



National Veterans Affairs and Rehabilitation Commission

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**STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
THE BOARD OF VETERANS' APPEALS ADJUDICATION PROCESS AND THE
APPEALS MANAGEMENT CENTER**

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Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to present The American Legion's views on the Board of Veterans' Appeals (Board or BVA) and the Appeals Management Center (AMC). The American Legion commends the Subcommittee for holding a hearing to discuss these two important parts of the Department of Veterans Affairs (VA) claims adjudication system.

Board of Veterans' Appeals

The BVA is a separate entity within VA. Its responsibility is to render a final decision on the propriety of regional office decisions. If the BVA determines that a final decision cannot be made on a case due to an inadequate record it has the authority to remand the case back to the agency of original jurisdiction, which now includes the AMC, for additional development and readjudication.

As of September 8, 2007, there were more than 160,000 cases in appellate status still pending in VA's 57 regional offices, with more than 142,000 requiring some type of further adjudicative action. In September of 2006 there were approximately 9,000 fewer pending appeals. Based on

statistics produced by the VA for the first 11 months of FY 2007, once a substantive appeal has been filed it takes the VA regional offices an average of 527 days to forward the case to the BVA. In view of the increasing number of new appeals coming into the system, it is painfully obvious that the level of dissatisfaction among claimants seeking VA disability benefits is substantial and growing.

At the end of FY 2006, the BVA had 457 employees, including 56 veteran law judges. Even though the Board's current average processing time is 274 days, up about 22 days from FY 2006, we do not believe there is an urgent or overriding need for any substantial increase in staffing. The amount of time it is taking to process an appeal should not be the most important factor in decisions about the adequacy of the Board's staffing. The American Legion is more concerned that the Board's decisions are fair and proper.

Since 2004 the BVA has concentrated much of its effort on eliminating avoidable remands. It is clear that the Board would like to issue more final decisions in order to reduce its backlog. This effort has resulted in a significant reduction in remands (from 56.9% in FY 2004 to 32% in FY 2006). It has also resulted in a significant increase in denials (from 24.2% in FY 04 to 46.3% in FY 06), with only a slight increase in allowances (17.1% in FY 2004 to 19.3% in FY 2006). It is the opinion of The American Legion, based on our review of American Legion represented appeals denied by the BVA, that in its zeal to avoid remands, the BVA has rendered erroneous or premature decisions in cases where benefits should have been granted or where the case should have been remanded. In the past eight years the National Veterans Legal Services Program (NVLSP), consultant to The American Legion, has appealed approximately 500 American Legion BVA denials to the U.S. Court of Appeals for Veterans Claims (CAVC) and has won a remand or reversal in over 90 percent of these appeals. Further, according to the CAVC web site, the combined remand plus reversal rate for appeals decided by the Court on the merits was just over 76 percent. This rate mirrors the remand plus reversal rate achieved by the volunteer attorneys who take cases through the Veterans Consortium Pro Bono Program. A 90 percent (or even a 76 percent) reversal/remand rate is unacceptable for any adjudicative system, but this extraordinarily high remand/reversal rate is especially galling for an adjudicative system that is required by statute to be so veteran friendly that the benefit of the doubt is given to claimants. Clearly, such a high remand/reversal rate is a direct reflection of substandard BVA decisions.

There are more than 31,000 appeals currently pending at the BVA. In FY 2006, the BVA issued 39,076 decisions (95 percent of these decisions involved compensation claims). In the first 11 months of FY 2007, the BVA issued more than 37,000 decisions and, of these, only 41 percent of the regional offices' decisions have been affirmed or upheld by the BVA. The Board overturned the regional offices' decisions in 21 percent of the cases and remanded 35 percent of the appeals. Most remands went to the AMC for additional development and readjudication. The BVA remand, allowance and denial rate for the first 11 months of FY 2007 is similar to that of FY 2006. A logical conclusion that one reaches after reviewing this data is that the quality of regional office adjudication continues to be totally unacceptable and the BVA continues to issue many substandard decisions.

It should be noted that the Board's work product is a direct reflection of the adjudications produced by the VA regional offices. The BVA cannot be reviewed in a vacuum. Most of the

problems with the BVA can only be corrected if the quality of adjudications in the VA regional offices is improved. The poor quality of VA regional office adjudications adversely impacts the work of the BVA. The American Legion has long maintained that such poor quality regional office work is a direct result of VA management placing a higher value on the quantity of adjudications produced by the VA regional offices rather than the quality of that work.

This emphasis on production continues to be a driving force in the VA regional office, often taking priority over such things as training and quality assurance. Performance standards of adjudicators and rating specialists are focused on productivity as measured by work credits, known as “End Products”. Both veteran service representatives (VSRs) and rating veteran service representatives (RVSRs) have minimum national productivity requirements that must be met each day. The American Legion has also learned that some VA regional offices also set their own production standards that require VA adjudicators to produce more final decisions over and above the national requirement.

Unfortunately, the end product work measurement system essentially pits the interests of the claimant against the needs of VA managers. The conflict is created because the regional office managers seeking promotion and bonuses have a vested interest in adjudicating as many claims as possible in the shortest amount of time. This creates a built-in incentive to take shortcuts so that the End Product can be taken. The system, in effect, rewards regional offices for the gross amount of work they report, not whether the work is done accurately or correctly. Often, the emphasis on production results in many claims being prematurely adjudicated. These problems are caused (in part) by not taking the time to adequately develop the claim, not taking the time to identify all relevant issues and claims, and not taking the time to order a new VA examination when the previous VA examination is obviously inadequate. Such errors are often overshadowed by the desire of VA managers to claim quick End Product credit.

The emphasis on production causes two bad results. First, because of shoddy regional office work there are so many cases for the BVA to remand that the Board, pressured to reduce its remand rate, all too often denies claims that should be remanded. This is reflected by the very high remand/reversal rate at the CAVC. Second, in many instances, the Board has no choice but to remand prematurely adjudicated claims. The high BVA remand rate has resulted in a growing backlog at the AMC. The BVA combined remand and reversal rate (56 percent) through August of 2007 is arguably a direct reflection of the greater emphasis placed on production over training and quality assurance by the VA regional offices.

Veterans Benefits Administration (VBA) management has been reluctant to establish a rigorous quality assurance program to avoid exposing the longstanding history of the manipulation of workload data and policies that contribute to poor quality decision-making and the high volume of appeals. VBA’s quality-related problems and the fact that little or no action is being taken to prevent or discourage the taking of premature End Products have been longstanding issues for The American Legion. The current work measurement system, and corresponding performance standards, are used to promote bureaucratic interests of regional office management and VBA rather than protecting and advancing the rights of veterans. The end product work measurement system, as managed by the VA, does not encourage regional office managers to ensure that adjudicators do the “right thing” for veterans the first time. For example, denying a claim three

or four times in the course of a year before granting the benefit sought allows for a total of five end product work credits to be counted for this one case, rather than promptly granting the benefit and taking only one work credit.

In the view of The American Legion, the need for a substantial change in VBA's work measurement system is long overdue. A more accurate work measurement system would help to ensure better service to veterans. Ultimately, this would require the establishment of a work measurement system that does not allow work credit to be taken until the decision in the claim becomes final, meaning that no further action is permitted by statute whether because the claimant has failed to initiate a timely appeal or because the BVA rendered a final decision. We are pleased that recently introduced legislation (H.R. 3047) would mandate such overdue changes to VA's work credit system. We are hopeful that, if enacted, this legislation, which would change the underlying incentive by rewarding quality of work rather than quantity, will increase the number of accurate decisions as well as claimant satisfaction and, in doing so, reduce the overall number of appeals.

Appeals Management Center

Frustrated with the large number of underdeveloped appeals received from the regional offices and the inordinate amount of time it was taking for remands to be worked upon by the regional offices and returned to the Board, the BVA established a development unit, pursuant to a newly written regulation (38 C.F.R. § 19.9(a)(2)) on February 25, 2002. However, as a result of a successful legal challenge to the establishment of the BVA development unit VBA dismantled the BVA development unit and the VA then established the AMC on July 23, 2003. The purpose of the AMC is to provide more expeditious action on remands and also to relieve the regional offices of the workload burden associated with remands.

The AMC was established to function as a national regional office that would handle BVA remands. It has been tasked to undertake the additional development of evidence specified by the Board and then re-adjudicate the claim. Unfortunately the AMC office, with a staff of 94 FTE, has been overwhelmed by an unmanageable backlog of remands since it first opened its doors. Initially, 16,484 cases were inherited from the BVA development unit and, currently, the AMC has more than 18,000 remands under development.

While the AMC is an admirable attempt by VBA to improve service to veterans, it does nothing to address the problems underlying the continued rise in the number of appeals and remands by the BVA. In our view, the very necessity of the AMC's existence begs the question – why hasn't VBA mandated the regional offices to correct their own mistakes?

The AMC is now responsible for correcting errors that the regional offices were unwilling or unable to do. The AMC, however, has no authority to prevent the same type of error, which prompted the appeal and remand, from occurring again. Since production work on new claims was the highest priority and because the VA regional offices did not receive work credit for work caused by a BVA remand, many regional offices placed a low priority in developing and adjudicating BVA remands. This resulted in many cases remanded by the BVA not being adjudicated for several years after the case was remanded. Now, because there is an AMC, there

is little incentive for the regional offices to improve the quality of their adjudications. Most prematurely denied claims are being remanded to the AMC. Therefore, when a regional office denies a claim incorrectly or prematurely it does not have to correct its error because the case will be remanded to the AMC. The American Legion asks that Congress take action to require that the VA regional offices are held accountable for the poor quality of initial decision-making.

The AMC's apparent inability to bring its extremely large backlog under control since its creation in 2003 has been a major concern of The American Legion. As previously stated, the AMC currently has more than 18,000 remands pending development and adjudication. In August of this year, the BVA remanded 1,710 cases to the AMC while the AMC only returned 639 remands to the BVA, leaving the AMC with a deficit of 1,071 cases for the month. Moreover, 21 percent of the 13,082 appeals remanded by the BVA in the first 11 months of FY 2007 were prior remands as were 30 percent of the appeals allowed by the BVA. This data tends to reflect a large percentage (51 percent) of cases that were not properly developed or adjudicated by the AMC. Additionally, in July of this year the AMC started brokering ready-to-rate cases to designated regional offices. As of September 24, 2007, there were 199 AMC remands at the Huntington Regional Office and 75 at the Seattle Regional Office with additional brokering expected to take place each month. Unfortunately, this is another example of the AMC, as it is currently structured, not being able to properly handle its workload. It is clear that the AMC is under funded. The Congress and the VA should now take prompt action either to eliminate the AMC or to properly fund its work.

Conclusion

The best way to help veteran claimants is to fix the entire VA claims adjudication system. Piecemeal solutions do not work and should be avoided. The VA work measurement system should be changed so that VA regional offices are rewarded for good work and suffer a penalty when consistent bad decisions are made. Managers, attorneys and the law judges at the BVA should be rewarded for prompt careful work and they should also be penalized when they make bad decisions. The AMC should be adequately funded or closed. American veterans seeking VA disability benefits deserve better treatment than what they are currently getting from the VA.

Thank you again, Mr. Chairman, for allowing The American Legion to present comments on these important matters. As always, The American Legion welcomes the opportunity to work closely with you and your colleagues to reach solutions to the problems discussed here today that are in the best interest of America's veterans and their families.