STATEMENT OF
IAN de PLANQUE, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE COMMISSION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE
AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"AN EXAMINATION OF UNDERPERFORMING U.S. DEPARTMENT OF VETERANS AFFAIRS REGIONAL OFFICES"

JUNE 2, 2011

Mr. Chairman and Members of the Committee:

The American Legion welcomes this opportunity to address the issue of underperforming Regional Offices (ROs) of the Department of Veterans Affairs (VA). For well over a decade now, The American Legion has conducted regular site visits as a part of a dedicated quality review system of the disability claims system. These visits, now entitled Regional Office Action Review (ROAR) visits, have enabled Legion personnel to see firsthand the actual operating environment in which VA conducts the business of adjudicating claims for disability and other benefits. Obviously, this firsthand knowledge provides ground truth for assessing the challenges VA faces and in providing analysis of the obstacles VA continues to stumble over to fulfill their charge to serve veterans.

How do we even know what "Poorly Performing" means to a Regional Office without clear parameters? By what standard should we measure the performance of a Regional Office? The American Legion believes that accuracy should be paramount, coupled with the timeliness of delivering earned benefits. A model Regional Office needs to be error free and smooth of operation to deliver benefits to those veterans who have earned them on time, fairly and consistently.

Sadly, there is little to be said addressing poorly performing offices of a truly groundbreaking nature. Perhaps the most tragic aspect of testimony such as this is the broken-record refrain of VA's inability to deliver benefits to deserving veterans in a timely and accurate manner. Congress, The American Legion, and many other voices have continued to ask VA why they fall short of meeting their mission to deliver benefits to these veterans and all are treated to the familiar replies. VA acknowledges errors have been made in the past, but insists they are working on the problem, and the next great management tool is going to fix all the errors of the past and present a rosier future to the veterans of America. The rosy future has stubbornly refused to arrive.

Congress and Veterans Service Organizations such as The American Legion are not alone in their harsh criticisms of VA for their failure to meet the needs of veterans. VA's performance has fallen so far short that the United States Court of Appeals for the Ninth Circuit issued a scathing decision in the matter of *Veterans for Common Sense v. Shinseki* that charged VA with no less than violating the Constitutional rights of veterans. The chorus call from concerned stakeholders for VA to set their house in order is growing by levels of magnitude.

Perhaps the system suffers largely from a lack of accountability for failure. What consequences are in store for VA officials who fail to address the chorus of complaints leveled at the organization by veterans and Congress and the rest of the public? The sad answer is there is little consequence that must be borne by the VA for failing to meet the needs of the veterans and the public. Sadly, the consequences of failure are felt not by VA but by the veterans they were created to serve.

Recently VA Secretary Eric Shinseki set forth the admirable goal that by 2015 no VA disability claims would be pending over 125 days, and VA's accuracy rate for claims would be 98 percent. However, not only has VA failed to make substantial progress towards those goals in the past year, VA overall has fallen further behind in both categories.

VA's backlog of cases pending over 125 days rose from just under 180,000 claims to over 290,000 claims. Accuracy was also a casualty. According to a GAO report from March 2010 VA's own self reported STAR accuracy figures noted a drop from 86 percent accuracy to below 84 percent accuracy. The news gets worse. According to a VA Office of the Inspector General report issued May 18, 2011 VA Regional Offices are expected to inaccurately process 23 percent of all claims, dropping their accuracy numbers even further to a dismal 77 percent.

VA is moving backwards, not forwards, and what fear is being placed into the hearts of those responsible? VA distributed bonus payments to Senior Executive Employees (SES) in the Veterans' Benefits Administration (VBA) averaging $14,000 last year. The figure of $14,000 is interesting, because if an indigent veteran seeking non-service connected pension received $14,000 for an entire year's wages they would be told they earned too much money to be eligible for pension. VA SES executives can watch over a VBA that saw the Secretary's key goals leap backwards for a year, making the claims process worse for veterans, and at the end of the year take home a *bonus* payment greater than what thousands of indigent veterans are forced to survive on for an entire year.

This is not solely an issue of money. Several years ago a massive scandal within VA was exposed relating to the shredding of personal documents and evidence sent to VA by veterans. In Detroit alone, over 14,000 documents were found waiting to be shredded improperly, jeopardizing legitimate benefits for veterans. The documents to be destroyed included original birth certificates, death certificates, marriage certificates and discharge documents. These documents were going to be destroyed, along with any hopes of receiving the disability benefits due to those veterans. This was not limited to one or two offices. This problem was found to be systemic and pervasive throughout the entire system. The implication was clear. VA employees were destroying veterans' documents, cutting corners to improve their numbers, and throwing disabled veterans onto the trash heap.

Yet in the aftermath, there were no public waves of firings. VA expressed remorse, yet very little was publicly seen in terms of accountability. Perhaps worse, instead of losing jobs, jobs were created. Because of the shredding fiasco, each Regional Office now has a GS-12 level government employee tasked solely to overseeing the destruction of documents. If this job could truly be seen as something that was a real protection of veterans' personal data, perhaps there would be justification. However, even VA's own employees internally joke about "The GS-12 who has to initial even a blank post-it note before you can throw it out." When pressed about such statements, under the assumption they were exaggerations, VA employees shake their heads and state "Yes, we really have a GS-12 who has to initial everything we are going to throw out, and it even includes blank paper."

To change VA requires a commitment to fundamental cultural change within VA. The American Legion does not believe this to be out of the realm of possibility, to the contrary by a few simple yet far reaching actions, VA can take advantage of the new technologies available to them and change the culture to a system more meaningful to veterans and more likely to be able to address their needs. VA must move forward to be more accurate, to be more efficient, and to be more transparent. Only when VA truly commits to these goals and ceases mere lip service to those aims will any real change occur.

VA ACCURACY:

The Monday Morning Workload reports posted regularly by VA on their website represent an interesting window into what publically matters to VA. These reports publish raw number of claims on hand, claims decided, almost anything but the figures continually asked for by veterans' advocates, figures on accuracy. While VA continues to maintain that accuracy is equally important to the number of claims processed, but if it is then Central Office's resistance to putting these figures forward is something of a conundrum.

If you listen to the words spoken in front of Congressional hearings by VA officials, absolutely accuracy is vitally important. However, if you talk to VA employees in the actual offices in the field, they will tell you point blank that the number one driving concern, the familiar refrain they are told day in and day out, is to move files across their desks, no matter what the cost. Somewhere there is a disconnect between the competing statements. Somewhere along the way the stakeholders are being told one thing while the office environment tells a different story.

VA cannot simply give lip service to accuracy. As stated before, accuracy numbers are falling, not rising. VA is getting worse. Simply increasing the number of claims processed merely shifts the problem to another desk. The backlog exists not only in every Regional Office, but at the Board of Veterans Appeals and at the Court of Appeals for Veterans Claims. Both of these bodies also must deal with the crippling backlogs brought about by sloppy work at the lower level where quality is sacrificed on the altar of speed.

Accuracy can and must be brought to equal standing with speed in the claims process. To begin with, VA must change the way they count work credit, or the message will never filter down to ground level. Until work done right counts more than work simply done, VA employees will

never see that their leadership frowns upon cutting corners at the expense of veterans. As the system presently stands, it doesn't matter whether a claim is properly adjudicated, you get credit when it leaves your desk. With the additional power to track claims afforded by VBMS, VA should be able to track the eventual outcome of claims. When claims are found to be done in a sloppy or slipshod manner, when a Decision Review Officer or Veterans' Law Judge finds that the lower rater never bothered to consider medical evidence, or blatantly ignored supporting evidence in a veteran's file, the credit for completing that claim should be removed.

Yes, credit is due for completing a veteran's claim, but credit must be taken away for error. This is not dissimilar to the workings of a checkbook. When work is done positively, you generate credit in the black, but when your work is riddled with errors and omissions, you deserve debits to place you in the red. If Regional Offices know their numbers will be adjusted in accordance with their error rates, and this is transparently disclosed to all stakeholders, the pressure shifts from simply moving files from one desk to the next and instead creates an environment supportive of accurately moving files on when they've been properly considered. There will always be a balance, to be sure, but such a simple change in the way work credit is counted has the potential to shift that balance towards accurate work and away from the decades old VA culture of purely numbers driven motivation.

VA EFFICIENCY

In a September 2009 audit of VA by the Office of the Inspector General (VA-OIG) an important yet disturbing trend was outlined. As of August 2008, when VBA had 11,099 claims pending over one year VA-OIG determined that inefficient workload management in the Regional Offices delayed 11,063 of those claims, nearly all of them. VA-OIG went on to state:

"Inefficient VARO workload management caused avoidable processing delays averaging 187 days for a projected 10,046 (90.5 percent) of the 11,099 rating claims."

Possibly the greatest single change VA could enact to improve their efficiency involves shifting experienced workers to the front end of the claims process. As the system stands now, there is little rhyme or reason to VA's workflow, but that could change. On the battlefield, triage exists to sort rapidly through the ranks of the injured to determine which would benefit most from immediate work. This same sort of triage is absent from VA's process, but need not be.

Some claims VA must deal with, such as those for a clear cut presumptive illness associated with Agent Orange, a simple rating increase based on severity of an existing injury, or a claim in which all of the material needed to grant the claim have been submitted up front by the veteran, can be processed more quickly. With an experienced hand to spot these claims as they are incoming, these claims can be shunted to "fast lanes" and swiftly handled, allowing for more time to be spent on the more complex claims. VA needs to average a certain amount of time per claim to keep up with their inventory and ensure veterans are not getting left behind. With a little triage to help align the claims with the best route to servicing those claims, the average time for all claims can be reduced.

VA's use of the new VBMS system can help here as well. The tracking potential within this system should give VA a great amount of control of workflow. When claims are electronic in format, the data can easily be shifted to the teams or rating specialists best suited to deal with those claims. In many training programs for service officers, new employees begin with simpler, one issue and straightforward claims to ensure they understand the overall process. As they gain experience and comfort with the VA system then they delve into claims of greater complexity. We are often reminded by VA of the complexity of adjudicating claims, and that it can take up to two years to become fully proficient. A good gatekeeper at the beginning of the process can ensure that the more inexperienced and green claims processors are receiving simpler claims within their skill level, and not being tossed into a deep end over their head with claims too complex for the newer employees to fairly adjudicate.

The addition of an experienced triage point guard to direct workflow has the potential to transform efficiency in an extremely positive way for VA. Furthermore, this is not a radical systemic overhaul requiring massive changes on behalf of VA and taking years and studies to develop a plan to implement. This can be initiated with relative swiftness and can start having immediate impact, and The American Legion urges VA to consider this addition as they are already in the transformative process of installing VBMS in all offices. As these new electronic tools are installed in each office, make this small adjustment to the work environment come with them to truly help maximize the impact of the new VBMS tools.

VA TRANSPARENCY

While Secretary Shinseki's stated goal to achieve an operational state for VA in which no claim is pending over 125 days and all claims have an accuracy rate of 98 percent is admirable, as stakeholders outside VA's inner workings it is difficult to track whether this culture is taking hold. Put quite simply, it seems apparent VA is tracking what is important to VA, and that is solely the number of claims processed by each station and the number of claims received. For all of VA's rhetoric about changing the culture and how important they view accuracy of claims, when VA publishes their Monday Morning Workload reports it's still just a numbers game for claims moved from one desk to another. Until this changes the veterans on the outside have to remain skeptical about any promises of culture change.

The American Legion has called on VA many times to add tracking of accuracy rates for Regional Offices to the Monday Morning Workload reports. These reports on VA's public website aren't solely accessed by veterans' group policy experts or concerned veterans on the street, VA's own employees look at these reports, and in dozens of Regional Office review visits conducted by The American Legion a familiar refrain has come from the employees themselves: "I know what my boss is looking at, and if error rate was important it would be on those reports too. It's numbers. It's how many of these claims I can move on by the end of the week. That's what my boss cares about."

Employees are motivated to perform work to meet and exceed the expectations of their boss. Much as we can be unaware of our non-verbal cues and the messages they send in social situations, we also must be aware of what cues we are sending institutionally. VA's institutional cue is quite clear. We care about the number of claims we process.

There are swaths of data veterans would love to know about their VA to understand what VA is doing for them. How accurate is the Regional Office handling my claim? How accurate is VA when it comes to rating my illness? How many veterans work in my Regional Office? How successful is the Voc-Rehab group in that Office?

VA regularly makes press releases regarding their agenda and how they're serving veterans, it's time for VA to regularly publish status updates on how they're doing. If VA states they are committed to reducing error rates, they ought to start publishing those error rates in a place and manner easy to find and be understood.

When VA has discovered problems in hospital operations, such as sterilization issues in Florida, Georgia, St. Louis and other places, they embarked on an aggressive awareness campaign to let veterans know what they were doing to ensure these things wouldn't happen again. When they did happen again they again aggressively reached out to those veterans and tried to restore their faith. A broken claims system is just as devastating as a broken hospital system. Both erode public trust in something essential, in the belief the government is set up to serve you the veteran in the manner that you the veteran served the nation.

Years of obfuscation, lies, manipulation, stall tactics and similar ill will have taken their toll on the veteran population. There is only a finite amount of trust in veterans. VA has squandered much of this trust. In order to win it back, it's time to start being truly transparent. VA needs to pull back the curtains, admit to what is broken, admit to where they fail, and show veterans on a day to day basis how they are improving.

CONCLUSION

It's easy to look at the challenges of the veterans' disability claims process in a vacuum and forget what ultimately the process is all about. VA is given a pass on this to a certain extent, and continues to fall short because to the people who work at VA, from the bottom to the top, there is little in terms of consequences for failure. The lack of consequence for failure does not extent to the veteran on the street however, and perhaps therein lies the greatest tragedy.

We don't often think about what it means to be a veteran waiting for benefits, or even what it means to be a veteran applying for benefits. Soldiers, sailors, Marines and airmen are not people who are conditioned to admit something is wrong and ask for help. It's not in their nature to begin with. Many of these veterans have families, and they seek benefits to help take care of those families only when they can no longer exist without them.

Dropped into a seemingly endless web of delays and denials, these systemic properties of the system only further exacerbate the existing personal doubts and poor self image of the veteran. Nobody talks about what it feels like to have your spouse question every day "When is the VA going to give us the benefits?" Nobody talks about how it feels around rent time every month when a veteran is paying their bills and wondering how they are going to keep for on the table for a child when they can't work because of what their service cost them.

We, as America, are failing these veterans. Veterans band together in groups to take care of each other, as we learned in our most basic training, but we also cannot get by entirely on our own. As painful as it may be to admit, veterans need the aid of the government to get by at times, to compensate for the toll on our bodies that we willingly expended to help carry the government through the execution of its policies in far off lands. When our country asked, we didn't even stop to say 'Yes sir' we just did what we were asked. Now when we ask, we must navigate a labyrinth that would have thwarted Theseus himself.

With electronic tools such as VBMS coming online VA has the potential to break this maze apart and actually deliver on the promise to veterans, but without systemic cultural change these new tools will only allow VA to repeat the errors of the past with greater speed. VA needs to take steps to be a new VA, and not simply the old VA with thin facade. Accuracy needs to be a top priority, or the current hamster wheel of wrongfully denied claims clogging the appeals process will prevail and the backlog will continue to grow. Efficiency needs to be addressed, and VA needs to shift work in smarter ways to maximize the advantages of the electronic system. Finally, VA must pull back the curtains and stop hiding behind their smokescreens of the past. If VA is truly proud of their record they need to show that record to the veterans, and if they're not proud then they need to step up, admit where they are failing, and show the veterans how they are working to make the system better. If VA cannot do these things, then the question remains - how much longer can they continue before the trust is irrevocably broken?

Executive Summary

The American Legion shares concerns regarding underperforming Regional Offices. While this problem is systemic and ongoing, with little change to address the underlying concerns over many years, it is not unreasonable to believe change can occur if VA is willing to break the current culture of placing quantity over quality.

The American Legion recommends the following measures to help each office achieve the goal of becoming a model Regional Office and avoiding the pitfalls of underperforming Regional Offices.

1. **Accuracy** – The VA *must* change the present culture that places a premium on quantity of claims processed and merely pays lip service to quality concerns. The system clogs up with unnecessary errors and this endless cycle of appeals and remanded claims more than any other factor contributes to the unconscionable backlog. VA *must* elevate accuracy rate to the same relevance as the simple number of claims processed and must back this up with systemic changes which illustrate this importance to staff at all levels. To this end, the creation of a new work credit system that not only credits work done, but penalizes work done improperly will strike a balance between speed and accuracy that will best serve veterans. VA must move away from present work credit systems that fail to distinguish between work done right and work simply passed on to the next level.
2. **Efficiency** – Reports from the VA Office of the Inspector General (VA-OIG) indicate that over 90 percent of the claims pending over one year in 2008 had been delayed over half a year because of inefficiencies in the Regional Offices. The American Legion believes the simplest measure to increase efficiency of operation and best utilize the new electronic tools becoming available with the Veterans Benefits Management System (VBMS) is to add an additional experienced claims evaluation to the front of the claims process to better triage claims and where they should be directed through the system. By utilizing the experienced eyes of this "point guard" the claims could be directed into tracks where they could be handled more efficiently. Claims for presumptive disorders such as those associated with Agent Orange could be processed in efficient manners similar to those developed to deal with the influx of cases seen with the addition of three new presumptive disorders in 2010 and more complicated claims could be directed to the experienced personnel more capable of dealing with those claims without error.
3. **Transparency** – In order to restore trust, VA must become more transparent in their operations and communicate better to stakeholders in the community. Publishing accuracy numbers alongside the usual Monday Morning Workload reports would be a clear indicator that error rate is just as important as number of claims processed. Providing more information on how VA offices are meeting the standards will demonstrate VA's commitment to achieving their stated goals of achieving an end state with no claim pending over 125 days and an accuracy rate of 98 percent.