

**EXECUTIVE SUMMARY OF
RICHARD DUMANCAS, DEPUTY DIRECTOR
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ON
"WADING THROUGH WAREHOUSES OF PAPER: THE CHALLENGES OF
TRANSITIONING VETERANS RECORDS TO PAPERLESS TECHNOLOGY"**

DECEMBER 4, 2012

The American Legion is concerned with three key parts of VA's handling of electronic data in the new paperless environment.

1. No clear plan for scanning.
 - a. VA has no clear, public plan for dealing with the scanning component of the VBMS, which is the gateway to much of their later data concerns
 - b. The BDD sites currently have no scanning contract, and new claims are building up behind this like a tidal wave behind a logjam. This needs to be corrected.
2. Lack of coordination of data and communication with DOD, especially regarding Guard and Reserve component service members.
 - a. Guard and Reserve records often wind up in multiple locations and can be confusing to track down.
 - b. Guard and Reserve records must be a top priority for coordination with VLER and any data communication with VA and DOD
 - c. VA employees need better training on tracking down records for these service members
3. Uneven application of existing regulations regarding absent or incomplete military records.
 - a. VA has several regulations on the books to deal with incomplete or absent records, but they are inconsistently implemented
 - b. VA's regulations on PTSD stressors for combat should also be extended to MST victims
 - c. VA needs to enhance their training and consistency in implementation on these regulations.

**STATEMENT OF RICHARD DUMANCAS, DEPUTY DIRECTOR
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Chairman Miller, Ranking Member Filner and distinguished Members of the Committee:

Thank you for this opportunity to come before you today to discuss the importance of the data component in the Department of Veterans Affairs (VA) efforts to transform the claims processing system for the 21st century and beyond. The much beleaguered claims system has been under harsh criticism for quite some time as VA has struggled under a massive backlog of claims and tried to work towards a system that could deliver earned benefits to veterans in the timely manner they deserve. If VA is to climb out from under this mountain of claims utilizing the new features of the Veterans Benefits Management System (VBMS) paperless processing environment, the way in which they manage veterans' data is going to be one of the most important factors in determining success.

Working with the veterans' data will present several challenges. First and foremost is the entryway to this paperless processing environment, how will VA deal with transferring information on paper into a digital world? Second, VA will have to deal with the management of the electronic records even though the real world data is divided amongst a confusing number of sources, particularly for Guard and Reserve component veterans. Finally, even though VA has an extensive history of dealing with lost data and many regulations to account for the fact that military record keeping is not always what it should be, these regulations are not always uniformly enforced at the Regional Office (RO) level and VA will need to address this lack of consistency as they move forward and deal with the new challenges presented in the electronic operating environment.

Scanning and Submission of Evidence – the Entry Point into VBMS

Perhaps the most critical component to the success of the new electronic tolls provided by VBMS in serving the needs of disabled veterans filing for earned benefits is the quality of the data available, and that demands attention to detail at the first step – scanning the veterans' data. Unfortunately, there is at best vague information about how VA plans to move forward with the scanning component, and at worst a morass of chaos and uncertainty. The American Legion

would like to see a clearer road map laying out VA's plans for transforming data to electronic data presented in a transparent manner.

Scanning is already required as a part of intake at ROs utilizing the VBMS system. Furthermore, the Benefits Delivery at Discharge (BDD) sites in Salt Lake City, UT and Winston-Salem, NC also require scanning as this key transition program also operates in an entirely electronic environment. However, developments at the BDD sites raise troubling questions about VA's plans to go paperless nationwide in the coming year.

At this time, there is no contract in place at either BDD site for scanning, so new claims are not being entered into the pool of claims. While one employee referred to this as "a temporary benefit" as it allowed everyone to catch up on the backlog of claims at the BDD sites, any long term view of the situations must recognize the growing backlog of claims building up waiting to be scanned. Like a dike bursting open to let the floodwaters through, these claims will overwhelm the resources as soon as a contract is in place.

At a hearing before the full House Committee on Veterans Affairs on June 19th, Mr. William Bosanko, Executive for Agency Services, National Archives and Records Administration (NARA) indicated there was no long term contract in place for scanning at VA Regional Offices. The contracts that had been in place were for a much smaller scale than expansion to all ROs. The most recent contract had been for only five locations. There have been no subsequent indications of future long term plans for the scanning provided.

What is most troubling about the scanning portion of the data chain within VA is not the myriad questions about the quality of optical character recognition (OCR) and how searchable the documents will be, although those questions are certainly important. What is deeply troubling is that the scanning is so obviously a key component and there has been little to no public indication from VA about the road forward. As concerned stakeholders, The American Legion can only wonder as to the size and nature of future log jams building up which could devastate the process for veterans in the future.

The American Legion urges VA to present a clear road map for the way forward on the scanning component so all concerned stakeholders can understand that this critical data component is no longer a weak link in the data chain. There are other more pressing data concerns to worry about, but it is hard to give them focus when there are so many outstanding questions about the basic steps at the front door to the entire process.

Data Location – Finding Government Records

Obviously, the ability to communicate the critical data between governmental entities such as the Department of Defense and VA is essential to a smooth claims process. To catalogue the litany of complaints about delays in the development of a Virtual Lifetime Electronic Record (VLER) between VA and DOD would be so lengthy as to obfuscate almost any other discussion. Suffice to say stakeholders such as The American Legion have a long history addressing the unacceptable lack of clear communications.

In the 21st century, the ability of the DOD and VA to maintain a simple, common record for service members from their date of induction all the way through their military and civilian careers until internment in a veterans' cemetery should be a given, not a question. Rather than add to the existing mountain of concerns about the lack of a consistent electronic nature, The American Legion will simply state there must be a renewed commitment to getting VLER back on schedule and implemented with all due haste.

However, there is another concern regarding the difficulties in communicating service member data that is often overlooked when discussing the communication problems between VA and DOD and that is the widely distributed nature of information and records for members of the National Guard and Reserve components.

As the last decade of warfare has clearly shown, the National Guard and Reserve components are an integral and highly utilized component of our nation's military structure. However, record keeping for these components still lags deeply in the past century. At times, over 40 percent of the deployed forces in Iraq and Afghanistan have been Guard or Reserve component members. Over 650,000 National Guard and Reserve members have deployed since September 11, 2001 with many of those service members deploying multiple times over the last decade.

Yet for a variety of reasons, consolidating the vital data for these service members is a far more challenging task, and that fact has presented difficulties for a number of veterans when it comes time to file a claim.

Anecdotally, one National Guardsman The American Legion came into contact with told this tale of the difficulties he had run into. In 2005, the veteran in question underwent a Medical Evaluation Board/Physical Evaluation Board (MEB/PEB) process and was ultimately discharged from the military due to a spinal injury sustained in service. The veteran filed their own claim with VA within a couple of months after discharge, and didn't seek representation for the claim at the time stating "I had just gotten discharged for the injury, how hard can this be?" After approximately ten months, the veteran finally received an initial denial of benefits from VA as they could not find a variety of records associated with the claim. This was all still within a year of being medically discharged from the Army.

The veteran sought help from The American Legion at this point, and filed an appeal with a Decision Review Officer (DRO) at the Regional Office. During the course of this appeal, which took over an additional year, it became clear that the veteran's records were split over multiple locations. There were still records located in the country the veteran deployed to. There were records in Landstuhl, Germany where the veteran had stopped over while being medically evacuated. There were records with the National Guard bureau in the veteran's home state. There were records with the active duty division that had commanded the Task Force the National Guard unit had operated under. There were records in the National Personnel Records Center (NPRC) in St. Louis, and there were records in the hospital at the military base the service member was sent to while on medical hold.

It was not until the complicated process of DRO review that these records were all consolidated and considered that the veteran was finally granted service connection – for a spinal injury that

had provoked their discharge from the Army. Obviously this is a somewhat extreme example, but it illustrates the major challenge Guard and Reserve component veterans face in seeking disability service connection from VA. Their records exist piecemeal and spread over a multitude of locations. When confronted with seeking out service records with a single request to NPRC or with a legwork intensive process of tracking down multiple units, commands, and records sources, what is an overworked employee with limited time to devote to a single claim in the face of a massive backlog more likely to lean towards?

American Legion representatives who have conducted site visits at ROs through the Regional Office Action Review (ROAR) process have seen flow charts prepared for VA employees to assist determining where to find Guard and Records. This is a positive step forward, and VA needs to build upon this step.

The American Legion believes better training on records location with those of their employees who develop claims could help with the problem of scattered records, but ultimately, there needs to be a better consolidation process for this information. Furthermore, this consolidation should be considered as part of the VLER project as VA and DOD work together to create a unified record for service members. This is too important to be tacked on as a later consideration; it must be a ground level, fundamental building block of the new VLER.

The heavy utilization of Guard and Reserve members is not going away. In fact, with deep cuts looming for active duty personnel levels in the coming decade it is clear the Guard and Reserve will be a critical component of the nation's defense structure for the foreseeable future. They must stop being an afterthought in the logistical side when it comes to safeguarding their vital records and communicating that information to the necessary other agencies of government.

Implementing the Rules and Regulations on the Books

The idea that the military sometimes struggles with record keeping is not a new one. There are already multiple rules and regulations on the books to deal with situations where records are either incomplete or not present. Whether it has been challenges in the past such as the St. Louis fire of 1973, the confusion inherent in combat zones, or even records that could help validate a veteran's claim that have been destroyed by regulation, there are rules on the books or in the works that address the known fact that sometimes the key information is not present in the record.

Despite instructions to give special attention to alternate means of establishing information such as "buddy statements," photographs and newspaper clippings, veterans are still often stonewalled by the a finding that the events are "not reflected in the service record." 38 USC § 1154 recognizes the lack of consistent record keeping in combat and states "...the Secretary shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran."

Recently, with regard to Posttraumatic Stress Disorder (PTSD), VA has relaxed internal regulations to concede the occurrence of stressor incidents when a diagnosis of PTSD exists and the stressors described are similarly consistent with the circumstances and conditions of combat. This was done not solely for those who could prove combat through awards such as a Purple Heart or Combat Infantryman Badge (CIB). This was extended theater wide for war zones, as recognition of the modern battlefield's asymmetrical nature, where clear lines of battle no longer existed.

During the period of consideration of the new regulations surrounding PTSD, arguments were made to further extend the concession of stressors to cases of Military Sexual Trauma (MST) when there was an existing diagnosis because MST survivors had similar challenges in establishing the occurrence of stressors. Perhaps cruelly, records of sexual trauma in the military are often expunged by regulation after a period of three years, making it impossible down the road for a veteran to obtain any record of the event. The American Legion continues to urge Congress to press for the relaxation of stressor requirements for MST survivors to match those afforded to combat veterans and to rectify this inequity.

However, even though VA's own rules afford great benefit of the doubt to veterans with lost records, at the RO level the application of these regulations is inconsistent at best. In fact, some RO employees have stated the regulations are "confusing" and "something for the Board [of Veterans Appeals] to handle, not us..."

This can be corrected with better training at the RO level and clear direction from VA Central Office (VACO) that these rules are important. The American Legion has long contended that training on all levels at the RO must be made more robust and better tailored to correct known deficiencies. The handling of claims with missing data is certainly an area where VA's training could use improvement.

Conclusion

In conclusion, The American Legion is deeply concerned about the lack of a clear plan forward regarding the scanning process, one of the most critical components of the shift to a paperless, electronic environment. The Legion urges VA to work with the stakeholders in the Veterans Service Organizations and Congress to develop a plan and make it transparent so all concerned can help ensure this portion of the process does not needlessly cripple later actions in the VBMS environment.

As progress moves forward on VLER, The American Legion urges VA and DOD to ensure the Guard and Reserve records are an integral part of this consolidation from the beginning, and in the meantime urges VA to work diligently to ensure their employees at all levels understand the challenges inherent in tracking down records for the Guard and Reserve component.

Finally, The American Legion recognizes VA's own regulations to deal with lost records as indicative of the intent of this government to truly work to help veterans; even when through no fault of their own records are lost, as they can often be in a large bureaucracy like the military.

However, the implementation of these regulations still leaves much to be desired in terms of consistency, yet with attention to training and enforcing consistency, VA could go a long way towards helping the unfortunate veterans whose records have been lost or destroyed.