



**STATEMENT FOR THE RECORD OF THE  
VETERANS AFFAIRS AND REHABILITATION COMMISSION  
THE AMERICAN LEGION**

**TO THE**

**COMMITTEE ON VETERANS' AFFAIRS, SUBCOMMITTEE ON DISABILITY  
ASSISTANCE AND MEMORIAL AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES**

**ON**

**"WHY ARE VETERANS WAITING YEARS ON APPEAL? A REVIEW OF THE POST-  
DECISION PROCESS FOR APPEALED VETERANS' DISABILITY BENEFITS  
CLAIMS."**

**JUNE 18, 2013**

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Nationwide, The American Legion has over 2,600 accredited representatives assisting veterans and their dependents seeking benefits from the Department of Veterans Affairs (VA). Additionally, 13 national appeals representatives are employed by The American Legion to represent claimants at the Board of Veterans' Appeals (BVA). Our national appeals representatives fervently advocate on behalf of veterans and their dependents to rectify errors committed by VA personnel during the adjudication process. We are honored to have represented over 698,000 veterans and their dependents in fiscal year 2013 resulting in the awarding of over \$5.7 billion in VA benefits during the fiscal year.

On behalf of National Commander James Koutz and the 2.4 million veterans of The American Legion, we would like to thank this Committee for the opportunity to address the critical issue of the appeals backlog affecting veterans across the nation.

From January 1, 2010 through June 1, 2013, The American Legion has represented 29,542 veterans and their dependents in their quest for veterans' benefits at BVA. Of these claims, The American Legion effectively proved the VA erred or failed to fully develop a claim in 21,632 cases. Of the 21,632 claims, 27 percent of claimants had benefits awarded by the BVA, indicating VA erred in its original adjudication, and only 45 percent of the claims proved to be fully and properly developed, indicating that VA failed in its development process more than half the time.

According to VA's Monday Morning Workload Report published on June 3, 2013, VA states they correctly adjudicated claims with 89.6 percent accuracy over the previous three months. Although the BVA statistics represent a portion of the claims adjudicated at the 56 VA Regional Offices (VAROs) and Appeals Management Center (AMC), we submit the statistics produced by BVA provide a sample of the quality in adjudication nationally at the VAROs. The accuracy statistics as indicated by BVA suggests VAROs are providing quality decisions in less than one out of four claims; these statistics are in stark contrast to VA's published report.

Unquestionably, the appeals process proves time-consuming and frustrating for the veteran population. By the time BVA renders a decision, a claimant will often have spent many years in

the appeals process, beginning with enduring the backlog at the VARO. Furthermore, in roughly half of the claims presented to BVA, the claims are remanded with clear instructions to AMC on how the claim should be developed:

Included within a BVA remand, clear instructions are provided to AMC how to proceed with the claim. Instructions often include:

- Providing a veteran with a Veterans Claims Assistance Act (VCAA) notification
- Providing a VA C&P examination
- Gathering information from other federal agencies pertinent to the development of the claim
- Providing the veteran with ample opportunity to supply private records pertinent to the development of the claim

Common reasons for BVA to remand claims include:

- Failure to provide the VCAA notification
- Inadequate VA compensation and pension (C&P) examinations
- Failure by veterans service representatives (VSRs) to properly develop claims, to include considering claims not only as directly related to service, but also manifesting by a previously service connected condition or aggravated by a previously service connected condition

Upon the completion of the necessary development of the claim, AMC renders a decision. A veteran has the right to appeal any decision provided by AMC; if a claim is denied, the claim is automatically returned to the BVA for review. Again, The American Legion's national appeals representatives will review the evidence, prepare an informal hearing presentation, and submit the claim to BVA for their review.

Unfortunately, despite clear instructions given by BVA administrative law judges within its original remand, The American Legion's representatives frequently successfully argue that AMC failed to comply with the clear instructions resulting in yet another remand. Insiders familiar with this process of repeated remands for the same claim refer to this endless cycle as the "perpetual remand wheel" where a claimant has to endure even more months, and often years, of claim development prior to receiving a final decision from BVA. Of course, this process can continue well beyond BVA's final decision if the veteran elects to appeal BVA's decision to the United States Court of Appeals for Veterans Claims.

The heart of this matter largely lies in the manner VA initially adjudicates its claims. VA Secretary Eric Shinseki and Undersecretary for Benefits Allison Hickey have repeatedly stressed the need for VA to improve its accuracy in claims' adjudication. VA often points to the accuracy percentage provided in the Monday Morning Workload Report; however, those statistics are fluid. If a claimant appeals a VA rating decision, and it is ultimately remanded or granted, then logic would dictate that the claim was inaccurately rated by the VARO, and the accuracy statistic

would be adjusted accordingly. Again, we understand that BVA adjudicates a small portion of claims compared to VAROs; however, if VA desired to arrive at a more accurate statistic regarding claims' adjudication accuracy, the statistic should reflect grants and remands by BVA. In reality, VA would not be able to truly ascertain the quality of its adjudications unless each and every veteran and dependent appealed each decision rendered by VAROs.

VA has a daunting challenge forecasted for their future. Secretary Shinseki has assured the veteran community that claims will be processed within 125 days and with 98 percent accuracy. Whether an individual wishes to lend credence to VA's Monday Morning Workload Report statistics regarding accuracy or the statistics formulated by BVA, it is clearly evident VA needs to vastly improve its adjudication accuracy to meet the Secretary's objective.

It is also necessary to discover methods to expedite the manner that a veteran can receive a positive nexus opinion linking a current diagnosed condition to either military service or a previously service connected condition. Many veterans utilize the VA healthcare system for treatment. Under the current structure, a VA primary care provider may treat the condition; however, the provider may not provide a nexus statement regarding the condition that may allow veterans to become service connected. This results in a cumbersome process; a veteran has to file for the condition and wait until a veterans' service representative schedules the veteran for a VA C&P examination. It is particularly frustrating for veterans when their primary care provider has indicated that the condition could be service connected, and the provider is unable to provide supporting medical opinions, including opinions relating to causation of a condition, when it is medically possible to do so.<sup>1</sup>

Resolving the timeframe that a claim waits in appeal status is largely connected with the manner VA originally adjudicates claims. If VA properly develops claims and renders a decision that is in accordance to the laws and regulations governing veterans' law, then logic would dictate that fewer appeals would occur thereby reducing the backlog of appeals. Additionally, if AMC staff would adhere to the remand instructions prepared by BVA, fewer cases of multiple remanded claims for development would need to occur.

The American Legion again thanks the Committee for its diligent attention to the claims process. For additional information regarding this testimony, please contact Mr. Ian de Planque at The American Legion's Legislative Division, (202) 861-2700 or [ideplanque@legion.org](mailto:ideplanque@legion.org) .

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<sup>1</sup> Resolution No. 24, OCT. 2008