliness and that the Deputy Secretary is actively involved in ensuring that each facet of the adjudication structure works with the common goal of putting veterans first. Each official understands the necessity for early identification and resolution of inconsistent interpretations of law. They also noted that specific actions to ensure identification and resolution of problems have been suggested in the many studies already done. Officials said that many of these ideas have been or will be implemented and that those discussed in our report are good ideas. They also said that the actions that are not being done need to be done, and those that are not being done well must be improved. They believe that the necessary mechanisms are in place to identify any inconsistent interpretations and resolve them through the General Counsel. Officials said that time will tell if this increased awareness and focus will resolve the problem.

We agree that the active involvement of the Deputy Secretary, especially with an increased focus on appeals, could have a positive impact on resolution of appeals problems. This is especially true if actions previously



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**Chapter 3**  
**Interaction Among VA Organizations**  
**Needed to Ensure Effective Service to**  
**Veterans**

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recommended are implemented and if, through existing mechanisms, such as the permanent working group, VA actively pursues the issue of inconsistent interpretations and other interface problems. VA officials, however, did not offer any details of actions expected to be taken.

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# Recommendations and Actions to Improve Staff Performance and Process Efficiency

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This appendix summarizes the key recommendations made in the seven studies that we reviewed that are not directly related to interaction among VA organizations. Most of those recommendations relate to improving staff performance or improving the efficiency of the current process.

Several studies have identified ways to improve staff performance at VBA and the Board by means of guidance, training, and performance standards. Although VA has begun or completed a variety of improvement efforts, determining their adequacy is difficult. Studies also have recommended many changes to increase process efficiency. VA has implemented some of these recommendations and, as a result of other legislation and management initiatives, has plans for implementing others. However, the Board Chairman said that in spite of these efforts to improve staff performance and increase efficiency, the problems of appeals backlog and processing delays will continue.

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## Efforts to Improve Guidance and Training Difficult to Assess

A key focus of several of the studies was the need to ensure that regional staff fully and accurately develop and decide claims. Poorly developed claims have been recognized as an important cause of slow claims processing in general and, more specifically, remanded cases because most require some additional development. The studies made a variety of recommendations to improve the way that staff develop cases, to increase the number of staff available to make rating decisions, and to improve guidance.

The Secretary's Court of Veterans Appeals Fact-Finding Committee concluded that VA's guidance was adequate but that training was inconsistent and not all VARO staff were receiving training that allowed them to understand and apply legal concepts. In fact, one of the problems identified was that VARO staff were increasingly unprepared to meet the more complex requirements being imposed by the Court.

VA has undertaken or planned many efforts to improve guidance and increase training for VARO adjudication staff. For example, VBA has developed training guides, increased centralized training, and created training materials for use by VAROS. VBA has recently completed a manual to use as a reference guide when developing claims. It is organized by type of claim and can be left open so that staff can refer to the checklists while they are developing claims. As discussed above, VA also has procedures to communicate new Court requirements to VARO staff within 4 to 8 weeks. VA plans to develop a multivolume Rating Specialist Training Guide and, as

the Rating Schedule for each body system is rewritten, they will also develop 1- or 2-day training programs for each body system.

Other related activities include implementing a new position of rating analyst technician to help ensure that development is complete before the claim is rated and developing a certification process for rating specialists. Likewise, VA routinely modifies performance measures and workload standards so that they more realistically reflect development requirements.

Some recommendations also addressed the need for performance standards and training for Board staff attorneys and Board members. VA is in the process of implementing these recommendations. New attorney performance standards went into effect in April 1994, and the first round of annual performance evaluations has been completed. A training committee has been established, and attorney training has begun. Performance standards for Board members were established for the first time in February 1995; no performance assessments have been done yet.

Because the training is relatively recent and the guidance is new, evaluating their effectiveness is difficult. However, an even greater concern is whether the training and guidance are addressing the right issues. Issues raised in recently remanded cases may not be indicative of current regional office activity because the Board is currently looking at claims that were decided by VAROS about 2 years ago. This issue was highlighted in Board member comments to the Secretary's Court of Veterans Appeals Fact-Finding Committee. They noted that measuring current VARO compliance was difficult because of the age of the cases they were reviewing. To address this concern, in June 1995, staff from VBA and the Board completed a review of 115 appeals recently certified by VAROS as ready for Board review. As discussed in chapter 3, they concluded better guidance and training are needed in several areas.

Evaluating the effectiveness of the training and guidance is also difficult because determining how many staff have been trained or received guidance is not possible. For example, although teleconferences are held monthly to discuss new Court decisions, no requirements exist concerning which VARO staff should attend those conferences and no records are kept about who actually does attend. In addition, trainers from VBA will sometimes train one or two staff from a VARO who will then be responsible for training others in their VARO. Although records are maintained about staff who participate in centralized training programs, records are not

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routinely maintained about who has actually received which training in VAROS.

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## Steps to Improve Productivity Taken and Planned, but Backlogs Expected to Continue

As early as 1990, we recommended that VA take steps to improve the timeliness of claims processing. Increasing backlogs and reduced timeliness since then have focused more attention on the efficiency of claims adjudication. For example, the November 1993 Blue Ribbon Panel's mission was to identify ways to improve timeliness and reduce the claims backlog. Subsequent studies of the appeals process, including the June 1994 Select Panel on Productivity Improvement, have reiterated the Blue Ribbon Panel's recommendations.<sup>21</sup>

As a result of legislative and procedural changes, VA has identified actions that address study recommendations. Some actions (in addition to those implemented as a result of the Blue Ribbon Panel) have already been taken.

- As a result of the Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994, enacted in July 1994, appeals may be assigned to either an individual member of the Board or to a panel of no fewer than three members. This ended the 60-year requirement that decisions be issued by a panel of three members. VA estimates that this change will result in a 25-percent increase in productivity at the Board.
- The Veterans' Benefits Improvements Act of 1994, enacted in November 1994, permits the Board to screen cases on appeal at any point in the decision process to determine whether the record is adequate for decision purposes. This procedure makes it possible to send files back to the responsible VARO so that they can be properly developed while waiting to come before a Board member.
- A variety of reference materials are available on-line or using CD-ROM technology, both in VAROS and at the Board. VAROS are able to access a package of personal computer-based national standardized letters; Court decisions; VBA policies and procedures; and VBA program directives, manuals, and circulars. Board staff have access to 1992 and 1993 Board decisions, Court decisions, and the Physicians Desk Reference via CD-ROM and such reference documents as the Board Chairman's Memoranda and applicable federal regulations on-line.
- One recommendation from the Select Panel was to revise the timeliness measurement system to measure the entire length of time that appeals are

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<sup>21</sup>For additional discussion of the status of VA's implementation of the Blue Ribbon Panel's recommendations, see Veterans' Benefits: Better Assessments Needed to Guide Claims Processing Improvements (GAO/HEHS-95-25, Jan. 13, 1995).

processed. This measurement has been revised and focuses attention on improving timeliness of appellate services from a customer perspective. The measurement starts when VA receives a substantive appeal and ends when the appellant receives a final decision.

- The November 1994 legislation required VAROS and the Board to expedite cases remanded by the Board or the Court. In June 1994, VBA had instructed VAROS to handle remands on a priority basis (that is, to begin work within 7 days of receipt) and to track timeliness of remand processing to ensure that they are processed on a priority basis. However, VAROS also had and still have several other types of priority cases, including Persian Gulf cases.
- The November 1994 legislation also made the payment schedule for Board members equal to that of administrative law judges and eliminated the 9-year term. Until 1988, the security and compensation of the two positions were about the same. In 1988, the Veterans' Judicial Review Act established 9-year terms for Board members, while administrative law judges did not have a limit. Then, in 1991, Congress created a substantial gap between the compensation for these two, essentially similar, positions. During the 13-month period following July 1993, nine Board members left to work as administrative law judges and other members were on the register to do so. To halt the flow of experienced Board members, the Secretary supported legislation to equalize compensation.

Other changes, such as the following, are anticipated.

- Although as of May 1995 the plans were on hold, VBA is developing procedures for a test of an imaging system to allow copies of documents to be stored electronically, so that, ultimately, paper files will not be needed. The system is being tested for original education claims in four VAROS. At this time there are no plans to test imaging documents for appellate cases.
- The July 1994 legislation enabled appellants to participate in hearings with the Board using teleconference or videoconference equipment if such facilities and equipment are available. In July, the Board began holding videoconference hearings with the St. Petersburg regional office and plans to test a three-way conference with the Des Moines regional office and Iowa state offices.
- A system of advanced docketing for Board cases has been in effect since January 1994, whereby the case folders remain in the VARO but the case is entered on the Board's docket. In an effort to reduce remanded cases, since October 1994, VAROS have had certification procedures to check files

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**Appendix I**  
**Recommendations and Actions to Improve**  
**Staff Performance and Process Efficiency**

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just before they are sent to the Board to ensure that they are complete. The Board began requesting these cases from the VAROS in July 1995.

- In the July 1994 legislation, the absolute limit on the number of Board members was eliminated. The Board plans a limited increase in the number of Board members, and also plans to hire additional staff attorneys to assist Board members.
- The Board has received approval from the Secretary for an internal reorganization. Among other things, the three-member Boards, with assigned staff attorneys, will be broken up. Board members will work in four sections (about 15 Board members, 50 staff attorneys, and 18 administrative staff in each). The sections will be associated with specific VAROS. The goals of this reorganization include increasing the number of decisionmakers, reducing administrative support, and improving communication with VAROS.

# Major Contributors to This Report

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Charles Taylor, Evaluator-in-Charge  
Cynthia Forbes, Senior Evaluator, (404) 679-1922  
Julian Klazkin, Senior Attorney  
Pamela A. Scott, Communications Analyst  
Richard Wade, Senior Evaluator, (404) 679-1872

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