STATEMENT OF
IAN de PLANQUE, ASSISTANT DIRECTOR
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
ADDRESSING THE BACKLOG: CAN VA HANDLE 1 MILLION CLAIMS?

JUNE 18, 2008

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to present The American Legion's views on the Department of Veterans Affairs (VA) backlog and VA's claims processing system.

Claims Backlog & Staffing

In Fiscal Year (FY) 2008, more than 2.95 million veterans received VA Veterans Benefit Administration (VBA) disability compensation benefits. Providing quality decisions in a timely manner has been, and will continue to be, one of VA's most difficult challenges. A majority of the claims processed by the VBA's 57 Regional Offices (ROs) involve multiple issues that are legally and medically complex as well as time consuming to adjudicate.

As of June 6, 2009, there were 722,901 claims pending in VBA, 409,362 of which are rating cases. There has been a steady increase in VA's pending claim backlog since the end of FY 2004 when there were 321,458 rating cases pending. At the end of FY 2008, there were more than 390,000 rating cases pending in the VBA system, with an increase of 14,000 from FY 2006. Of these, more than 85,000 (22.1 percent) were pending for more than 180 days. Including non-rating claims pending, the total compensation and pension claims backlog were more than 624,000, with over 20 percent of these claims pending more than 180 days. There were also more than 183,000 appeals pending at VAROs, with more than 167,000 requiring some type of further adjudicative action. Since the beginning of this year, the number of appeals has grown by almost 10,000.

The American Legion National Staff has interviewed regional office employees during quality review visits with the consistent complaints among Regional Office employees being: Inadequate staffing levels, inadequate continuing education, and pressure to make quick decisions, have resulted in an overall decrease in quality of work. It is an extreme disservice to veterans, not to mention unrealistic, to expect VA to continue to process an ever increasing workload, while maintaining quality and timeliness, with the current staff levels. The current wartime situation provides an excellent opportunity for VA to actively seek out returning veterans from Operations Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF), especially those with service-connected disabilities, for employment opportunities within VBA. Despite the recent hiring initiatives implemented to provide additional staffing, viewed by many as a "surge" tactic, ROs will need to

continue the hiring of additional personnel given to meet current and projected future workload demands.

The American Legion is also concerned with the retention of newly hired and trained claims adjudicators. Repeatedly, The American Legion has asked the question – what is the attrition rate of newly hired claims adjudicators? Mr. Chairman, the silence is deafening. This is an area The American Legion believes should be exploded. Hiring new personnel is great, but if their tenure with VBA is short-lived (3 years or less), then retention of experienced claims adjudicators may very well continue for years to come.

Through this process, VBA must be required to provide better justification for the resources it says are needed to carry out its mission and, in particular, how VBA intends to improve the level of adjudicator training, job competency, and quality assurance. Each of these topics will be discussed in greater detail below.

Production vs. Quality

Since 1996, The American Legion, in conjunction with the National Veterans Legal Services Program (NVLSP), has conducted quality review site visits at more than 40 regional offices for the purpose of assessing overall operation. This Quality Review Team visits a regional office for a week and conducts informal interviews with both VA and veterans' service organizations' (VSO's) staff. The Quality Review Team then reviews a random sample of approximately 30-40 recently adjudicated American Legion-represented claims. The Team finds errors in approximately 20-30 percent of cases reviewed.

The most common errors include the following:

- Inadequate claim development leading to premature adjudication of claim;
- Failure to consider reasonably inferred claims based on evidence of record;
- Rating based on inadequate VA examination; and/or
- Under-evaluation of disability (especially mental conditions).

These errors are a direct reflection of VA's emphasis of quantity over quality of work. This seems to validate The American Legion's concerns that emphasis on production continues to be a driving force in most VA regional offices, often taking priority over such things as training and quality assurance. Clearly, this problem frequently results in premature adjudications, improper denials of benefits and inconsistent decisions. These issues all contribute to claims remaining in the system far longer than is necessary.

Training

Proper mandatory training is a key factor in the quality of VA regional office rating decisions. The Board of Veterans' Appeals (BVA) combined remand and reversal rate (over 55 percent) of regional office decisions for FY 2008 is a direct reflection of the lack of importance placed on training by the

VAROs. Our Quality Review Team site visits have revealed that, at many regional offices, there have been too few experienced supervisors that could provide trainee adjudicators proper mentoring and quality assurance. In addition, at many stations, ongoing training for the new hires, as well as the more experienced staff, would be postponed or suspended, so as to focus maximum effort on production.

Many ROs are receiving an influx of additional personnel. At a large number of ROs, as much as a third or more of the staff has less than three years of experience. This is due to regular job turnover, but also the recent measures to ensure adequate staffing that have created so many new positions.

There is no time better than the present to ensure that the training is first rate. With so much staff in the earliest portion of their VA tenure, the opportunity to instill, with proper training, the skills to create and sustain a first class workforce for the foreseeable future of VA is at hand. As new employees learn to administer the system and adjudicate benefits, let them learn to do it right. Attention to training at this stage will reap only positive benefits down the road as the new, core nucleus of VA employees is formed. We are building VA not just for today, but for the future, and attention to the building blocks in the foundation now will prevent catastrophic failures and instabilities down the line.

Consistency in training remains problematic. Each of VBA's 57 ROs appears to have a different approach to training and each also differs in the importance placed on training. According to a May 2005 report from the VA Office of the Inspector General (VAOIG), based on a survey of rating veterans' service representatives (RVSRs) and decision review offices (DROs), the respondents expressed positive opinions regarding the quality of their training, but the overall response indicated that training did not receive high priority. Although this VAOIG's survey is now more than four years old, our Quality Review Team still hears similar comments when talking to service center staff during our site visits.

Some stations have regular formalized or structured training programs, while others have training programs that are best described as more informal and sporadic. Some stations have well established and structured training for new employees, but ongoing training for experienced staff is very limited.

The VAOIG also recommended that a scientific study be conducted to further examine the variances in disability payments. VA subsequently contracted the Institute for Defense Analyses (IDA) to conduct the study. IDA released its report in 2007, noting that although VBA provides centralized training modules for training purposes, many ROs supplement this training with material developed locally. IDA also found that many rating specialists interviewed stated that they received "on-the-job" training from senior raters and identified these individuals as the biggest influence on their rating styles. IDA suggested that a "stronger mechanism" would reduce the potential for persistent differences among regional offices in ratings and ensure that raters VA-wide are receiving the same training. IDA further recommended that raters be given standardized test cases, reflecting the most likely areas of variation, as part of an ongoing training process.

We are also aware of the centralized training program that has been implemented; however, a national training standard/requirement, in addition to the centralized training conducted by Compensation and Pension (C&P) Service, for RO personnel is also needed. Consistent and standardized training at each regional office must take place for all personnel—experienced and new hires alike. The American Legion believes it is crucial that such a program be implemented and closely monitored for compliance by the Under Secretary for Benefits. Management in stations, not

in compliance with such training requirements, must be held accountable; otherwise, any national or centralized training effort will not be successful.

Additionally, The American Legion believes it is essential to proper training that information (reasons for remand or reversal) from BVA decisions, DRO decisions and errors noted in the National Systematic Technical Accuracy Review (STAR) and other internal quality reviews be tracked and examined for patterns. This information should then be used in mandatory formal training to ensure that common errors and other discrepancies occurring in regional office rating decisions are not repeated. This information should also be used for remedial training purposes when patterns of errors are identified for specific individuals. Although such data is currently being collected and disseminated to the ROs, it appears that consistent utilization of this data in regular formalized and specific training is lacking.

The American Legion must stress that unless ROs (both managers and individual adjudicators alike) learn from their mistakes and take corrective action, VA will continue to have a high rate of improperly adjudicated claims, which result in a consistently high appeals rate and subsequent high BVA remand/reversal rate.

Performance Standards

Performance standards of adjudicators and rating specialists are centered on productivity as measured by work credits, known as "End Products." Both veterans' service representatives (VSR) and RVSRs have minimum national productivity requirements that must be met each day. Some stations also set their own standards, based on their claims backlog and other station specific requirements that are over and above the national requirement. Despite the fact that VBA's policy of "production first" has resulted in many more veterans getting faster action on their claims, the downside has been that tens of thousands of cases are prematurely and arbitrarily denied. Approximately 65 percent of VA raters and DROs surveyed by the VAOIG, in conjunction with its May 2005 report, admitted that the raters did not have enough time to provide timely and quality decisions. In fact, 57 percent indicated that they had difficulty meeting production standards if they took time to adequately develop claims and thoroughly review the evidence before making a decision. Unfortunately, even though four years have passed since the release of this report, its findings are still consistent with what our Quality Review Team has reported from recent interviews with regional office service center staff.

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 ROs have a vested interest in adjudicating as many claims as possible in the shortest amount of time. Awards and bonuses are often centered on production rather than outcomes. This creates a built-in incentive to take shortcuts so that the End Product can be taken. The system, in effect, rewards ROs for the gross amount of work they report, not whether the work is done accurately or correctly, often resulting in many claims being prematurely adjudicated. These problems are caused by inadequate development, failure to routinely identify all relevant issues and claims and/or ratings based on inadequate examinations. Even the VAOIG acknowledged that because the VA often does not take the time to obtain all relevant evidence and information, there is a good chance that these claims are not properly adjudicated.

This is underlined by the findings of The American Legion's Quality Review visits, which can be revelatory in their candid commentary with VA staff and personnel. Time and time again, VA employees express frustration with their ability to balance their time to properly review a case file against the meeting of production standards. One veteran VA rater indicated a thick file, not atypical of the claims process, several inches thick and containing hundreds of pages of medical records. "This file…" the rater stated, "I have two hours to review this file [indicating the standard requirement of 3 ½ claims processed per day]. How do I give that veteran justice?" This is not an uncommon refrain.

This ultimately creates a desire to claim quick End Product credit. The result has been a traditionally high remand rate by BVA and the Court of Appeals for Veterans Claims (CAVC). The American Legion believes that VBA management is 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 systems, 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.

Immediate (Non-Legislative) Remedies to Reduce Claims Backlog

Greater emphasis should be placed on conducting triage to identify and expedite claims that are substantially complete (very little or no development needs to be completed in order to rate the claim) at the time they are submitted. Then C&P exams should be ordered as soon as possible in cases where the only development that is needed in order to rate the claim is an exam. Although there are mandatory notification requirements under the VCAA, VA can streamline its waiver process in those cases where the claim is substantially complete and/or veterans do not have any additional evidence to submit. This would allow VA to proceed with the adjudication process in a timely manner without having to wait for the expiration of the time period for a veteran to submit additional evidence or otherwise respond to the VCAA letter.

The aforementioned process should also be applied in claims with multiple issues in order to provide claimants with access to VA health care and compensation, while VA continues to work those issues that are more complex or require significant development. Issues that are substantially complete and essentially "ready to rate" at time of submission should be so identified and expedited in order to

avoid delay that would result if adjudication was put off until all issues were ready to rate. Issues that are more complex or require significant development should be deferred for rating upon completion of required development.

VA often receives claims that contain evidence sufficient to establish service-connection and also sufficient medical evidence to properly rate the current severity of the condition under the applicable diagnostic code. In most, if not all of these cases, VA, as matter of routine, schedules an exam even though it has sufficient evidence to not only establish service-connection, but also sufficient evidence to properly rate the condition under the applicable rating criteria.

Perfect examples of this are claims of entitlement to service-connection for type II diabetes based on the Vietnam Agent Orange (herbicide) presumption. If a veteran diagnosed with type II diabetes meets the Vietnam service requirements, exposure to herbicides is conceded and entitlement to service-connection is automatically established, if the condition developed to a degree of 10 percent or more disabling during the applicable presumptive period and rebuttal of service-connection, in accordance with 38 C.F.R. § 3.307, was not accomplished. In type II diabetes cases, the treatment notes (either private or VA) more often than not contain sufficient medical information to properly rate the current severity of the condition under the VA Schedule for Rating Disabilities, negating the necessity of a VA examination. However, if a VA examination is necessary to address secondary conditions, such issues can be deferred and addressed at a later date thereby allowing for the immediate rating of the type II diabetes, and commencement of compensation benefits, without delay. Unfortunately, the routine scheduling of (unnecessary) examinations in cases such as this where there is sufficient evidence of record to establish service-connection and to properly rate the condition can result in one to three month delays in adjudicating the claim. The American Legion, therefore, recommends establishing specially trained triage teams to identify such claims.

VA could also explore another option that involves cases where there is sufficient evidence to establish service-connection, but an exam is needed to accurately rate the current severity of the condition. In these cases, VA could grant service-connection, establish a baseline evaluation based on the medical evidence of record, and then go back later and conduct an exam to establish current severity of the condition. Such a process would quickly establish service-connection and, as a result, VA health care eligibility, and generally provides the claimant with payments in a timelier manner.

Brokered Claims

In an effort to help balance its claims backlog across regional offices, VBA established a "brokering" program where it transfers claims from the regional office of jurisdiction to another regional office to be adjudicated. The idea behind brokering cases is to provide assistance to regional offices with large backlogs by having another regional office rate a specified number of its claims each month. Regional office employees and VSOs located at regional offices that broker work to other offices have consistently voiced concern about the quality of the brokered work, to our Quality Review Team during site visits. There seems to be a common consensus among VA and VSO employees, interviewed by our Quality Review Team that regional offices working brokered claims do not have a vested interest in the brokered claim as it is not under their permanent jurisdiction, nor will they have to deal with subsequent appeals. The frequency of errors found in brokered cases reviewed during The American Legion Quality Review Team site visits supports this concern.

Unfortunately, although VBA does not have a mechanism in place to monitor the quality of brokered work; VBA management continues to tout this program as an effective case management tool. Although this program may be a necessary short-term solution for regional offices unable to effectively manage current workloads, it does not address the staffing and other resource deficiencies that resulted in the need for work to be brokered in the first place. VBA management should not continue to rely on brokering as permanent solution to addressing its claims backlog, but should focus on ensuring that its regional offices have adequate staffing, training, and other resources in order to properly manage their own workloads and eliminate the need for brokering all together.

Conclusions

The best way to help veteran claimants is to fix the entire VA claims adjudication system. This is not a time to repeat errors of the past and continue to throw augmented numbers of the same resources at the problem. Such an approach will only reinforce the errors and flaws which led us to this precarious position. What is called for is a fresh look at the system, an examination of the root causes that put the veterans of this country in such a dire state.

Piecemeal solutions do not work and should be avoided. It is essential that the VA work measurement system be changed so that VA regional offices are rewarded for good work and suffer a penalty when consistent bad decisions are made. Managers, rating specialists and BVA law judges and attorneys should be rewarded for prompt careful work and they should also be penalized when they make bad decisions. If we want to preclude an ever growing mountain of claims continuing to back up in the system, we need to ensure that we are providing a system that rewards getting it right *the first time.* American veterans seeking VA disability benefits deserve better treatment than what they are currently getting from VA.

Thank you again, Mr. Chairman, for allowing The American Legion to present comments on this important matter. 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, solutions that are in the best interest of America's veterans and their families.