

**STATEMENT OF DONALD L. MOONEY, ASSISTANT DIRECTOR
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
CHALLENGES AND OPPORTUNITIES FACING DISABILITY CLAIMS
PROCESSING IN 2006**

DECEMBER 7, 2005

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present The American Legion's views on the challenges and opportunities facing Department of Veterans Affairs (VA) disability claims processing in 2006. We commend the Committee for holding this hearing to discuss these important issues.

Workload and Claims Backlog

The VA has a statutory responsibility to ensure the welfare of the nation's veterans, their families, and survivors. Providing quality decisions in a timely manner has been, and will continue to be, one of the VA's most difficult challenges.

There are currently almost 2.6 million veterans receiving disability compensation and VA reports that this number is increasing at a rate of 5,000 to 7,000 per month. VA reported that its 57 Veterans Benefits Administration (VBA) regional offices issued more than 763,000 disability determinations in fiscal year 2005. Three and four percent increases are expected in fiscal years 2006 and 2007, amounting to approximately 826,000 claims in fiscal year 2006 and 842,000 in fiscal year 2007. A majority of these claims involve multiple issues that are legally and medically complex and time consuming to adjudicate.

The increasing complexity of VA claims adjudication continues to be a major challenge for VA rating specialists. Since judicial review of veterans' claims was enacted in 1988, the remand rate of those cases appealed to the United States Court of Appeals for Veterans Claims (CAVC) has, historically, been about 50 percent. In a series of precedent setting decisions by the CAVC and the United States Court of Appeals for the Federal Circuit, a number of longstanding VA policies and regulations have been invalidated because they were not consistent with statute. These court decisions immediately added thousands of cases to regional office workloads, since they require the review and reworking of tens of thousands of completed and pending claims.

As of November 26, 2005, there were almost 368,000 rating cases pending in the VBA system. Of these, more than 84,000 (22.9 percent) have been pending for more than 180 days. According to the VA, the appeals rate has also increased from a historical rate of about 7 percent of all

rating decisions being appealed to a current rate that fluctuates from 11 to 14 percent. This equates to more than 152,000 appeals currently pending at VA regional offices, with more than 130,000 requiring some type of further adjudicative action.

Staffing

Whether complex or simple, VA regional offices are expected to consistently develop and adjudicate veterans' and survivors' claims in a fair, legally proper, and timely manner. The adequacy of regional office staffing has as much to do with the actual number of personnel as it does with the level of training and competency of the adjudication staff. VBA has lost much of its institutional knowledge base over the past four years, due to the retirement of many of its 30-plus year employees. As a result, staffing at most regional offices is now made up largely of trainees with less than five years of experience. Over this same period, as regional office workload demands escalated, these trainees have been put into production units as soon as they completed their initial training.

Concern over adequate staffing in VBA to handle its demanding workload was addressed by VA's Office of the Inspector General (IG) in a report released in May of this year (Report No. 05-00765-137, dated May 19, 2005). The IG specifically recommended, "in view of growing demand, the need for quality and timely decisions, and the ongoing training requirements, reevaluate human resources and ensure that the VBA field organization is adequately staffed and equipped to meet mission requirements." Additionally, the chairman of the newly established Veterans' Disability Benefits Commission questioned the Under Secretary for Benefits about the adequacy of current staffing levels during a Commission meeting this past July. The Under Secretary conceded that the number of personnel has decreased over the last three years. 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 less staff. Our current wartime situation provides an excellent opportunity for VA to actively seek out returning veterans from Operations Enduring Freedom and Iraqi Freedom, especially those with service-connected disabilities, for employment opportunities within VBA.

Training

Over the past few years, The American Legion's Quality Review Team has visited almost 40 VA regional offices for the purpose of assessing overall operation. This includes a review of recently adjudicated claims. Our site visits have found that, frequently, there have been too few supervisors or inexperienced supervisors to provide trainees necessary mentoring, training, 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. However, we are encouraged by the Under Secretary for Benefits' public commitment to improving the training of VBA personnel and we look forward to improvements in this area in 2006.

Production Versus Quality

Any rational, informed observer of the VA adjudication system would find that the VA suffers from a quality problem. 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 have been prematurely and arbitrarily denied. Approximately 65 percent of VA raters and Decision Review Officers (DRO) surveyed by the IG, in conjunction with its May 2005 report, admitted that they 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. Inadequate staffing levels and pressure to make quick decisions, resulting in an overall decrease in quality of work, has also been a consistent complaint among Service Center employees interviewed by The American Legion staff during our regional office quality checks. As a consequence, the appeals burden at the regional offices, the Board of Veterans' Appeals (Board or BVA) and the Appeals Management Center (AMC) continues to grow. In fiscal year 2005, the BVA issued more than 34,000 decisions and, of these, the BVA either overturned the regional offices' decisions or remanded for additional development in almost 60 percent of the appeals.

For years The American Legion and other veterans service organizations (VSOs) have stated that the driving force behind most VA adjudications is the need for the VA to process as many claims as possible in the fastest possible time. Awards and bonuses are often centered around production and even the IG 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. The emphasis on quantity and speed of adjudication results in premature adjudications, improper denials of benefits, and of course, inconsistent decisions. The growing claims backlog and the immense pressure on VA leadership to reduce it and provide timely decisions is often at odds with efforts to maintain or improve the quality of the decisions. Instituting realistic production goals and timelines that take into consideration the number of pending cases and the complexity of the work must be accomplished if VA is to ever reach a much needed balance between production and quality in its adjudication process. In addition to providing rating personnel with enough time to properly develop and rate claims, it is essential for VA management to actively encourage and reward quality work.

Additional Areas of Concern

VBA Communication with Veterans

The Veterans' Claims Assistance Act of 2000 (VCAA), P.L. 106-475, was designed in part to improve the way VBA communicated with claimants and the way in which VA regional offices developed claims. Great pains were taken in the wording of the statute to make clear the exact nature and extent of VA's obligations and responsibilities in notifying and assisting claimants. Essentially, the VCAA required the VA to inform veterans of the evidence and information that was needed in order for the VA to award benefits. This process was a major departure from longstanding adjudication policies and procedures, which did not adequately inform and assist individuals with their claims. This legislation was expected to result in claims that were more fully developed and which could be adjudicated in a more expeditious and accurate manner,

thereby, improving service to claimants. There was also an expectation that these improvements would increase claimant's satisfaction with the decision received and, over time, reduce the appellate workload for the Decision Review Officers and for the Board of Veterans' Appeals.

Unfortunately, many VCAA development letters have not fulfilled the intent of the legislation. It is the experience of The American Legion, based on over 36 quality reviews of VA regional offices, that many VCAA letters are poorly written and difficult to understand. We have identified instances where the letter sent to the claimant did not even begin to address relevant issues. Additionally, during our site visits, some VA regional office adjudicators and managers expressed dissatisfaction with the content of the VCAA letters issued by VA Central Office. These regional office employees were upset that they were not permitted to alter or amend the language provided by VA Central Office. In addition, it has been the experience of The American Legion that in some VA regional offices, relatively inexperienced regional office employees are tasked with the job of developing claims. Inadequate early development and notification can lead to a plethora of later adjudication problems.

Veterans seeking VA benefits should not have to wait until they receive a statement of case in order to understand what evidence the VA needs in order to properly adjudicate their claims. Properly and promptly informing the claimant of the evidence and information required to win the claim is an essential part of the VA's duty to assist the claimant in the development of his or her claim and it is an integral part of the non adversarial VA claims adjudication process. It is evident from the high appeals rate and remand rate for VCAA deficiencies that in many instances this is not being done.

The American Legion wants to stress that besides inadequate VCAA notifications being a legal issue, the failure to properly communicate with veterans seeking VA benefits is a fairness issue. It makes no sense for the VA to hide from what evidence would support the grant of VA benefits.

Additional Outreach Requirement

A provision in the Military Quality of Life Functions, Military Construction, Veterans Affairs, and Related Agencies Appropriations Act of 2006, passed by Congress on November 18 and signed by the President on December 1, requires the VA to conduct outreach to veterans in states with an average annual disability compensation payment of less than \$7,300 (based on the findings of the May 2005 IG report). Specifically, VA would be required to notify, by mail, all veterans in these states, who are receiving compensation, of the their state's history of below average disability compensation payments. Veterans in the targeted states would also be provided with instructions on how to submit new claims and request review of past disability claims and ratings. Given its already large claims and appeals backlog, the additional claims work generated as a result of this outreach requirement will be a tremendous challenge for VA in 2006.

VBA PTSD Review

Last month, after intense scrutiny and criticism from members of Congress and VSOs, VA scrapped its plans to review more than 70,000 post-traumatic stress disorder (PTSD) cases, rated 100 percent and 100 percent based on individual unemployability, granted from fiscal year 1999

through 2004. VA's decision to review these cases was in response to recommendations in the May 2005 IG report that found that about 25 percent of the 2,100 PTSD awards it reviewed were based on inadequate evidence of the occurrence of traumatic event, a key requirement in a PTSD claim.

The American Legion strongly believes that VA's decision to initiate the review was a "knee jerk" reaction to a flawed IG report and we are pleased that Secretary Nicholson eventually decided to do the right thing and call it off. Unfortunately, the public's trust and confidence in VA was damaged by what many saw as an excuse to take away veterans' benefits. Moreover, widespread media coverage of VA's announcement to conduct a large scale PTSD review caused undue stress and aggravation for an untold number of veterans with serious psychiatric conditions.

Not only was the intent of such a review highly questionable as it would only cover claims that were granted, not those that were erroneously or prematurely denied and/or under evaluated, a number that is undoubtedly higher than those that were improperly allowed, it wasn't practical. In light of VBA's staffing issues and an enormous existing backlog of rating claims and appeals, VA simply could not afford to tap its limited resources to conduct a review of more than 70,000 cases that would otherwise not have to be touched. Additionally, announcing it would review thousands of previously granted PTSD cases without fully considering all potential ramifications, or even how such a large-scale review would be conducted, was extremely irresponsible. VA now has the opportunity to address any legitimate problems, identified by the IG, when adjudicating claims that are currently pending and those that are filed in the future.

We are hopeful that VA leadership has learned a lesson from this experience and will take the time to carefully and thoughtfully consider all future recommendations and reports before making important decisions that will have a direct impact on the lives of the nation's veterans and their families.

Lump Sum Payments

VA is currently exploring the establishment of lump sum payments of benefits, as recommended by the IG in its May 2005 report. The IG report confirms that acceptance of a lump sum payment would prevent a veteran from filing a claim for increase in his or her disability rating. For example, a veteran might establish entitlement to service connection for hypertension evaluated as 10 percent disabling. Years later the hypertension could cause a heart condition that would render the veteran unemployable, and the heart disability might cause the veteran's death. The veteran would not be able to obtain an increase in evaluation if he or she accepted the lump sum payment. It is not clear whether the spouse would be entitled to service-connected death benefits in such a case. Additionally, in implementing this option, one would have to necessarily assume that the initial award, for which the lump sum is paid, is correct. As indicated by the high BVA remand and reversal rate, this is not a safe assumption.

Regional Office Consolidation

Regional office consolidation is an idea that surfaces every few years. Some VA managers like the idea of consolidation because of the economic advantage to the VA. It is cheaper to have 10 or 16 offices than to pay for 57 regional offices. However, in our experience, many of the bigger

VA offices have more quality problems than the smaller regional offices. The American Legion quality reviews reveal that the fact that raters and DROs are under the same roof does not mean they will all rate claims consistently. Also, consolidation would hamper access to the VA regional offices for many veterans, especially among low income and minority veterans and those in rural areas.

Closing

The American Legion realizes that VBA faces many difficult challenges during the upcoming year. Although we have offered our suggestions and comments, we realize that there is no easy solution and we will continue to work closely with VA to ensure our nation's veterans receive the benefits to which they are entitled. That concludes my testimony. I will be happy to answer any questions.