

**STATEMENT FOR THE RECORD OF THE AMERICAN LEGION  
TO THE  
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
"EXPEDITING CLAIMS OR EXPLOITING STATISTICS?  
AN EXAMINATION OF VA'S SPECIAL INITIATIVE TO PROCESS RATING  
CLAIMS PENDING OVER TWO YEARS"**

**MAY 22, 2013**

The first step to solving a problem is to admit that you have a problem. For many years now when pressed for answers regarding the growing backlog of disability claims, the response from the Department of Veterans Affairs (VA) has been to forestall any concerns by repeating the mantra of "everything is under control, when the Veterans Benefits Management System (VBMS) rolls out, we will have the backlog under control and we will meet our goal of 98 percent accuracy and no claims pending more than 125 days." On April 19, 2013 VA finally admitted they had a problem, and needed to take extraordinary measures to stay on target.

The Letter that VA issued on April 19 was entitled "Guidance Regarding Special Initiative to Process Rating Claims Pending Over Two Years."<sup>1</sup> We are pleased that VA is taking action to address this select group of massively backlogged claims, and VA's efforts to contact The American Legion and other Veterans Service Organizations (VSOs) as they neared a launch date for this plan is further laudable. At the end of the initiative, more than 50,000 claims that have been pending for more than two years will have some kind of resolution for the veteran, while more than 200,000 claims pending a year or more will be similarly resolved. Following the directions of the "Fast Letter", these claims will be moved to a digital format, further supporting VA's ongoing transformation to an electronic operating environment. The American Legion finds that there are many things to praise VA about with this initiative.

That said, The American Legion believes that there are many serious concerns still outstanding with regard to the implementation. Ultimately, the disability claims process is supposed to be inherently pro-claimant, with the best interest of the veterans held paramount. The American Legion has been working with our network of over 2,600 accredited service officers to receive real time feedback of what is transpiring in the field. As our Regional Offices (ROs) struggle to implement the program, they are also struggling to address the concerns of veterans who are affected by this policy change.

One of the chief concerns that The American Legion has is the allocation of personnel resources that will need to be devoted in order to successfully implement this program. As we understand it, all Rating Veteran Service Representatives (RVSRs) and the majority of Veteran Service Representatives (VSRs) will be devoted solely to this project, and Decision Review Officers (DROs) will be diverted from their appeals work to work these claims as well. While assurances

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<sup>1</sup> VA Central Office (VACO), VBA Letter 20-13-05

have been made that certain priority groups (Homeless, Terminally Ill, Medal of Honor recipients, Former POWs, and Fully Developed Claims) will still receive priority, all other work has been tabled to devote resources to this initiative, and our service officers are concerned this may be an overreaction. Claims being worked on one day will be suddenly set aside, even if they are ready to rate, and delayed until the oldest claims can be completed. In the interest of addressing the older cases, a claim that required something as minor as a signature in order to be processed for payment to the veteran may now sit on the shelf needlessly for months. The American Legion believes that there must be a better way to address this process, rather than by suspending work on some claims while diverting resources to others. Even a skeleton crew finishing last minute work on nearly completed claims would help ameliorate this problem.

One of the problems beginning to emerge may be systemic, and bears further scrutiny; ROs are being instructed to assign an “EP (End Product) 400” code to provisional ratings. Our staff has been told the EP 400 code will “automatically expires on a certain date and subsequently disappears.” A full record of any previous adjudicative actions is essential in case a claim must be appealed. What the long term effects of these changes to end product codes will be is still unclear, and how these end product codes will affect tracking of claims is still unclear. The number shuffling by changing end product codes is a serious concern to The American Legion.

Further systemic problems are raised by the conversion of all of these claims to the electronic VBMS format. While The American Legion fully supports moving VA into the VBMS operating model, not every office is prepared for this. Some ROs are being forced into handling claims in VBMS without the proper preparation and roll out, which creates problems for service officers attempting to help veterans with their claims. In many cases at some ROs, we are receiving reports of claims being decided, and sent out for scanning, before service officers are allowed to view and review the file for appeals determination. If the service officers can’t access the full file and analyze the rating, veterans are at a disadvantage for their appeals. In order for the process to be truly fair, everyone has to have access to all of the information. The scanning process alone adds two weeks to a month to the wait time before a service officer can review the file, and if the RO is not yet fully equipped for VBMS, it is likely in a format that will make review difficult.

The lines of communication between VA and the VSOs in this matter have been improved in recent years, but The American Legion still has concerns about this vital link in the communications chain. While some ROs conducted meetings with the VSOs to brief them on the operation of this initiative within their office, this has not been consistently done. The improvements in communication between VACO and the VSOs needs to be better distributed on a national level to ensure it is getting down to the “boots on the ground” level. Furthermore, when VSOs raised concerns about omissions in basic procedural rights regarding the provisional decisions, such as ensuring necessary medical examinations take place, and ensuring all required federal records had been obtained, VACO was receptive to the critiques and made changes to the plan, which The American Legion greatly supports and appreciates; but the fact that those omissions even existed in the first place – and needed to be pointed out by the VSOs involved – is troubling.

Finally, a concern has emerged through this process involving the new forms being utilized by VA for veterans to express a Notice of Disagreement (NOD). The new NOD forms are problematic in two areas, and both of these concerns reflect troubling directions VA is pursuing in terms of potentially affecting the appellate rights of veterans who may be dissatisfied with the ratings of their claims;

Block 13, under Part II – Telephone Contact (see Fig. A), asks the veterans if they would like contact through phone or email with VA regarding their claim. There is no way for the veteran to indicate they would like to include any representative they might have, such as a service officer, involved in the contact. Due to the complexity of the disability claims process a veteran is far better served when there is someone present who understands and can explain the complexities of their individual claim, and knows what questions to ask and how to respond to questions from VA. Some improvement in this area would be to include representation for the veteran, which is in the best interest of the veteran.

**Figure A**

PART II - TELEPHONE CONTACT	
13. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR EMAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR NOD?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO <i>(If you answered "Yes," VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time at the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.)</i>
<input type="checkbox"/> 8:00 a.m. - 10:00 a.m.	<input type="checkbox"/> 10:00 a.m. - 12:30 p.m.
<input type="checkbox"/> 12:30 p.m. - 2:00 p.m.	<input type="checkbox"/> 2:00 p.m. - 4:30 p.m.
Phone number I can be reached at the above checked time: <input type="text"/>	

The second and perhaps most critical concern addresses Block 15C (see Fig B.) This block presses a number of questions to the veteran of a technical nature regarding their claim. It asks the veteran to provide specific details about their dissatisfaction with the decision, and section C requires them to assign a desired percentage evaluation for their disability.

**Figure B**

15. PLEASE LIST EACH SPECIFIC ISSUE OF DISAGREEMENT AND NOTE THE AREA OF DISAGREEMENT. IF YOU DISAGREE ON THE EVALUATION OF A DISABILITY, SPECIFY PERCENTAGE EVALUATION SOUGHT, IF KNOWN. PLEASE LIST ONLY ONE DISABILITY IN EACH BOX. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.		
A. Specific Issue of Disagreement	B. Area of Disagreement	C. Percentage (%) Evaluation Sought (If known)
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	

Veterans are not trained medical or legal personnel, and do not have access to the regulations or resources that ROs use to determine the different levels of disability rating. They are not necessarily qualified to provide this information, and could potentially damage their benefit sought on appeal due to a lack of legal knowledge. While a represented veteran is in a more expert position, it still places the veteran or service officer in the position of doing the VA’s job of rating the claim. If a veteran only asks for one step up in rating from 10 percent to 30 percent, when the case actually merits a 50 percent evaluation, will VA simply rate them at 30 percent and consider this “A FULL GRANT ON APPEAL”? As of now, this is unclear. Veterans are not expert in the complete corpus of veterans’ law and benefits; they should not be required to provide information in the dark with the very real possibility of damaging their claim on appeal by providing bad information.

On behalf of our National Commander James E. Koutz, the 2.4 million members of The American Legion we would like to thank this subcommittee for their diligent attention to the disability benefits process. Overall this initiative is a positive step forward for VA in addressing systemic problems in the benefits system. However, ensuring veterans are not impacted negatively by this is something that will bear close scrutiny over the coming months. The American Legion will be watching closely, and hopes to work closely with both VA and Congress to ensure the ultimate outcome is in the veterans’ best interest.

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