

**STATEMENT OF  
ZACHARY HEARN, DEPUTY DIRECTOR FOR CLAIMS,  
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THE AMERICAN LEGION  
BEFORE THE  
SUBCOMMITTEE ON DISABILITY AND MEMORIAL AFFAIRS  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
"DRAFT LEGISLATION, "TO AMEND TITLE 38, UNITED STATES CODE, TO  
IMPROVE THE APPEALS PROCESS OF THE DEPARTMENT OF VETERANS  
AFFAIRS"**

**APRIL 28, 2016**

More than 1.4 million claims for veterans' disability were processed last year, and the Veterans Benefits Administration (VBA) is on track to surpass even that number this year. At a ten to twelve percentage rate of appeal, the workload at the Board of Veterans Appeals (BVA) will likely never disappear.

With an appeals inventory at roughly half a million pending claims, the Department of Veterans Affairs (VA) asked stakeholders to gather in several high intensity day-long working meetings to help come up with a system that would recommend solutions to help VBA and the Court of Appeals for Veterans Claims (CAVC) better process and manage this existing workload.

Chairman Abraham, Ranking Member Titus and distinguished members of the Subcommittee on behalf of National Commander Dale Barnett and The American Legion; the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving *every* man and woman who has worn the uniform for this country; we thank you for the opportunity to testify regarding one of the critical components of the VA's disability claims system, the appeals process.

**Background:**

The American Legion currently holds power of attorney on about three quarters of a million veteran claimants. We spend more than two million dollars a year on veteran claims and appeals processing and assistance. Our success rate at the BVA hovers at around 80 percent, either outright grants of benefits or remands to properly process a claim that VA had failed to properly process at the lower level of the Regional Office.

When VA invited stakeholders to the table to discuss appeals modernization, The American Legion knew that appeals modernization was not about appeals alone, that the recommendations required to streamline appeals needed to take place much earlier in the process, at the point of the initial adjudication. With that, one of the first things the group looked at was the VBA decision notice. Refining the initial decision notice is not as easy as it sounds and several of the Veterans

Service Organizations (VSOs) worked with VA for months in 2014 to try and improve these letters, with frustrations over lack of clarity still remaining. Getting VBA to agree to improve the quality of the letter was a landmark accomplishment that got the process off to a good start.

After the initial VA commitment to improve the decision letter, the stakeholders listened to what they perceived as barriers to improved appeals processing, which supported another of the primary American Legion concerns, the lack of a centralized training process. The BVA has complained that the appeal case file that is finally presented to a veterans law judge looks nothing like the claim that was adjudicated at the Regional Office (RO) level in almost all cases, due to the allowance of additional evidence during the appeals process. Therefore VBA claims they have no way to determine how, or if ROs are misinterpreting the law or making mistakes.

BVA further argued that if there were a process within the appeals system that allowed law judges to review disputed decisions that were adjudicated at the regional offices, based only on the same information that the regional office had at the time the claim was originally decided, then BVA would be able to provide a “feedback loop” they could use to help train and educate ROs, and additionally help identify regional offices where the decisions uniformly fail to address specific legal issues.

It was with these two foundational underpinnings that the big six VSOs, in addition to state and county service officers, veteran advocate attorneys, and other interested groups worked with senior VA officials from VBA and BVA to design the framework of the legislation being discussed here today.

The guiding principle leading all of our discussion was ensuring that we preserved all of the veteran’s due process rights while ensuring that they did not lose any of the claim’s effective date, which we were able to do successfully.

When we started the design process, we had to suspend dealing with the current caseload of appeals while we designed the new model and treated the two sets of cases as independent of each other. Now that we have designed a more streamlined and effective model for future claims, all stakeholders will still need to determine how to deal with the existing inventory of appealed claims.

The design of the proposed appeals process allows for multiple options for claimants, as well as options for additional claim development, the option to have the decision reviewed by another adjudicator (difference of opinion) and the chance to take your case straight to the board to have a law judge review the decision and make a ruling on your claim.

### **The New Legislation:**

The proposed bill provides veterans additional options while maintaining the effective dates of original claims. Veterans can elect to have an original decision reviewed at the ROs through a Difference of Opinion Review (DOOR) which is similar to the function of what the Decision Review Officers (DROs) do now. A DOOR provides an opportunity for a claimant to discuss concerns regarding the original adjudication of a particular issue, or the entire claim, prior to appealing to BVA. Additionally, the administrative actions removes the need for a Notice of

Disagreement (NOD), a process that currently takes 403.6 days, according to the April 25, 2016, Monday Morning Workload Report.

Beyond improvements in administrative functions, the proposed bill will enable claimants to select a process other than the standard multi-year backlog if they want to have an appeal addressed more expediently, and if they believe they have already provided all relevant and supporting evidence. Similar to the Fully Developed Claims (FDC) program, veterans will be able to elect to have their appeals reviewed more expeditiously by attesting that all information is included within the claim, VA records, or submitted with VA Form 9 indicating the intent to have their claims immediately forwarded to BVA for review.

Veterans indicating that they may need additional evidence or time, could elect to have their claim reviewed in the current BVA format allowing additional evidence to be entered into the record. For veterans requiring additional evidence, such as lay statements from friends and families or a private medical examination rebutting VA medical examinations, this is a viable alternative to allow the time and opportunity to provide further development necessary to substantiate the claim for benefits.

Throughout this entire process, veterans will be able to maintain their effective date of the original claim. Recognizing that an increased burden is being placed upon veterans, VA will permit veterans to maintain their effective dates, even if BVA denies the claim. If an appeal is denied by BVA, the veteran can submit new and minimally relevant evidence to reopen the claim at the RO while holding that effective date that may have been established long before the second filing for benefit.

Just as we did when we worked in partnership with VA to roll out the Fully Developed Claims process, The American Legion is willing to put in the necessary work to ensure this program is successful. We recognize the increased burden it can place on veterans; we also recognize that our approximately 3,000 accredited representatives have the tools to ensure success for the veterans and claimants we represent. Throughout the year, we will continue to work with our representatives, our members, and most importantly, our veterans to understand the changes in law, and how they will be able to succeed with these changes.

Reforming a process as complex as the disability claims system is not simple, and not every aspect of appeals reform is able to be legislated, some parts are more nuanced and require the attention of all stakeholders. The American Legion is committed to providing constant feedback as we move forward with appeals modernization. We believe that the architects of this proposal have acted in good faith, and we support their efforts to modernize the appeals process for the good of veterans.

The American Legion thanks this committee for the opportunity to address this legislation. For additional information regarding this testimony, please contact Mr. Warren J. Goldstein at The American Legion's Legislative Division at (202) 861-2700 or [wgoldstein@legion.org](mailto:wgoldstein@legion.org)