

**STATEMENT OF JAMES P. TERRY
CHAIRMAN, BOARD OF VETERANS' APPEALS**

BEFORE THE

**COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

December 7, 2005

Good morning, Mr. Chairman. Thank you for the opportunity to discuss the operations of the Board of Veterans' Appeals (Board) with you, the members of the Committee, and your staff.

When the Board last presented testimony before the Subcommittee on Disability Assistance and Memorial Affairs on May 5th of this year, we contrasted our performance with that of past years, notably when we appeared before the Committee in February 1994 and June 1998. This comparison continues to be instructive in demonstrating where we are heading and how we will meet the challenges that the future will bring.

In Fiscal Year (FY) 1994, the Board issued about 22,000 decisions. Our pending caseload stood at 47,000, and was on its way to 60,000. Our measure of timeliness then used—average response time—was 781 days.

By FY 1998, we had significantly improved our timeliness and productivity. With 483 full-time employees (FTE), we issued 38,886 decisions, and held 4,875 hearings. Appeals resolution time—the time from the date a veteran files a Notice of Disagreement until he or she receives a final decision on appeal—was 686 days.

In FY 2005, the Board issued 34,175 decisions and conducted 8,576 hearings, a substantial increase from 1998. Appeals resolution time stood at 622 days. Our cycle time—the time that it actually takes the Board to issue a decision (excluding the time the case is with the service organization representative)—was 104 days. Significantly, we accomplished these results with 434 authorized FTE, or 49 fewer FTE than we had in 1998. Despite our efforts, we continue to receive more appeals than we are deciding. Case receipts for FY 2005 were 41,816, and the number pending at the end of FY 2005 stood at 37,539. Our most significant challenge for the future is how to eliminate the growing backlog with available resources.

We are fortunate to have received much help in achieving our successes and in meeting future challenges. I would like to thank:

- The Congress for its unqualified support for the appellate rights of veterans and their families.
- The assistance of the veterans service organizations, which represent about 85% of our appellants.
- Strong support from VA's leadership to enable us to ensure that veterans receive timely, fair, high quality decisions.
- The Board's Veterans Law Judges (VLJs), counsel, and administrative support staff, whose efforts have thus far increased average productivity by 20% for staff counsel, and by 25% for the VLJs over historic levels, and who have enabled us to nearly double the number of hearings held.

Two of the most significant and persistent challenges we face are:

- Eliminating avoidable remands to VA regional offices, and
- Increasing productivity to contain and reduce the appeals backlog.

In regard to remands, we know that:

- Veterans want timely and correct decisions on claims for benefits. For the Board to do that, the record must contain all evidence necessary to decide the claim and show that all necessary due process has been provided. If the record does not meet these requirements, and the benefits sought cannot be granted, a remand for further development is necessary.
- Remands lengthen appeals resolution time. One remand adds about a year to the process.
- Remands also divert resources from processing other claims and appeals.
- About 75% of cases remanded by the Board are subsequently returned to the Board, which increases our workload and degrades timeliness.

- Hence, eliminating avoidable remands is a goal that will provide better service to veterans and their families and, ultimately, help to diminish the growing backlog.
- We are working with the Veterans Benefits Administration (VBA), Office of General Counsel (OGC), and Veterans Health Administration (VHA) to identify and track root causes of remands, to provide training, and, ultimately, to eliminate avoidable remands. In this regard, our training efforts have been considerable. We held several direct training sessions during the past year for all VLJs and staff counsel on aspects of remand avoidance, as well as on how to draft clearer and more efficient remand orders. We held joint training sessions with VBA (including a video broadcast), on avoidable remands and on evidence development. We conducted numerous sessions on a variety of medical and legal subjects within our jurisdiction and are planning two new intra-Departmental training initiatives—all designed to reduce remands and improve quality. In addition we are working with VHA and VBA on the Compensation and Pension Examination Project (CPEP), to improve the quality of VA compensation examinations so that remands to obtain sufficient examinations can be reduced.
- The results so far are encouraging. The remand rate for FY 2005 has dropped to 38.6% as compared to 56.8% in FY 2004. For FY 2006, the remand rate stands at 32.1%. We expect further improvement once we begin reaching cases on our docket that have been subject to VBA's efforts to avoid remands.

If nothing had been done, our backlog was projected to grow to unacceptable levels. The Board's backlog disposition time—the projected time it would take the Board, working at its current rate and devoting all its resources to eliminate the backlog—would increase from 284 days in FY 2005, to 361 days in FY 2006, and to 603 days in 2008.

Although we have made many improvements, we have a way to go. Within existing resources, through incentives and sound management, we will continue to improve by:

- **Eliminating avoidable remands:** The ongoing reduction in remands in FY 2005 and 2006 will contribute to reduce the growth of the backlog and improve appeals resolution time.

- **Strengthening our intra-agency partnerships:** Our joint training efforts with VBA, OGC, and VHA, will improve decision quality and reduce remands.
- **Writing shorter, clearer and more concise decisions:** We are training our VLJs and counsel to write shorter and more concise decisions.
- **Utilizing employee incentive, mentoring and training programs:** A number of new programs have been introduced to increase employee motivation and satisfaction, as well as to increase productivity and decision quality.
- **Making use of overtime:** We will use overtime within existing resources to enhance productivity.
- **Increasing our use of paralegals:** We will increase the use of our paralegals for non-decisional support activities, freeing up our legal staff to decide appeals.
- **Providing improved on-line legal research tools and analytical frameworks** to aid timely and correct decision production.
- **VLJs will draft decisions,** in addition to reviewing decisions drafted by staff counsel, as time permits.

We believe these measures will work to reduce the backlog and shorten the time it takes for a veteran to receive a fair, well-reasoned Board decision. We have reduced the time it takes for an appeal to be finally resolved from 686 days in FY 1998, to 622 days in FY 2005. While this reduction is important, it is even more significant in light of the fact that 71.4% of the decisions issued in FY 2005 were final decisions, as compared to 58.7% of decisions in FY 1998. While our decision quality was at 89% in FY 2005 this reflects the complexity involved in drafting more final decisions, addressing the merits of a claim, as opposed to remands for more development. Notably, the Board's own timeliness -- our cycle time -- stands at a little over three months.

I wish to assure you that that we will continue working together with our partners in and outside the Department to develop new and creative solutions to the challenges we face in order to fulfill our statutory mission to hold hearings and provide timely, high quality decisions to our Nation's veterans and their families.

I would be pleased to answer any questions you or your colleagues mi