

Appendix L

Statement of Separate Views by Commissioner John Holland Grady

In the following four sections, I present several recommendations and positions that differ from those of the Veterans' Disability Benefits Commission. Otherwise, I fully support this report.

1. A New Compensation and Retirement System

The reports by CNA Corporation (CNAC) and the Institute of Medicine (IOM) provide convincing evidence that the current disability benefit system lacks adequate incentives and contains disincentives for disabled veterans to return to work, thus reducing quality of life of some disabled veterans. Consequently, the current system must be changed to encourage and support rehabilitation and return to work.

The President's Commission on Care for America's Returning Wounded Warriors (PCCWW) recommended "A Streamlined DOD/VA Retirement & Compensation System," and I support much of their concept. Transition compensation during the period of rehabilitation should provide a strong incentive to commence and complete a rehabilitation plan. Purposeful participation in the rehabilitation plan should be required for continued eligibility for transition compensation. Performing the rating for earnings loss after the rehabilitation period will more accurately reflect the veteran's ongoing occupational ability. The PCCWW-recommended system requires changes to the Military Retirement System that are consistent with the changes I recommend in Section 3 of this statement. In Section 2 below, I recommend changes to compensation for earnings loss to achieve parity, which are not addressed by the PCCWW; hence, I cannot speak to their views on this aspect. The payment period recommended by the PCCWW for compensation for earnings loss would stop at Social Security retirement age. The compensation payments would be treated as wages for Social Security benefit purposes; therefore, Social Security benefits would be comparable to

those of nondisabled veterans. Conceptually, the combination of veterans' compensation prior to retirement age, with Social Security benefits after retirement age, is an acceptable alternative approach to veterans' benefits compared to the current approach of lifetime compensation payments without Social Security benefits. However, complexities with the approach that includes Social Security benefits are avoided if those benefits are not brought into the design. As one example, compensating veterans who become disabled at older ages for loss of earning capacity is problematic if the compensation ends at age 65 because, according to the CNAC report, significant earnings losses occur after age 65.

I disagree with the PCCWW recommendation that payments for earnings loss should be "recalculated periodically as veterans' conditions or earnings change." This would shift the basis for compensation payments away from loss of average earnings capacity to an individual-based approach. This change would be a step backward because it would be a disincentive to the veteran to attain his or her maximum employment potential. What might be considered overpayments, if these recalculations are not made, will be systematically reduced over time as periodic analyses are made of loss of earnings capacity and adjustments are made to the compensation table.

The new system should modify or eliminate the way occupation is reflected in the rating process, as suggested by IOM, to eliminate or reduce the disincentive to work. Places in the rating schedule where such references currently exist include mental conditions and individual unemployability (IU). For posttraumatic stress disorder (PTSD), with its remitting and recurring pattern, this Commission recommended a "baseline level of benefits to include health care as an incentive for recovery." This approach may be a beneficial change for other conditions as well.

This Commission recommended quality-of-life compensation of up to 25 percent of compensation for earnings loss. Further study will be required to properly design this benefit. Special monthly compensation (SMC), which is provided for a limited number of disabilities, is primarily for the purpose of addressing quality of life. Therefore, the new provision should integrate with and supersede portions of SMC. Also, as discussed in section 2, the current compensation schedule is above parity at the older entry ages. For some older entry ages, the current level of compensation is already far greater than the appropriate level for both loss of earning capacity and quality of life; therefore, any increase for these groups would be inappropriate.

This Commission recommended significant improvements to the effectiveness of the Vocational Rehabilitation & Education program. These improvements are also an essential part of the new system contemplated in this section.

The standard for the appropriate level of income, in my view and, I believe, in the view of the Commission, is *for average income (earnings plus compensation plus retirement benefits) of disabled veterans to be equivalent to average income (earnings plus retirement benefits) of similar nondisabled veterans*. This standard should guide the levels of benefits in the new system.

A new system with the above features would accomplish two very important objectives: (i) align the incentives of the system with the well-being of disabled veterans; and (ii) provide benefit levels that conform to clear standards of appropriateness.

2. Parity in Compensation for Young and Old Entry Ages

Parity means that disability compensation plus earned income of disabled veterans is equivalent to the earned income of similar nondisabled veterans. CNAC measured parity by determining the ratio of earned income plus compensation of disabled veterans to the earned income of nondisabled veterans, using present values at various ages of entry into the compensation system (“entry age”).

Recommendations in this report do not specify whether the compensation table should be revised, upward and downward, to achieve parity by entry age. I believe that the compensation table should be revised to achieve entry age parity by replacing the current single column, which is used for all entry ages, with separate columns for groups of entry ages. The compensation amounts in the new table should be either higher or lower than the current amounts, as necessary, to achieve parity.

The present value of average future earnings subsequent to age 75, for example, is different from the present value of average future earnings subsequent to other ages. For this reason, it is essential for compensation to vary by entry age to provide parity. CNAC’s analysis (Table 17) found that annual compensation amounts of approximately \$40,000; \$30,000; and \$5,000 would provide parity for entry ages of 35, 55, and 75, respectively, for the 100 percent rating. (When considering the parity calculations for the 100 percent rating and the IU rating, it should be remembered that the CNAC analysis does not reflect the Social

Security Disability Insurance (SSDI) benefits that many veterans in these categories receive. As a result, the calculated compensation amounts that provide parity are greater than would be necessary if the government-funded portion of SSDI were included in the analysis.)

As a practical matter, the compensation table could combine entry ages into a few groups, such as (i) fewer than 50 years, (ii) 50–59 years, (iii) 60–69 years, and (iv) 70 years and older. That is, the current one-column schedule would be replaced with a four-column schedule (which should not be difficult to implement). A claimant rated 60% at age 45 would be entitled to the compensation amount for 60% in column (1). If an increase in rating from 60% to 100% is granted at age 65, the claimant would be entitled to an increase in compensation equal to the column (3) 100% amount minus the column (3) 60% amount.

A new compensation table determined in this way will provide parity to disabled veterans relative to the average earnings of nondisabled veterans. Compensation for quality of life is a separate issue, and the Commission recommended that it be addressed with a separate element of compensation.

The natural aversion to implementing benefit decreases can be mitigated in several ways. First, grandfather existing claimants and introduce the new table for future claimants. Second, introduce the new table at the same time as new improvements, such as quality-of-life compensation. Third, introduce the new table at the same time as broader, fundamental changes to the system (see Section 1).

3. Concurrent Receipt

Contrary to the recommendation of the Commission, it is my opinion that it is appropriate for disabled veterans to concurrently receive (with no offset) their military retirement benefit and their disability compensation benefit *only if* the two benefits are each properly designed so that the two benefits together provide the appropriate level of income (see statement at end of Section 1).

Changes in VA compensation and military retirement benefits are required if this condition is to be met; therefore, I do not support concurrent receipt of the two benefits as they now exist. If compensation is changed as discussed in Section 2 above, and if military retirement benefits are changed as discussed below, the two benefits together will achieve the desired objective and concurrent receipt will be appropriate. The Military Retirement System should provide a benefit to

all service members discharged for unfitness based on their years of service and rank (without consideration of their disability rating). There should be no minimum number of years of service required for disability retirement benefits for unfit service members. This benefit would appropriately address the *portion of the service member's career prior to disability*; that is, the disabled veteran would accrue retirement benefit credits for the years prior to disability in the same way as a nondisabled service member who continues on to become eligible for retirement. With the changes described in Section 2, disability compensation for earnings loss would appropriately address the *portion of the career after disability*; that is, the disabled veteran would receive compensation equivalent to the loss in earning capacity from the point of disability forward. The two benefits together would keep the disabled veteran whole relative to the full career of the nondisabled veteran.

This Commission also recommended the elimination of the survivor benefit plan (SBP)/Dependency and Indemnity Compensation offset. I disagree with this recommendation because it would provide greater-than-appropriate benefits for a relative handful of survivors. The CNAC analysis does not support the need for this increase. I believe two different changes are appropriate for survivors. First, the refund of SBP premiums should be changed to include interest, as a matter of equity. Second, Servicemembers' Group Life Insurance (SGLI) should be changed to provide a floor of coverage (such as 10 percent of the maximum coverage) at no cost to the service member. Although, participation in SGLI is high (98 percent), there is likely to be some number of service members who elect little or no coverage, and some of these are likely to be those whose dependants can least afford the loss.

4. Guiding Principle 3:

Benefits should be uniformly based on severity of service-connected disability without regard to the circumstances of the disability (wartime v. peacetime, combat v. training, or geographical location).

Benefit policy has often followed the point of view expressed in the Commission's third guiding principle in the past. However, there have been exceptions, such as the practice of paying lower compensation rates for peacetime service compared to wartime service from 1933 to 1972. Today, Combat Related Special Compensation and some sections of the Wounded Warrior legislation provide special benefits and services to veterans whose disabilities arise under select circumstances. In my opinion, Principle 3 is not appropriate because it regards all circumstances as equally deserving. It leads to benefit policies that are

difficult to reasonably justify, that allocate benefit resources to veterans indiscriminately, and that make it too costly to provide appropriate benefits in the most deserving cases.

The element of sacrifice is a legitimate consideration in determining benefit policy for veterans. Sacrifice, “to permit injury or disadvantage for the sake of something else,” relates to circumstances as well as results. The sacrifice made by a soldier injured in combat is greater than the sacrifice made by a service member injured in an off-duty motorcycle accident or a veteran with type 2 diabetes caused more by obesity than by exposure to Agent Orange. All three examples involve sacrifice for the nation because all three service members volunteered for military service with its inherent obligations and risks. But the three do not involve the same type or degree of sacrifice, even if the severity of disability is the same. In my opinion, it is not appropriate to require, as a matter of principle, that all the benefits and services provided in these three situations be the same. In all cases, the benefits and services should be “above the norm” of civilian benefits; but it is appropriate to allocate the greatest care to the greatest sacrifices.

The lack of discrimination among circumstances results in low respect for the reasonableness of the system. During our site visits, the Commissioners heard VA employees in various roles express dissatisfaction with the current policy in which all circumstances are treated the same. Our survey of raters found that only 28 percent of raters “definitely agree” that the “Disability Rating Process Most Often Arrives at the Right or a Fair Decision.” The reasons for this low response rate are not available from the survey; however, it is consistent with site visit discussions to surmise that the raters’ low opinion of the fairness of the process is, in part, attributable to this issue. Although some disabled veterans support Principle 3, I believe it has a widespread effect of undermining respect for the reasonableness and integrity of veterans’ benefits.

The “Line of Duty” section of the report (Chapter 5), points out that the broad 24x7 definition of line of duty is not found in other countries’ military systems or in American public safety officers’ systems. Nevertheless, the Commission supports this policy and rejects the more typical policy in which off-duty injuries are excluded from benefits. A middle-ground policy, such as one in which a portion of the cost of coverage for off-duty injuries is borne by the service member, should be considered. Such a middle-ground policy would better align the obligation of the nation with the sacrifice of the veteran than does the current 24x7 policy. The “Age as a Factor” policy (Chapter 5) raises the question of

whether disabilities related both to events occurring in military service and to natural aging occurring after military service should entitle individuals to benefits in the same way as disabilities arising directly from military conflict. A policy that considers proportionality of causes, i.e., how much of the responsibility for the disability is related to military service versus natural aging, would be more equitable than policies that assign full responsibility to either military service or natural aging. The compensation amount would be proportionate to the service-related portion of the responsibility. The Commission discussed proportional compensation in the context of presumptive service connection and had concern that this approach would be impractical.

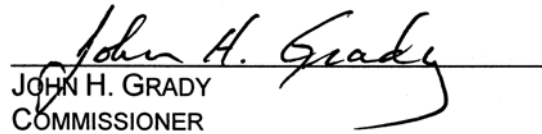
Appropriate differentiations in benefits, based upon guidelines supported by the majority of stakeholders, should be considered. Such guidelines would ensure that (i) proper respect and generosity are shown for all veterans' disabilities; and (ii) greater respect, in the form of greater benefits, is shown for greater sacrifice. Care provided to disabled veterans would be commensurate with the responsibility and gratitude of the nation for the varying degrees of sacrifice made by veterans. Following are examples of differentiations in benefits that might emerge from such consideration:

- a. "On-duty" service connection vs. "Off-duty" service connection: "On-duty" disabilities would be eligible for the normal VA compensation program. "Off duty" disabilities would instead have guaranteed access to a disability income insurance program, with premiums paid by the service member (subsidized by the government as necessary to keep rates at fair market level). Disease-related disabilities would be determined to be either on-duty or off-duty, depending on the circumstances, but would be covered one way or the other. Under this system, an individual entering military service would know that he or she is automatically protected for on-duty disabilities but would need to take advantage of the voluntary insurance program to be protected for off-duty disabilities. Free health care for both on-duty and off-duty disabilities could continue as it is currently.
- b. Proportionality in compensation for disease-related disabilities: For conditions (e.g., type 2 diabetes and prostate cancer) that result from multiple causes, of which the service-related cause may be minor, compensation would be based on the proportion that the service-related cause bears to the total of all causes. Free health care could continue as it is currently.

I am not suggesting that a large number of distinctions be made. Clearly, more distinctions make the system more complex to administer. However, the advantages to be gained by making appropriate distinctions would include (i) greater respect for the reasonableness of veterans' benefits, and (ii) greater fairness in the allocation of benefits to veterans.

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The above four sections summarize the issues that I felt it necessary to address in a separate statement. Notwithstanding these issues, I otherwise support the many important recommendations made by the Veterans' Disability Benefits Commission.



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COMMISSIONER