STATEMENT OF

ZACHARY HEARN, DEPUTY DIRECTOR FOR CLAIMS,

VETERANS AFFAIRS AND REHABILITATION DIVISION

THE AMERICAN LEGION

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

ON

"CASES LANGUISH AND DATA MANIPULATED AT THE BOARD OF VETERANS' APPEALS"

SEPTEMBER 10, 2014

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September 10th, 2014

The American Legion, on behalf of our National Commander Michael Helm and the 2.4 million members across this nation, is here to reaffirm our commitment to building a strong VA to serve the needs of this nation's veterans.

The Board of Veterans' Appeals (BVA) has served as the overall appellate body for VA claims prior to being appealed to the Court of Appeals for Veterans Claims. BVA annually adjudicates thousands of claims for veterans electing The American Legion as their power of attorney (POA).

Through September 1, 2014, BVA has adjudicated 8,366 claims that The American Legion has POA. Of those 8,366 claims, 2,330 previously denied decisions by the VA regional offices have been overturned, resulting in a grant of benefits to the veteran. 3,904 claims have been remanded, indicating that claims have been improperly developed and prematurely denied and require additional work by the Department of Veterans Affairs (VA) to ensure they are properly adjudicated, and 1,762 claims have continued as a denial. The combined percentage of granted and remanded claims for veterans with American Legion as their POA at BVA is 74.5 percent.

A common complaint The American Legion receives from veterans typically occurs when the veteran calls the BVA. When a veteran asks what the date of the docket is that they, BVA, are working; a median date is provided of all cases within their caseload. This statement is as confusing to the veteran as it is misleading.

In this fiscal year, 46.6% of all claims have been remanded for improper development. Some of the reasons these claims are remanded, or returned, are for additional records or medical examinations. Many of these claims have been remanded on multiple occasions – this is commonly referred to as the "perpetual remand cycle" and results in months, and even years passing before these claims receive their final adjudication. Additionally, when asked to report

the date that BVA is reviewing, the BVA representative will report a random date selected from somewhere in the middle of their workload, rather than the oldest date in their stack. It is not uncommon to have a case remanded with a date several years old, but not have that date reflected in BVA's workload report. This type of reporting is not accurate.

BVA has an obligation to complete claims, with few exceptions, in docket date order; in other words, first case in-first case out. If an American Legion accredited representative prepares an informal hearing presentation today, and that claim has a docket date of January 2005, there is no way that VA is working a docket date of January 2013, as VA is compelled to work in docket date order. This is an example of how BVA would report erroneous data.

Recently, BVA has instituted "Rocket Docket", a program instituted by BVA to quicken the response times for claimants pursuing appeals. Under this program, a BVA representative would review selected one or two-issue claims upon arrival at BVA and determine if the claim should be included into the "rocket docket" program. If selected, the claim would then be forwarded to the claimant's selected POA. The POA would then conduct a review and return the claim to BVA for further adjudication. If the POA agreed, then BVA would adjudicate the claim nearly immediately.

The American Legion supports BVA trying to expedite the process; however, this program has been problematic and frustrating for veterans. Most veterans have waited not months, but years, to have their claims adjudicated, and while this program proves beneficial to the selected veterans, it only places more claims ahead of the majority of claims that have been waiting for an extended period of time. While The American Legion has participated in the program; we have reservations about its effectiveness. If BVA exists on the premise of "docket date" order, then we question why BVA is expending time and resources to work out of assigned docket dates.

The American Legion at The Board of Veterans' Appeals

The American Legion employs accredited representatives at the BVA; for many veterans, these dedicated men and women serve as the veterans' last chance to have their claim reviewed before leaving VA and appealing to the Court of Appeals for Veterans Claims. For those with experience representing veterans at BVA there is a high degree of frustration because claims are repeatedly remanded for further development.

Organizationally, we have dedicated hundreds of thousands of hours and millions of dollars to identify common problems within the VA adjudication process for the purpose of making recommendations to help streamline and fix access hurdles. American Legion representatives regularly visit VA regional offices and dedicate much of our time to seeking improvements for our own service officers' methods of representing veterans, and also work to help find common

errors within the VA regional offices processed records. Unfortunately, these visits have often been met with skepticism and resistance by VA.

During a recent visit to a VA regional office, an issue arose where a veteran on two separate occasions received decisions that were harmful to the veteran, costing him, at minimum, disability compensation compounded over a number of years. This issue was brought to the attention of senior staff within the VA regional office. During this conversation, the VA senior executive stated that the error should not be the fault of the current rater but that of the previous rater. In short, he indicated that The American Legion should not "pin the blame" on the most recent rater. Finally, he indicated that the veteran will receive the proper compensation for the corrected decision.

Each rater has an obligation to review the entirety of each veteran's claim. Additionally, the loss of earned benefits cannot simply be "made up" by providing a retroactive payment. For this veteran, the lack of a proper granting of benefits not only resulted in a lack of proper compensation due to conditions incurred in military service, but it may have resulted in a lack of proper medical care, waiver of funding fee for mortgage, or federal hiring preference, or any number of lost benefits that the veteran would have been entitled to had his/her claim been properly decided the first time. Moreover, the veteran could have potentially lost her home due to the lack of compensation, experienced family hardship, or developed severe mental anguish and depression due to a lack of treatment. In short, VA's errors cannot simply be always rectified through issuing a retroactive check.

Recommendations

That The American Legion urges Congress to pass legislation requiring the Department of Veterans Affairs (VA) to provide, in a venue readily available to the citizens of the United States, a monthly 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 status.[1]

This data should be included in the Monday Morning Workload Report as the Grant/Remand/Denial rate by BVA. VBA should be required to break down the statistics by VA Regional Office (VARO). This will not only serve as a tool for veterans to understand the quality of their local VARO, it will also serve as yet another tool that VA can use to determine the quality of their employees by station.

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.

[1] http://archive.legion.org/bitstream/handle/123456789/2261/2012N099.pdf?sequence=1