

EXECUTIVE SUMMARY
OF
VERNA JONES, DIRECTOR OF THE NATIONAL VETERANS AFFAIRS AND
REHABILITATION COMMISSION OF THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
PENDING LEGISLATION

JUNE 28, 2013

Bill	Title/Summary	Position
HR 1288	World War II Merchant Mariner Service Act	Supports
HR 1494	Blue Water Navy Ship Accountability Act	Supports
HR 1623	VA Claims Efficiency Through Information Act of 2013	Supports
HR 1809	<i>To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to provide notice of average times for processing claims and percentage of claims approved</i>	Supports
HR 2086	The Pay As You Rate Act	Supports
HR 2138	Ending VA Claims Disability Backlog and Accountability Act	Supports
HR 2189	<i>To establish a commission or task force to evaluate the backlog of disability claims of the Department of Veterans Affairs.</i>	No Position
HR 2341	The Veterans Pension Protection Act	No Position
HR 2423	Disabled Veterans Access to Medical Exams Improvement Act	Supports

**STATEMENT OF
VERNA JONES, DIRECTOR OF THE NATIONAL VETERANS AFFAIRS AND
REHABILITATION COMMISSION OF THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
PENDING LEGISLATION**

JUNE 28, 2013

Chairman Runyan, Ranking Member Titus and distinguished Members of the Subcommittee, on behalf of Commander Koutz and the 2.4 million members of The American Legion, I thank you and your colleagues for the work you do in support of our service members and veterans as well as their families. The hard work of this Subcommittee in creating significant legislation has left a positive impact on our military and veterans' community.

H.R. 1288: *World War II Merchant Mariner Service Act*

To direct the Secretary of Homeland Security to accept additional documentation when considering the application for veterans status of an individual who performed service as a coastwise merchant seaman during World War II, and for other purposes.

"[Mariners] have written one of its most brilliant chapters. They have delivered the goods when and where needed in every theater of operations and across every ocean in the biggest, the most difficult and dangerous job ever undertaken. As time goes on, there will be greater public understanding of our merchant's fleet record during [World War II]." -- President Franklin D. Roosevelt

The question of veteran standing for those that served in the Merchant Marines during World War II has routinely been debated. Is the merchant mariner a veteran? According to a January 9, 1988 decision of the Secretary of the Air Force veteran status is warranted for a merchant mariner that served between December 7, 1941 and December 31, 1946. The American Legion similarly recognizes these standards. We encourage these men to join their brothers and sisters that have served their nation honorably during periods of conflict in The American Legion. Additionally, we support including the Merchant Marine flag "in all National Displays as an official United States Auxiliary Service Flag and to fly beside other Service flags of the Armed Forces as appropriate and in accordance with accepted protocol."¹

H.R. 1288 directly addresses correcting the record for any members who may have served in the Merchant Marines and have lacked the proper documentation to prove service. World War II Merchant Marine and maritime historian Charles Dana Gibson provided testimony to the United States Senate Committee on Veterans' Affairs on May 7, 2008, regarding how some individuals

¹ Resolution No. 3, October 2003

entered the Merchant Marines; the manner that men entered the Merchant Marines has resulted in difficulties for World War II merchant mariners achieving veteran status.

Unlike the Departments of Army and Navy, where enlistment documentation was housed within the War Department, many men in the Merchant Marines were contracted by a private sector employer “through means of ‘letters of intent to employ’ written by shipping companies and/or unions and addressed to the United States Coast Guard which then issued the seaman’s certification for one of three entry rating....Such men did not go through the apprentice training programs that were operated by the U.S. Maritime Service and for which we do not have the approximate numbers”, according to Mr. Gibson².

The nature that many of these men entered Merchant Marine service suggests that records of service may not have been maintained in a similar manner as veterans who served in other branches of the armed forces. As a result, some of these veterans charged with the protection of cargo on vessels, to include soldiers and sailors, may have long been denied benefits entitled to veterans. Through the passage of H.R. 1288, veterans of the Merchant Marines may be able to finally receive benefits earned through their sacrifice to this nation’s war efforts during World War II.

The American Legion supports the passage of H.R. 1288.

H.R. 1494: *Blue Water Navy Ship Accountability Act*

To direct the Secretary of Defense to review the operation of certain ships during the Vietnam Era, and for other purposes.

The exemption of Blue Water Navy Vietnam veterans from presumptive Agent Orange exposure has caused heartache and frustration for many veterans. Current regulations require Blue Water Navy veterans to prove going ashore in Vietnam; their ship is one of 244 ships currently registered on Department of Veterans Affairs’ (VA) public health website³, or they have to file a claim, ask VA to research to determine if a ship qualifies for presumptive exposure in their quest for VA disability benefits.

According to H.R. 1494, Congress calls upon the Department of Defense (DOD) to “review the logs of each ship under the authority of the Secretary of the Navy that is known to have operated in the waters near Vietnam during the Vietnam Era” to determine whether each ship operated in the territorial waters of Vietnam, the dates of the ship’s service in Vietnam, and the proximity of the ship to the shore at its closest point.

Through the passage of this bill, ownership of the whereabouts of naval vessels during the conflict is rightfully placed upon DOD as they were the department ordering the deployment of ships. In August 2012, The American Legion directly addressed this issue, calling upon “DOD to provide a full disclosure of all wartime and non-wartime locations to (VA) where hazardous environmental exposures exist and that armed forces members were exposed through testing,

² Chales Dana Gibson, Senate Committee on Veterans’ Affairs, May 2008

³ <http://www.publichealth.va.gov/exposures/agentorange/shiplist/list.asp>

transportation, storage, disposal and environmental contamination.⁴” Additionally, we stated that “(DOD) prepare and provide an updated list of all areas outside of the United States, including but not limited to Panama and Okinawa, where it is known that herbicides, specifically Agent Orange, were used in connection with the location and deployment of troops, to include but not limited to the herbicide or herbicides used; the date of each use of each herbicide; and the units located in each area/place that may have been exposed.”

The ownership of location of naval vessels during Vietnam should not completely fall upon VA’s shoulders. The ships were deployed by the direction of DOD, as were the sailors. DOD would be the department responsible for the maintenance of these records and should be directed to supply the location of all naval vessels during the conflict.

It is long past time that a comprehensive accounting of these vessels be completed, to save veterans and VA many needless hours of time addressing claims for benefits.

The American Legion supports the passage of H.R. 1494.

H.R. 1623: VA Claims Efficiency Through Information Act of 2013

H.R. 1809

H.R. 1623: To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to make publicly available certain information about pending and completed claims for compensation under the laws administered by the Secretary, and for other purposes.

H.R. 1809: To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to provide notice of average times for processing claims and percentage of claims approved, and for other purposes.

With over 2,600 accredited representatives dedicated in assisting veterans and their dependents with claims for VA benefits, The American Legion is keenly aware of the necessity for transparency within the Veterans Benefits Administration (VBA) and to resolve the backlog of VA claims. Due to this vast network of representatives, we are able to monitor areas of concerns held by the accredited representatives that may negatively affect veterans’ claims.

Currently, VBA releases a weekly Monday Morning Workload Report (MMWR). The MMWR contains numerous statistics to include but not limited to, average days pending for a claim and adjudication accuracy. These statistics reflect production and accuracy for each VA Regional Office (VARO) and national averages. Additionally, it provides an accuracy average for the previous three months.⁵

H.R. 1623 and H.R. 1809 direct the VBA to provide statistics indicating the number of claims granted and denied by each VARO. Additionally, H.R. 1623 directs VBA to provide statistics regarding the grant or denial of benefits by medical condition. The American Legion supports

⁴ Resolution No. 95, August 2012

⁵ www.vba.va.gov/REPORTS/mmwr/MMWL_Summary.doc

full transparency of VBA. As an organization dedicated to support the needs of the veteran community, to include veterans' disability benefits, we assert a full understanding of VBA's policies and the implementation of policies is required. In August 2012, we called upon Congress to require VA to provide in a readily available venue a report of "the number of claims for compensation and disability that were submitted, that were granted/awarded, that were denied and that remain in a pending status⁶".

H.R. 1809 discusses veterans pursuing VA benefits through filing a fully developed claim (FDC). As members of the Committee may know, The American Legion has worked closely with White House and VA staff as the FDC process was implemented nationwide. Our involvement with the implementation of the FDC process has resulted in the visiting of numerous VAROs with VA and this Committee's staff. A report of our findings will be released later this year.

What The American Legion has seen is that in many cases, the improvement in processing time by pursuing a claim that qualifies under the FDC process is striking. Helping veterans to better understand what the best option available to them to pursue their claim will help not only countless veterans applying for disability benefits, but also VA as claims are more efficiently routed to the process stream best suited for a veteran's claim. Increasing transparency and access to the data necessary to make informed decisions about their claims is vital to continuing the improvement process in the overall claims system.

The American Legion supports the passage of H.R. 1623.

The American Legion supports the passage of H.R. 1809.

H.R. 2086: *The Pay As You Rate Act*

To direct the Secretary to make interim payments of disability compensation benefits for certain claims for such compensation prior to the adjudication of such claims, and for other purposes.

This legislation would provide a much needed way to start access to health care and benefits for veterans in the disability process. Often, for veterans with complex medical conditions, or multiple medical conditions, the process is lengthy because VA will typically wait until all issues have been fully researched and resolved before issuing a decision that covers all conditions for which benefits are sought. While VA has the authority to grant individual issues and defer decisions on other issues currently pending, this is seldom done. According to findings at American Legion Regional Office Action Review (ROAR) visits to VA Regional Offices (VAROs) this is often because employees do not get credit for such split and deferred decisions, so it goes against their incentive to devote the time to writing a decision they will not receive work credit for.

Starting the flow of benefits to a disabled veteran is important for many reasons. The start of disability payments, even if they are only a small amount of money for a simple condition rated at a low percentage, can often make the difference between making ends meet and falling into dire financial straits. Veterans are compensated for their disabilities in some part because these

⁶ Resolution No. 99, August 2012

disorders negatively affect their ability to work and earn a living. Furthermore, receiving a service-connected disability rating gives the veteran access to health care for that disability. The sooner they can receive treatment, the better they can mitigate the negative effects of the disability.

This bill would help direct such decisions, rating the issues that can be rated and starting at least a trickle flow of benefits to the veteran, and that is vitally important to many disabled veterans as they wait through the many months it takes VA to render complete decisions on every issue.

The American Legion supports the passage of H.R. 2086.

H.R. 2138: *Ending VA Claims Disability Backlog and Accountability Act*

H.R. 2138: To direct the Secretary of Veterans Affairs to resolve the backlog of disability claims of the Department of Veterans Affairs, and for other purposes.

Repeatedly, VA Secretary Eric Shinseki has touted VA's bold initiative to eliminate the backlog with 98 percent accuracy by 2015. While we certainly applaud the Secretary's vision, we remain concerned that this initiative will not become a reality. Officials within VBA suggest that a "tipping point" has been reached regarding the backlog of VA claims, as they reported that claims awaiting decisions for at least two years have finally been adjudicated; however, this success raises at least two questions:

- VBA was able to adjudicate claims in 60 days that they could not adjudicate in at least two years. Why were these practices not employed earlier?
- As these claims were rapidly adjudicated, does VBA feel confident in the accuracy?

The latter question unfortunately will likely not be answered for years as these decisions may be appealed to a VA Decision Review Officer, Board of Veterans' Appeals (BVA), and Court of Appeals for Veterans Claims. Historically, statistics generated through BVA decisions suggest that the quality of adjudication at VAROs is not as accurate as the MMWR would indicate.

H.R. 2138 directs the Secretary to provide tangible metrics to ensure that VBA meets the goal of eliminating the backlog with 98 percent accuracy by Memorial Day, 2015. Additionally, it calls for necessary records from federal agencies to be expeditiously transferred to VA for the purpose of VA claims' adjudication. The enactment of this provision should reduce the timeline that VA experiences when waiting for records from agencies such as the Social Security Administration as suggested by Under Secretary for Benefits Allison Hickey during her March 2013 testimony before the United States Senate Committee on Veterans' Affairs⁷.

It is also noted that this bill calls for a comprehensive training program for claims' adjudicators. Recognizing that VA claims can be significantly complicated due to the nature of the

⁷ <http://www.heller.senate.gov/public/index.cfm/2013/3/heller-questions-veterans-benefits-administration-about-va-claim-backlog>

condition(s), the responsible act would include an exhaustive training to help ensure that VBA can achieve Secretary Shinseki's objective.

The American Legion has long conducted VARO visitations to review claims' adjudication quality. We have long held that their training, in its current format, is not sufficient. We applaud the bill's attempt to improve training within VBA. In August 2012, The American Legion petitioned "Congress to pass legislation that requires VA be held accountable for achieving the VA Secretary's stated goal to achieve an operational state for VA in which no claim is pending over 125 days and all claims have an accuracy rate of 98 percent or higher."⁸ We believe the enactment of this bill will aid in the Secretary achieving his objective; more importantly, it will assist in reducing the backlog of claims and allow veterans and their dependents to receive the benefits they deserve.

The American Legion supports the passage of H.R. 2138.

H.R. 2189:

To establish a commission or task force to evaluate the backlog of disability claims of the Department of Veterans Affairs.

The commission or task force established by this legislation would address the backlog of disability claims by considering a broad gamut of considerations, regarding the interests of veterans, the public, the Constitution, and other interested parties. The commission will issue regular reports over the course of half a year addressing their findings on the issue.

The American Legion has no position on this legislation.

H.R. 2341: The Veterans Pension Protection Act

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to consider the resources of individuals applying for pension that were recently disposed of by the individuals for less than fair market value when determining the eligibility of such individuals for such pension, and for other purposes.

The American Legion and our network of over 2,600 service officers regularly work with veterans and their families to ensure they receive the benefits they deserve. Over the last several years, it has become more apparent that predatory actors are moving in and taking advantage of elderly veterans in a vulnerable position, by engaging in questionable business practices which can fleece a veteran of their money while offering false promises of pension programs to pay for elder care facilities.

While The American Legion is tremendously appreciative of critical attention to this issue, and this legislation's aim is admirable – seeking to protect veterans from these predatory practices by increasing the look back period when examining veterans' assets -- The American Legion has reservations as to whether or not this is the most appropriate measure to provide relief to veterans

⁸ Resolution No. 99, August 2012

and their families. Research conducted through The American Legion's network of service providers shows, that this new look back period would affect surviving spouses of veterans who need benefits, as well as questions how VA would be able to address the increased workload of the look back period when pension centers struggle to address their existing workload.

However, as this is a matter of concern, The American Legion continues to work with the expertise of our service officers, membership and staff to determine a course of action which would provide remedy in this situation. When such a remedy is determined, then by our own resolution process our membership, will The American Legion be able to ratify a plan for taking action. Due to the complexity of the situation, there is no consensus and therefore we can neither support nor oppose this course of action.

The American Legion has no position on this legislation.

H.R. 2423: Disabled Veterans' Access to Medical Exams Improvement Act

To improve the authority of the Secretary of Veterans Affairs to enter into contracts with private physicians to conduct medical disability examinations.

In the traditional claims process two of the three critical components needed for a veteran to be granted service connection for a disability require an examining physician. A veteran must have a current diagnosis with information about the extent and severity of the disorder provided by a physician. A veteran also must have a "nexus opinion" or a written analysis by a doctor stating that it is "as likely as not" that the veteran's current disability is a result of an event, injury or disorder sustained in service. There are other methods involving aggravation of a condition, development of a condition secondary to an already service-connected condition, malpractice and other concerns; but physician's opinions are vital to proper decision making in the claims process.

In many regions, contract examinations through outside parties to perform these Compensation and Pension (C&P) examinations are a vital component in ensuring VA has the resources to meet demands in the local area. Not every area has appropriate VHA facilities or resources to provide these exams. In practice, the outside contractors have performed perfectly well, and currently the system relies on these important contract exams to operate smoothly. If the contracting authority were to expire, an already overstressed system would be further taxed, potentially to the breaking point. With wait times for exams a potential delaying factor in an already overlong disability claims process, losing this important piece could be disastrous to attempts to get the claims process back on track in a timely fashion.

The American Legion supports the extension of the contracting authority for these C&P exams. There are other means that will help carry the load on the stressed system such as better use of Disability Benefits Questionnaires (DBQs) by private physicians to alleviate the need for additional exams, and better training of VA employees to recognize and accept private medical opinions that provide valid and complete information sufficient to allow rating of a claim, but losing the contracting authority would set the whole process back.

The American Legion supports the passage of H.R. 2423.