STATEMENT OF
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THE AMERICAN LEGION
TO THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS’ AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
“RATING THE RATING SCHEDULE – THE STATE OF VA DISABILITY RATINGS
IN THE 21st CENTURY”

JANUARY 24, 2012

Mr. Chairman and Members of the Committee:

As the nation’s largest wartime veterans’ service organization, The American Legion has been deeply involved in ensuring proper care and compensation for service disabled veterans since our founding in 1919. Every day, over 2,000 American Legion accredited service officers are hard at work providing advocacy free of charge to veterans in their often arduous quest for disability compensation for injuries and conditions incurred as a result of their service. These service officers are front line soldiers in the fight for justice for these disabled veterans. Their insights, coupled with insights gleaned from interviews with VA staff in over fifty Regional Office Action Review visits over the last decade, have provided The American Legion with critical insight into the problems inherent in the VA Rating Schedule.

Any attempt to reform or revise the rating schedule must begin by considering the overall mission and purpose of the Department of Veterans Affairs (VA.) To paraphrase the words of President Abraham Lincoln, VA exists to care for those who have borne the battle and for their families and their orphans. The American Legion believes therefore any rating schedule must be built upon the guiding principle of serving the disabled veteran.

Understanding this principle, concerns of VA must be examined and understood in the proper context. Those with experience in the VA disability rating system will agree the current regulations are difficult for veterans and employees of VA to utilize effectively. However, care must be taken in revision to ensure regulations are not simply changed for administrative
expediency that comes at the expense of veterans. We cannot afford to simplify for bureaucratic convenience if those simplifications result in an overall negative impact on disabled veterans.

The adjudication of claims in a timely and accurate manner is perhaps the greatest challenge facing VA’s service to disabled veterans. As of January 3, 2012 over 65 percent of pending compensation claims were still pending over 125 days. Accuracy figures are difficult to determine as VA still does not publish accuracy ratings with the same prominence as those for timeliness despite repeated requests from The American Legion and other service organizations. If VA is to achieve their stated goal of 98 percent accuracy and zero claims pending over 125 days by 2015 they will clearly need help, and some of that help will most likely come from a more efficiently designed rating schedule.

Clarity of language and ease of use will be essential in making the tools adjudicators must use to fairly process veterans’ claims. Simply rewriting the regulations will not replace the need to properly train those who must interpret the regulations on a daily basis to ensure veterans receive their fair due. Currently over half of VA’s employees have less than three years experience on the job. This is a transformational time and that must be used to VA’s benefit, shedding institutional biases of the past for a more agile and efficient workforce. Of course, service to the disabled veterans must assume its place at the proper position of prominence. These VA employees must be trained on the new regulations, and that training time cannot be sacrificed in the service of raw output. An improperly trained staff would only waste the good efforts invested in the creation of the regulation rewrite.

Any rewrite must also be directed towards better consistency, and The American Legion believes this must be considered not solely with regard to variations across regional offices, but also across the various branches of active duty service and the medical and physical evaluation boards. One only has to consider lawsuits such as Sabo, et al. v. United States to realize there are still widespread issues with proper application of the existing laws at the critical bridge point of transition between active duty and veteran status. American Legion personnel also are deeply involved tracking the status of disabled active duty service members experiencing the Medical Evaluation Boards (MEBs) and Physical Evaluation Boards (PEBs) and have noticed inconsistencies across branches of service.

Just as veterans with identical knee injuries should receive the same rating whether they are evaluated in Newark, NJ or Oakland, CA active duty service members with identical injuries should be evaluated equally regardless of whether they serve in the Air Force, Coast Guard, Navy, Army or Marine Corps. Furthermore, it is only common sense that ratings on both sides of the green line dividing active duty and veteran status should be consistent. Sadly, this is not the current state of affairs.

The American Legion would like to thank VA for the progress being made towards better inclusion of service organizations and concerned stakeholders in the revision process. This very week I am attending a review of proposed changes to the VA Schedule for Rating Disabilities (VASRD) and we have had regular meetings and briefings from VA as a part of this process. This is important. Any change to the rating schedule will require thought and analysis, and a proper period of informed consideration of changes cannot be underestimated. We hope this
continues throughout the process, and that there is deep consideration of the input from organizations such as The American Legion and others. Our service officers are right there with VA’s adjudicators in the front line trenches. The input from these sources is incalculable and deserves heavy consideration and recognition of its value. Furthermore, The American Legion encourages field testing of any changes before any final decisions are made. Often unintended consequences are not immediately apparent when a regulation is rolled out, and the old military advice that no plan survives first contact is an important guiding principle.

The rating system as a whole is indeed full of challenges. The mental health section is desperately in need of revision, and VA is in the process of addressing this. In American Legion Regional Office visits, this section is consistently mentioned by VA employees as the most difficult to interpret. Care should be exercised however. In the past, the diagnostic schedule for Traumatic Brain Injury was justly recognized as being inadequate to address the impact of the sometimes terrible injury. However, the system ultimately rolled out, while medically addressing all the proper information, was unwieldy and even incomprehensible to many who are required to use the new schedule on a daily basis.

The American Legion is sympathetic to the line VA must walk in designing the rating schedule. The ratings must be complete enough to adequately address complex injuries, but must be clear enough to be interpreted by non-medical employees during the claims process. It is difficult, but we believe possible, to achieve this with the input of veterans’ law experts and medical professionals as well as those adjudicators and service officers who utilize the system on a daily basis.

This is not a new task. Daniel Cooper, Chairman of the VA Claims Processing Task Force noted the need to “rewrite and organize the C&P Regulations in a logical and coherent manner…” over a decade ago in October of 2001. This is an ongoing task and will require continued input of all interested stakeholders be they from Congress, VA, the service organizations or even the lawyers and medical professionals who also use the system.

If there is one underlying point to remember throughout this process however, it is this: the disability system exists to serve those veterans who have suffered ongoing and often devastating effects in the service of this country. Every act must be considered in light of how well it will serve those veterans.